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Environmental Protection Agency

40 CFR Part 745

Lead; Notification Requirements for Lead-based Paint Abatement Activities and Training; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 745**

[OPPTS–62165; FRL–6764–7]

RIN 2070–AD31

Lead; Notification Requirements for Lead-based Paint Abatement Activities and Training**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: Under the authority of Section 407 of the Toxic Substances Control Act (TSCA), as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as “Title X (ten),” EPA proposes to establish notification procedures for certified lead abatement professionals conducting lead-based paint activities, and accredited training programs providing lead-based paint activities courses. Specifically, this proposal seeks to establish the procedures that would be used to provide the notification to the Agency that is currently required prior to the commencement of lead-based paint abatement activities. This proposal also seeks to establish provisions which would require accredited training programs to notify the Agency under the following conditions: (1) Prior to providing lead-based paint activities training courses, and (2) following completion of lead-based paint activities training courses. These notification requirements are necessary to provide EPA compliance monitoring and enforcement personnel with information necessary to track compliance activities and to prioritize inspections. Today’s proposal, will help to prevent lead poisoning in children under the age of six by supporting the Agency’s implementation of the mandate in Title X to ensure that lead abatement professionals involved in inspecting, assessing or removing lead-based paint, dust or soil are trained and certified to conduct these activities.

DATES: Comments, identified by docket control number OPPTS–62165, must be received by EPA on or before February 21, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. under **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number

OPPTS–62165 in the subject line on the first page of your response.

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

For technical information contact: Mike Wilson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–4664; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a lead abatement professional (individual or firm) who must be certified to conduct lead-based paint abatement activities in accordance with 40 CFR 745.226. Specifically, the proposed procedure for notification of the commencement of lead-based paint abatement activities applies to both the certified supervisor and certified firm employing that supervisor conducting lead-based paint abatement activities. The proposed procedure for notification of lead-based paint activities training courses applies to the training manager of an accredited training program.

This proposed rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States and Indian tribes contact the National Lead Information Center (NLIC) at 1–800–424–LEAD. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Code	Examples of Potentially Affected Entities
Lead abatement professionals	562910	Firms and supervisors engaged in lead-based paint activities.

Categories	NAICS Code	Examples of Potentially Affected Entities
Training programs	611519	Training programs providing training services in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 745. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the Internet Home Page for the EPA Lead Program at <http://www.epa.gov/lead/>. You can also access an electronic copy of this document by going directly to the **Federal Register** listings at <http://www.epa.gov/fedrgrstr/>, and look up this document using the date of publication. To access information about lead-based paint and the Lead Program, go directly to EPA’s Lead Home Page at <http://www.epa.gov/lead/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–62165. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any

electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Non-confidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260-7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-62165 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260-7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS-62165. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

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

We invite you to provide your views on the various options we propose, new approaches we may not have considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the proposed rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. How Does this Action Fit into EPA's Overall Lead Program?

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X directed EPA to promulgate regulations aimed at fulfilling the purposes of Title X. These included TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and the establishment of standards for conducting lead-based paint activities.

Section 404 of TSCA requires that EPA establish procedures for States seeking to establish their own programs for lead-based paint activities. On August 29, 1996, EPA promulgated a final rule under sections 402 and 404 of TSCA titled "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities" (61 FR 45778). This rule is codified at 40 CFR part 745, subparts L and Q.

One of the standards EPA developed for performing lead-based paint activities, codified at 40 CFR 745.227(e)(4), requires notification to EPA prior to the commencement of lead-based paint abatement activities in a residential dwelling, or child-occupied facility, or as a result of a Federal, State, Tribal, or local order. However, the current 40 CFR 745.227(e)(4) does not detail specific notification procedures. Today's proposal includes such procedures.

Today's proposal also includes requirements for accredited training programs (accredited under 40 CFR 745.225) to notify the Agency of lead-based paint activities course schedules prior to being taught and provide information after the completion of a training course. Currently, accredited training programs are asked to voluntarily notify the Agency prior to offering a lead-based paint activities course. This proposal seeks to codify this practice.

These proposed notification requirements for lead-based paint abatement activities and training courses will assist significantly in the implementation of lead-based paint activities regulations codified at 40 CFR part 745 subpart L. The notification provisions will help to assure compliance by facilitating observation of abatement activities and training by EPA compliance monitoring and enforcement personnel.

B. What is the Agency's Authority for Taking this Action?

EPA is issuing this proposed rule under the authority of section 407 of the Toxic Substance Control Act (TSCA), 15 U.S.C. 2687. Section 407 states that regulations of the Administrator under Subchapter IV of TSCA shall include such recordkeeping and reporting requirements as may be necessary to insure effective implementation. EPA regulations under Subchapter IV of TSCA include lead-based paint activities regulations, which this proposal seeks to amend, codified at 40 CFR part 745 subpart L.

III. Proposal

A. What are the Requirements for Notification of Lead-based Paint Abatement Activities?

Today's proposed rule includes the procedures that will be used to satisfy the requirements for the notification of commencement of lead-based paint abatement activities in § 745.227(e). This provision includes instructions which would require firms certified under 40 CFR 745.226 to provide notification to the Agency prior to conducting lead-based paint abatement activities. The original notice, signed by a certified supervisor, would be required to be received by the Agency at least 10 business days prior to the start of lead-based paint abatement activities. An abbreviated notification period is provided for lead-based paint abatement activities conducted in response to an elevated blood lead (EBL) determination and/or a Federal, State, Tribal, or local emergency abatement order, where the firm is unable to comply with the standard notification period due to the necessity for an expeditious response to such event. If lead-based paint abatement activities are expected to begin on a date other than that specified in the original notice or if the other reported information changes, an updated notice would be required. This proposal would prohibit lead-based paint abatement activities from starting on any date other than the one contained in the applicable notification. This notification provision would provide EPA compliance monitoring and enforcement personnel with information necessary to track compliance activity and to prioritize compliance inspections. The notice would include the following:

1. Notification type (Original, Updated, Cancellation).
2. Date when lead-based paint abatement activities will commence.
3. Date when lead-based paint abatement activities will end (approximation using best professional judgement).
4. Firm's name, EPA certification number, address, and phone number.
5. Type of building on/in which abatement work will be performed.
6. Property name (if applicable).
7. Property address for abatement work, including nearest cross streets.
8. Copy of Federal/State/Tribal/Local emergency abatement order, if applicable.
9. Name, EPA certification number, and signature of the Certified Supervisor.
10. Approximate square footage/acreage to be abated.

11. Brief description of abatement activities to be performed.

Notification would be accomplished using any of the following methods: written notice, or E-mail. All notices submitted by E-mail must be followed with written notice within 24 hours of submission. Written notification would be accomplished using either the sample form titled "Notification of Lead-Based Paint Abatement Activities" or a similar form. All written notices would be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. When using the U.S. Postal Service for delivery, an additional three business days should be factored in to ensure Agency receipt of the notice by the required date. The notice would have to be signed by a certified supervisor. Notification instructions and sample forms would be obtained from the National Lead Information Center (NLIC) at 1-800-424-LEAD, or the Internet at <http://www.epa.gov/lead>.

B. What are the Requirements for Notification of Lead-based Paint Activities Training?

Today's proposed rule includes requirements for the notification of lead-based paint activities training in 40 CFR 745.225(c). This provision would require training programs certified under 40 CFR 745.225 to provide notification to the Agency prior to conducting lead-based paint activities courses. The original notice would be required to be received by the Agency at least 10 business days prior to the start of a lead-based paint activities course. An updated notice would be required if the starting date for a lead-based paint activities course is changed to a date other than that specified in the original notice or if the other reported information changes. This proposed rule would also prohibit lead-based paint activities courses from starting on any date other than the date which is contained in the applicable notification. This notification provision would provide EPA compliance monitoring and enforcement personnel with information necessary to track training program compliance and to prioritize compliance inspections. The notice would include the following:

1. Notification type (Original, Updated, Cancellation).
2. Training program name, EPA accreditation number, address, and phone number.
3. Course discipline, type (initial/refresher), and the language in which instruction will be given.
4. Date(s) and time(s) of training.

5. Training location(s) phone number, and street address (including nearest cross streets).

6. Principal instructors name.

7. Training manager's name and signature.

Training programs would also be required to provide notice to the Agency following completion of a lead-based paint activities course. This notice would be provided to the Agency within 10 business days of course completion. This notification provision would provide information necessary for the following: (1) the evaluation of certification applications, and (2) to properly evaluate the training and certification credentials of individuals conducting lead-based paint abatement activities. This notice would include the following:

1. Training program name, EPA accreditation number, address, and phone number.
2. Course discipline and type (initial/refresher).
3. Date(s) of training.
4. The following student information:
 - a. Name.
 - b. Address.
 - c. Social security number.
 - d. Course completion certificate number.
 - e. Student test scores.
5. Training manager's name and signature.

Notification of lead-based paint activities course schedules and notice following completion of lead-based paint activities courses would be accomplished using any of the following methods: written notice, or by E-mail. All notices submitted by E-mail would be followed up with a written notice. Written notification of lead-based paint activities course schedules would be accomplished using either the sample form titled "Lead-based Paint Activities Training Course Schedule" or similar form. Written notification following lead-based paint activities courses would be accomplished using either the sample form titled "Lead-based Paint Activities Training Course Follow-up" or similar form. All written notices would be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. When using the U.S. Postal Service for delivery, an additional 3 business days should be factored in to ensure Agency receipt of the notice by the required date. The notice would have to be signed by the Training Manager. Notification instructions and sample forms would be obtained from the National Lead Information Center (NLIC) at 1-800-424-LEAD, or on the Internet at <http://www.epa.gov/lead/>.

C. What Were the Principal Issues Considered During the Development of this Proposal?

1. How is notification accomplished?

While considering notification methods, the Agency reviewed the notification provisions of several existing State lead-based paint abatement programs, as well as a similar Agency program for asbestos abatement, the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. It was determined that each of these programs require notification in writing, delivered by hand, postal service, or commercial delivery service.

The NESHAP program received comments regarding the use of faxed notification. In the 1990 final rule (55 FR 48406), the NESHAP program responded that EPA did not consider fax notification to be sufficiently reliable, at the time, to allow their use but might consider the use of facsimile machines in the future when their reliability improved.

For purposes of this proposal, the Agency would like to make use of existing technology to simplify the lead-based paint abatement and training notification process. The use of fax machines today is commonplace and reliability concerns are greatly diminished. Also, E-mail is a reliable and effective communication tool. Therefore, in addition to the more traditional notification methods (mail, commercial delivery service, or hand delivery) the Agency is proposing to allow fax and E-mail notification. In allowing E-mail notifications, the Agency is proposing that E-mail notification would require follow-up written notification for the record. However, the original E-mail notice would satisfy the applicable notification time requirements.

The Agency is also particularly interested in receiving comments on other electronic reporting mechanisms, including web-based on-line reporting. Under the Government Paperwork Elimination Act (GPEA) of 1998, Public Law No. 105-277, all Federal agencies are required to have an electronic means of reporting to government as an alternative to reporting on paper by October 2003, and such submissions and transactions must be given the same legal effect as a paper submission. It requires Federal agencies to provide individuals or entities the option to submit information, transact business with the Agency, and maintain records electronically, when practicable. In addition, the Electronic Signatures in Global and National Commerce Act (E-SIGN) of 2000, Public Law No. 106-229,

is intended to eliminate legal barriers to the use of electronic technology in business-to-business and consumer transactions. Its basic purpose is to promote the use of electronic signatures, electronic contract formation, and electronic record-keeping in private commerce by establishing legal equivalence between: (1) Contracts written on paper and contracts in electronic form; (2) pen-and-ink signatures and electronic signatures; and (3) other legally-required written documents and the same information in electronic form.

In compliance with these mandates, EPA is developing a centralized Agency-wide electronic report receiving system, called the "Central Data Exchange" (CDX). Once CDX is in place for a particular reporting or submission requirement, regulated entities that wish to submit electronic documents directly to EPA would be able to do so using CDX. In addition, until CDX is available, and parallel to CDX, the Office of Pollution Prevention and Toxics (OPPT) is also developing a user-friendly electronic reporting process for the information that is submitted to EPA under sections 4, 5, 8, and 12(b) of TSCA. OPPT expects to implement these electronic reporting options in the first quarter of 2001. In providing comments on additional electronic options to consider for the notification covered in this proposed rule, EPA asks commenters to also provide estimates for the reporting burden associated with electronic reporting, differences between the burden of reporting electronically versus in paper, availability of technology necessary for electronic reporting, and comments or preferences between on-line web-based notifications and e-mail electronic options.

The Agency also considered telephone notification and found it inappropriate because it would increase administrative burden, and would be less reliable due to inherent problems associated with transcribing verbal information. Therefore, the Agency does not intend to allow telephone notification.

2. Time periods for notification. In determining when EPA would require receipt of abatement and training notifications, the Agency considered input from the following:

(1) A similar regulatory program NESHAP.

(2) Existing state notification requirements.

(3) EPA's Office of Enforcement and Compliance Assistance (OECA).

The Agency operates a similar regulatory program, the NESHAP, which

requires Agency notification for asbestos stripping and removal. The NESHAP program requires original notification to be postmarked 10 business days prior to the commencement of asbestos stripping and removal projects. NESHAP notification is required in writing, to be delivered by hand, U.S. Postal Service, or commercial delivery service. The 10 business day period is necessary to review the notice, assign appropriate personnel, arrange for travel, and dispatch Agency representatives. Travel is often required due to the large geographical areas for which the 10 EPA regional offices are responsible.

The Agency also reviewed several existing State programs including California, Texas, Oklahoma, and New Jersey. These States require 5 days, 7 days, 10 days, and 14 business days respectively for original notification of lead-based paint abatement activities. Each of these State programs require notification in writing. Although it is difficult to directly compare specific notification provisions due primarily to differences in staffing and jurisdictional areas at the State level, it is important to note that the EPA proposed 10 business day notification period is readily comparable to the notification periods of these States.

OECA manages the enforcement and compliance assurance activities for the NESHAP program. While the two programs are similar in nature, the lead-based paint activities program has a more complex regulatory structure with more disciplines and requirements than NESHAP. Therefore, OECA recommends that notification be received by the Agency at least 10 business days prior to the start of lead-based paint abatement activities and training courses, to assure that adequate time is allotted for compliance monitoring staff and managers to thoroughly review, select, and prepare for potential inspections of work sites and training programs. OECA staff emphasize the many activities which must be conducted in preparation for a site inspection including: (1) Notification processing; (2) inspection determination; (3) travel authorization; (4) pre-inspection notification; (5) preliminary compliance review; and (6) travel.

In conclusion, the Agency believes that receipt of notification 10 business days prior to conducting lead-based paint abatement activities or training courses is necessary to facilitate the inspection of abatement and training locations. The proposal also would include provisions for updating the original notification. The Agency determined that a 10 business day

notification would also apply to a change in course location, or if the course is to be presented earlier than described in the original notification. Other changes, including cancellation of a session, need only be received by the Agency at least 2 business days before the session is scheduled to begin. Such notification periods are appropriate to allow proper allocation of EPA compliance monitoring and enforcement resources, and to prevent the arrival of Agency personnel at the wrong location or time.

3. *Abbreviated notification time period.* The Agency understands that situations arise which require prompt action and that in these situations a firm may find it difficult, if not impossible, to satisfy the standard 10 business day notification period for lead-based paint abatement activities. In defining when these instances might occur, the Agency identified those abatement activities which are required in response to a determination that a child has an elevated blood lead level (EBL) or as a result of a Federal, State, Tribal, or local emergency abatement order as those which would require such prompt action. Notification time periods in such instances would be abbreviated and require documentation showing evidence of an EBL determination or a copy of the order to be included as part of the written notification.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is not a "significant regulatory action" subject to review by OMB under E.O. 12866, because this action does not meet any of the criteria for a "significant regulatory action" under section 3(f) of E.O. 12866.

The estimated costs for the first year of implementation are estimated to be approximately \$440,000, decreasing to an average annual estimated cost of approximately \$395,000 in subsequent years. For additional information about these estimated costs, please refer to the document entitled "Information Collection Request (ICR) Supporting Statement for a Proposed Addendum to EPA ICR No. 1715 entitled TSCA section 402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities" (herein the ICR Addendum (EPA ICR No. 1715.03)). This document, identified as EPA ICR No. 1715.03, is an

addendum to the existing ICR. A copy is available in the public version of the official record described in Unit I.B.2., and may also be obtained as described in Unit IV.C.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this action, if promulgated as proposed, will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is as follows. The Agency already assessed the potential small entity impacts of the notification requirement that was contained in the 1998 final rule as part of the economic analysis that was prepared for that rulemaking, a copy of which is available in the public version of the official record for this proposed rule as described in Unit I.B.2. In addition, the Agency has estimated the impacts of the other requirements contained in this proposed rule, which are presented in the ICR Addendum (EPA ICR No. 1715.03).

In considering the potential small entity impacts of this proposed rule, the Agency believes that its previous determination regarding the Lead Abatement Training and Certification Final Rule is not affected by the notification procedures contained in this proposed rule. Based on the estimated total costs of this proposed rule as presented in the ICR Addendum (EPA ICR No. 1715.03), EPA has determined that this rulemaking is not likely to result in a significant impact on a substantial number of small entities. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency.

For the purpose of analyzing the potential impacts of this proposed rule on small entities, EPA used the definition for small entities that is found in section 601 of the RFA. Under section 601, "small entity" is defined as: (1) A small business that meets Small Business Administration (SBA) size standards codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The SBA size standards for the small businesses potentially affected by this proposed rule is 500 employees or less for lead

abatement firms whose primary activity is classified as environmental remediation (NAICS code 562910), and revenues of \$5 million or less for firms that are accredited to provide lead-based paint training (NAICS code 611519). Since SBA recently amended its small business size standards, which previously classified small business sizes according to the Standard Industrial Classification (SIC) system, to classify small business sizes according to the NAICS system, the analysis for the Lead Abatement Training and Certification Final Rule uses the SBA size standards that were in place in 1996, when that analysis and rule were completed. Although it is possible that certain businesses could gain or lose "small" status as a result of SBA's conversion to NAICS, EPA does not believe that any such changes would affect its conclusion to certify under the RFA, because the incremental costs per entity are not significant, regardless of the entity's size. By definition, individuals, States and Indian tribes are not considered small entities under the RFA.

This rule only applies in those States that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies if that State chooses to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, small governmental jurisdictions are only impacted if there isn't a State authorized program and then only if the small governmental entity chooses to seek certification to perform lead abatement activities or accreditation to provide lead training on their own.

Small abatement firms and training providers are only impacted if there isn't an authorized State program in their State, and then only if they seek certification to perform lead abatement activities or accreditation to provide lead training. EPA estimates that, in EPA administered states, there could be approximately 1,167 abatement firms with 15.36 notifications per firm each year, and approximately 51 training providers with an estimated 17.93 notifications in the first year and an estimated 4 notifications in subsequent years.

The estimated average cost per notification for abatement firms is approximately \$5, with an estimated total cost per entity of approximately \$75. The estimated average cost per notification for training providers is approximately \$32, with an estimated total cost per entity of approximately \$298 in the first year and approximately \$67 in subsequent years. EPA believes that the impact of these costs would be

proportional for both small and large firms, and that the impacts may be slightly lower for small governmental jurisdictions that fund abatement work due to lower wage rates and overhead expenses. Overall, EPA believes that these costs would not result in a significant impact on affected small entities.

Small non-profit organizations are only impacted if they seek certification to perform lead abatement activities or accreditation to provide lead training on their own. Although EPA believes that non-profit organizations may seek certification, EPA does not have sufficient information about these organizations or their intentions regarding certification or accreditation. Nevertheless, given the low costs for notification and the relatively small number of non-profit organizations EPA believes are likely to seek certification or accreditation, EPA does not believe that this affects the Agency's determination that this rule is not expected to have a significant impact on a substantial number of small entities.

Any comments regarding the impacts that this action may impose on small entities, should be submitted to the Agency in the manner specified under Unit I.C. In addition, information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request, and is included in the public version of the official record for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (the ICR Addendum (EPA ICR No. 1715.03)), a copy of which has been placed in the public version of the official record described in Unit I.B.2., and which may also be accessed electronically on EPA's homepage at <http://www.epa.gov/icr>.

The information requirements contained in this proposal are not effective until promulgation and OMB approval, which is represented by a currently valid OMB control number. An agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial

publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

The proposed rules contain four requirements that would impose paperwork burdens: reading and interpreting the proposed rules, the notification of lead-based paint abatement activities, the notification of lead-based paint activities training courses, and notification following completing of lead-based paint activities training courses. Paperwork burdens are estimated to be 21,254 total hours for the first year of implementation, and 19,048 hours annually in subsequent years.

Under the PRA, "burden" means 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.

Comments, submitted as instructed under Unit I.C., are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. The final rule will respond to any OMB or public comments received on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law No. 104-4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States and Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, the rule will not impose an enforceable duty on

any State, local or Tribal governments. Since, this proposed rule is estimated to cost approximately \$439,573 in the first year of implementation, and \$395,157 annually in subsequent years, it is not expected to result in expenditures by the private sector of \$100 million or more in any given year. As a result, the UMRA requirements in sections 202, 204, and 205 do not apply to this proposed rule.

This proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the UMRA.

E. Executive Orders 13084 and 13175

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, because this proposed rule applies only in Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

On November 6, 2000, the President issued Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249). Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 as of that date.

EPA developed this proposed rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. EPA believes that the differences between the Executive Order do not affect the Agency's activities for this proposed rule. EPA will, however, analyze and fully comply with the requirements of Executive Order 13175 before promulgating the final rule.

F. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule applies only in States that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States who choose to seek certification to perform lead abatement activities or accreditation to provide lead training.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with the States at meetings of the Forum on State and Tribal Toxics Action and the annual EPA meeting with State Lead Program representatives.

G. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (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. The Agency's analysis has determined that this proposed action has no disproportionate

impact on minority or low income populations.

H. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that (1) is economically significant as defined under OMB's guidance related to section 3(f)(1) of Executive Order 12866, and (2) addresses an environmental health or safety risk that EPA has reason to believe has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an "economically significant regulatory action" as defined by Executive Order 12866 (see Unit IV.A.). Although this proposed rule is associated with EPA's overall lead-based-paint management program which is designed to reduce health risks to children, this rule itself simply establishes an Agency notification procedure and does not directly address environmental health or safety risk. This proposed rule does, however, help to further the Agency's efforts to prevent lead poisoning in children under the age of six by supporting the Agency's implementation of the mandate in Title X, which requires that lead abatement professionals involved in inspecting, assessing or removing lead-based paint, dust or soil be trained and certified to conduct these activities.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The

NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The Agency invites comment on the potential use of voluntary consensus standards in this rulemaking, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the Attorney General's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

K. Executive Order 12988

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

List of Subjects in 40 CFR Part 745

Environmental protection, Fees, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: January 16, 2001.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 745 be amended as follows:

PART 745—[AMENDED]

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

Authority: 15 U.S.C. 2605, 2607, 2615, 2681–2692, and 42 U.S.C. 4852d.

2. In § 745.223 by adding in alphabetical order definitions for "Business day"; "Lead abatement professional"; "Lead-based paint activities courses"; and "Training provider" to read as follows:

§ 745.223 Definitions.

* * * * *

Business day means Monday through Friday with the exception of Federal holidays.

* * * * *

Lead abatement professional means an individual certified to conduct lead-based paint activities under § 745.226 as a worker, supervisor, project designer, inspector, or risk assessor.

* * * * *

Lead-based paint activities courses means training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

* * * * *

Training provider means any business entity accredited under § 745.225 that offers lead-based paint activities courses.

* * * * *

3. In § 745.225 by adding paragraphs (c)(13) and (c)(14) to read as follows:

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

* * * * *

(c) * * *

(13) The training manager shall provide notification of lead-based paint activities courses offered.

(i) The training manager shall provide the agency with notice of all lead-based paint activities courses offered. The original notice must be received by the agency at least 10 business days prior to offering any lead-based paint activities course.

(ii) The training manager shall provide the agency updated notice when lead-based paint activities courses will begin on a date other than the one specified in the original notification, as follows:

(A) For lead-based paint activities courses beginning prior to the original start date an updated notice must be received by the agency at least 10 business days before the revised start date.

(B) For lead-based paint activities courses beginning after the original start date an updated notice must be received by the agency at least 2 business days before the original start date.

(iii) The training manager shall update the agency of any change in location of lead-based paint activities courses at least 10 business days prior to the scheduled course start date.

(iv) The training manager shall also update the agency regarding any course cancellations, or any other change to the original notice. Updated notices must be received by the agency at least 2 business days prior to the scheduled course start date.

(v) Each notice, including updates, shall include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and phone number.

(C) Course discipline, type (initial/ refresher), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) phone number, and street address.

(F) Principal instructors name.

(G) Training manager's name and signature.

(vi) Notification shall be accomplished using any of the following methods: written notice, or by E-mail. All notices submitted by E-mail must be followed with written notice within 24 hours of submission. Written notification of lead-based paint activities course schedules can be accomplished by using either the sample form titled "Lead-based Paint Activities Training Course Schedule" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the agency receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD, or on the Internet at <http://www.epa.gov/lead>.

(vii) Lead-based paint activities courses shall not begin on a date, or at a location other than that specified in the original notice unless an updated notice identifying a new date or location is submitted, in which case the course must begin on the date and location specified in the updated notice.

(viii) No training program shall provide lead-based paint activities courses without first notifying the agency of such activities in accordance with the requirements of this paragraph.

(14) The training manager shall provide notification following completion of lead-based paint activities courses.

(i) The training manager shall provide the agency notice after the completion of any lead-based paint activities course which shall be received by the agency no later than 10 business days following course completion.

(ii) The notice shall include the following:

(A) Training program name, EPA accreditation number, address, and phone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

(1) Name.

(2) Address.

(3) Social security number.

(4) Course completion certificate number.

(5) Student test score.

(E) Training manager's name and signature.

(iii) Notification shall be accomplished using any of the following methods: written notice, or by E-mail. All notices submitted by E-mail must be followed with written notice within 24 hours of submission. Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-based Paint Activities Training Course Follow-up" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the agency receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD, or on the Internet at <http://www.epa.gov/lead>.

* * * * *

4. In § 745.227 by revising paragraph (e)(4) to read as follows:

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

* * * * *

(e) * * *

(4) A certified firm shall notify EPA of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (e)(4)(ii) of this section, the agency must be notified prior to conducting lead-based paint abatement activities. The original notice must be received by the agency at least 10 business days before lead-based paint abatement activities begin.

(ii) Notice for abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, tribal, or local emergency abatement order must be received by the agency as early as possible before, but not later than the day lead-based paint abatement activities begin. Documentation showing evidence of an EBL determination or a copy of the Federal/State/tribal/local emergency abatement order must be included in the

written notification to take advantage of this abbreviated notification period.

(iii) Updated notice of a new start date must be provided to the agency for lead-based paint abatement activities that will begin on a date other than the date specified in the original notification notice, as follows:

(A) For lead-based paint abatement activities beginning prior to the original start date an updated notice must be received by the agency at least 10 business days before the revised start date.

(B) For lead-based paint abatement activities beginning after the original start date an updated notice must be received by the agency at least 2 business days before the original start date.

(iv) The certified firm shall update the agency of any change in location of lead-based paint abatement activities at least 10 business days prior to the project start date.

(v) The certified firm shall also update the agency regarding the cancellation of any lead-based paint abatement activities, or other significant changes including, but not limited to, when the square footage or acreage to be abated changes by at least 20 percent. This updated notice must be received by the agency at least 2 business days prior to the project start date.

(vi) The following shall be included in each notice:

(A) Notification type (original, updated, cancellation).

(B) Date when lead-based paint abatement activities will commence.

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgement).

(D) Firm's name, EPA certification number, address, phone number.

(E) Type of building (e.g. single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(F) Property name (if applicable).

(G) Property address including apartment or unit number (if applicable) for abatement work.

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/tribal/local emergency abatement order, if applicable.

(I) Name, EPA certification number, and signature of the certified supervisor.

(J) Approximate square footage/acreage to be abated.

(K) Brief description of abatement activities to be performed.

(vii) Notification shall be accomplished using any of the following methods: written notice, or by E-mail.

All notices submitted by E-mail must be followed by written notice within 24

hours of submission. Written notification can be accomplished using either the sample form titled "Notification of Lead-based Paint Abatement Activities" or similar form. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (Persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that the agency receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD, or on the Internet at <http://www.epa.gov/lead>.

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original, or updated notice, in the event of changes to the original notice.

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying the agency of such activities according to requirements of this paragraph.

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