

LEAD CERTIFICATION REFERENCES AND EXCERPTS FROM STATE STATUTES AND FEDERAL REGULATIONS

MINNESOTA STATUTES

Minnesota Statutes, section 326B.106 - General Powers of Commissioner of Labor and Industry

Subd. 13. Lead certification.

When issuing permits in compliance with the State Building Code to a residential building contractor, residential remodeler, manufactured home installer, or residential roofer licensed under section [326B.805](#), municipalities must verify lead certification qualifications of the licensee required under subdivision 14 for renovations performed on residential property constructed prior to 1978. Municipalities may charge a surcharge for verification of this certification under section [326B.815](#), subdivision 2.

Subd. 14. Pre-1978 structures.

A residential building contractor, residential remodeler, manufactured home installer, or residential roofer licensed under section [326B.805](#) performing renovation as defined by Code of Federal Regulations, title 40, section [745.83](#), on a residential structure constructed prior to 1978 must be certified in accordance with Code of Federal Regulations, title 40, section [745.89](#), unless the property has been determined to meet an exemption under Code of Federal Regulations, title 40, section [745.82](#). Before performing the renovations as defined by Code of Federal Regulations, title 40, section [745.83](#), on a residential structure constructed prior to 1978, a licensee working on the structure must be able to provide to the commissioner information so that proof of certification can be obtained as required in this subdivision. The department shall provide on its Web site a link to the United States Environmental Protection Agency Web site for verification of certification of a licensee.

645.17 Presumptions in Ascertaining Legislative Intent

In ascertaining the intention of the legislature the courts may be guided by the following presumptions:

- (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;
- (2) the legislature intends the entire statute to be effective and certain;
- (3) the legislature does not intend to violate the Constitution of the United States or of this state;

(4) when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and

(5) the legislature intends to favor the public interest as against any private interest.

Code of Federal Regulations
Title 40, Volume 30
Revised as of July 1, 2010
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TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

PART 745 LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL

Subpart E - Residential Property Renovation

Sec. 745.82 Applicability.

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

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

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

(b) The information distribution requirements in Sec. 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in Sec. Sec. 745.85,

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

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

Effective Date Note: At 75 FR 24818, May 6, 2010, Sec. 745.82 was amended by removing paragraph (c), effective July 6, 2010.

Sec. 745.83 Definitions.

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

Administrator means the Administrator of the Environmental Protection Agency. Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA vacuum means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Minor repair and maintenance activities are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by Sec. 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Pamphlet means the EPA pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This

includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to Sec. 745.326.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Recognized test kit means a commercially available kit recognized by EPA under Sec. 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Renovator means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

Work area means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

(July 6, 2010. For the convenience of the user, the revised text is set forth as follows)
Sec. 745.84 Information distribution requirements.

(b) * * *

(2) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required by Sec. 745.86(c) and (d), at no cost to the occupants, or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by Sec. 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants.

* * * * *

(c) * * *

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by Sec. 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

* * * * *

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be

accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by Sec. 745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the parents or guardians.

Sec. 745.85 Work practice standards.

(a) Standards for renovation activities. Renovations must be performed by certified firms using certified renovators as directed in Sec. 745.89. The responsibilities of certified firms are set forth in Sec. 745.89(d) and the responsibilities of certified renovators are set forth in Sec. 745.90(b).

(1) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic

sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

(D) In certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(3) Prohibited and restricted practices. The work practices listed below shall be prohibited or restricted during a renovation as follows:

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

(ii) The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with HEPA exhaust control.

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

(4) Waste from renovations

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(5) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(b) Standards for post-renovation cleaning verification

(1) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(2) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(3) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(4) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into

roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(1) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(2) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(3) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(2) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:

(1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.

(2) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(3) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in Sec. 745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard.

(d) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

EFFECTIVE DATE NOTE: At 75 FR 24819, May 6, 2010, § 745.86 was amended by removing paragraph (b)(6), redesignating paragraph (b)(7) as (b)(6) and revising paragraphs (b)(1), (c), and (d) effective July 6, 2010. For the convenience of the user, the revised text is set forth as follows:

Sec. 745.86 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(1) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described in § 745.82(a). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

* * * * *

(c)

(1) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(2) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This

information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(3) The information required to be provided by paragraph (c) of this section may be provided by completing the sample form titled “Sample Renovation Recordkeeping Checklist” or a similar form containing the test kit information required by § 745.86(b)(1)(ii) and the training and work practice compliance information required by § 745.86(b)(6).

(d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(1) The owner of the building; and, if different,

(2) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(3) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

Sec. 745.88 Recognized test kits.

(a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.

(b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.

(1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply:
<http://www.epa.gov/etv/howtoapply.html>.

(2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.

(4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.

(5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.

(6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) Response criteria

(1) Negative response criteria. For paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

(2) Positive response criteria. For paint containing lead below the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time.

Sec. 745.89 Firm certification.

(a) Initial certification.

(1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform

renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

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

(1) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) EPA action on an application. After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) Firm responsibilities. Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with Sec. 745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in Sec. 745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in Sec. 745.85.

(4) The pre-renovation education requirements of Sec. 745.84 have been performed.

(5) The recordkeeping requirements of Sec. 745.86 are met.

6, 2010, § 745.90 was amended by revising paragraphs (a)(4) and (b)(8), effective July 6, 2010. For the convenience of the user, the revised text is set forth as follows:

Sec. 745.90 Renovator certification and dust sampling technician certification.

(a) * * *

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA before April 22, 2010, must complete an EPA accredited renovator refresher course before July 1, 2015, to maintain renovator certification.

(b) * * *

(8) Must prepare the records required by § 745.86(b)(1) and (b)(6).

Sec. 745.103 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings 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.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint free housing means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

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 established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

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 single-family dwelling, 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, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

- (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (2) Visual inspection;
- (3) Limited wipe sampling or other environmental sampling techniques;
- (4) Other activity as may be appropriate; and
- (5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations,

trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

- (1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and
- (2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-Bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

Sec. 745.223 Definitions.

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

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

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

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with Sec. 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 Sec. 745.225 to provide training for individuals engaged in lead-based paint activities.

Adequate quality control means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

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

Certified firm means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 Sec. 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 [micro]g/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 [micro]g/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 Sec. 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 Sec. 745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

Lead-based paint activities means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

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

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator pursuant to TSCA section 403.

Lead-hazard screen is a limited risk assessment activity that involves limited paint and dust sampling as described in Sec. 745.227(c).

Living area means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

Local government means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

Multi-family dwelling means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

Paint in poor condition means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

Permanently covered soil means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal government.

Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

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.

Start date means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

Start date provided to EPA means the start date included in the original notification or the most recent start date provided to EPA in an updated notification.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

Training curriculum means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training manager means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

Training provider means any organization or entity accredited under Sec. 745.225 to offer lead-based paint activities courses.

Visual inspection for clearance testing means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

Visual inspection for risk assessment means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

Sec. 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 Sec. 745.227.

(5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in Sec. 745.227 after March 1, 2000, if that individual has not been certified by EPA pursuant to this section to do so.

(6) Individuals applying for certification must submit the appropriate fees in accordance with Sec. 745.238.

(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 March 1, 2000, 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 being 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.

(3) Individuals applying for re-certification must submit the appropriate fees in accordance with Sec. 745.238.

(f) Certification of firms.

(1) All firms which perform or offer to perform any of the lead-based paint activities described in Sec. 745.227 after March 1, 2000, 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 Sec. 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 Sec. 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.

(6) Firms applying for certification must submit the appropriate fees in accordance with Sec. 745.238.

(7) To maintain certification a firm shall submit appropriate fees in accordance with Sec. 745.238 every 3 years.

(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 Sec. 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 Sec. 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.

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