

(a)(1), (3), (4), and (5), and paragraphs (b)(2), (3), (4), (6), (11), (12), and (13).
 3. Section 52.2026 is further amended by adding the following two sentences at the end of paragraph (a)(2):

§ 52.2026 Conditional approval.

* * * * *

(a) * * *

(2) * * * The Commonwealth

submitted, in a November 13, 1997 SIP revision submittal, amendments to its enhanced I/M regulation requiring that the ongoing evaluation of its program be conducted as specified in this paragraph. By November 30, 1998, the Commonwealth must submit its actual program evaluation plan including the specific EPA-approved methodology it will use to conduct the ongoing program evaluation required under its I/M regulation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS-62158A; FRL-6017-8]

RIN 2070-AD11

Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing this final rule to establish fees for the accreditation of training programs and certification of contractors engaged in lead-based paint activities pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA). As specified in section 402(a)(3), EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's cost of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors engaged in lead-based paint activities. Specifically, this rule establishes the fees to be charged in those States and Indian country without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

About three-quarters of the nation's housing stock built before 1978 (64 million homes) contains some lead-

based paint. When properly maintained and managed, this paint poses little risk. If improperly managed, chips and dust from this paint can create a health hazard. Recent studies indicate that nearly one million children have blood-lead levels above safe limits; the most common source of lead exposure in the United States is lead-based paint. Today's rule supports the effort of 40 CFR part 745, subpart L to ensure that contractors claiming to know how to inspect, assess or remove lead-based paint, dust or soil are well qualified, trained and certified to conduct these activities.

DATES: This rule is effective October 19, 1998 unless significant adverse comments are received by October 2, 1998. If significant adverse comments are received in a timely manner, this rule will be subsequently withdrawn and notice will be published in the **Federal Register** before the effective date.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III of the SUPPLEMENTARY INFORMATION section of this preamble.

FOR FURTHER INFORMATION CONTACT: For technical information: Mike Wilson, Project Manager, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: 202-260-4664; fax: 202-260-1580; e-mail: wilson.mike@epa.gov. For general information: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET-543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: 202-554-1404, TDD: 202-554-0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. 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 TSCA section 402 and 40 CFR 745.225, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with TSCA section 402 and 40 CFR 745.226. Potentially affected categories and entities may include:

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

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

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at <http://www.epa.gov/homepage/fedrgstr/>.

B. In Person or by Phone

If you have any questions or need additional information about this action please contact one of the persons identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this action has been established under docket control number [OPPTS-62156A], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. NE B-607, Waterside Mall, 401 M St., SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Document Control Office telephone number is 202-260-7093.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number [OPPTS-62158A] in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G-099, East Tower, Waterside Mall, 401 M St., SW., Washington, DC; telephone: 202-260-7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments in ASCII file format avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket control number. You may also file electronic comments and data online at many Federal Depository Libraries.

B. How Should I Handle CBI Information in My Comments?

You may claim information that you submit in response to this action 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. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. All CBI claims must be made at the time the information is submitted. Failure to make a CBI claim at the time of submittal will be considered a waiver of such claims. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

IV. Under What Legal Authority Is this Action Being Issued?

EPA is issuing this rule under the authority of section 402 of TSCA (15 U.S.C. 2682). Sections 402(a)(1) and (a)(2) require the Agency to promulgate

regulations for, among other things, the accreditation of training programs and the certification of individuals and firms engaged in lead-based paint activities. This regulation was published in the **Federal Register** on August, 29 1996 (61 FR 45805-45808)(FRL-5389-9) and appears at 40 CFR part 745, subpart L. Section 402(a)(3) of TSCA requires, with certain exceptions, that the Administrator of EPA impose a fee on persons operating accredited training programs and on individuals and firms engaged in lead-based paint activities certified under TSCA. Section 402(a)(3) requires that the fees be established at a level necessary to cover the costs of administering and enforcing the standards and regulations under this section. EPA does not have the authority to retain fees collected under this program. Therefore, fees collected by the Agency will be deposited into the Treasury as required by 31 U.S.C. 3302(b).

V. 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 direct EPA to promulgate regulations aimed at fulfilling the purposes of Title X. These include 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 to establish standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States seeking to establish their own lead-based paint activities programs. On August 29, 1996, EPA promulgated final rules that implemented sections 402 and 404 of TSCA titled "Lead: Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities". These rules are codified at 40 CFR part 745, subpart L. Section 402(a)(3) of TSCA directs the Agency to establish fees for the accreditation of training programs and certification of individuals and firms conducting lead-based paint activities. Today's rule addresses this TSCA requirement with respect to entities regulated under part 745, subpart L. EPA expects to develop additional regulations addressing lead-based paint activities for commercial and public buildings, and for the disposal of lead-based paint debris. To the extent EPA requires additional accreditations or certifications pursuant

to such rules, additional fee rules may be developed.

Before EPA began the development of this rule, the Agency consulted with States with lead-based paint activities programs, Federal officials with experience in operating fee-charging programs, and with other interested parties. Over the last several months, the Agency has carefully reviewed and considered the information that has been provided. While not all of this information has been incorporated into this notice, all points of view have been carefully evaluated and many of the concepts of the interested parties are reflected in this rule.

VI. Who Will Be Required to Pay Fees Under this Rule?

The fees in this rule apply to (1) training programs applying to EPA for the accreditation and re-accreditation of training courses in the following disciplines: inspector; risk assessor; supervisor; project designer; abatement worker; and (2) individuals and firms seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the above mentioned disciplines. Consistent with TSCA section 402(a)(3) and as further described in this preamble, this rule precludes the imposition of fees for the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

This rule applies only in States and Indian country where there are no authorized programs pursuant to 40 CFR part 745, subpart Q. For further information regarding the authorization status of areas or regions of the country contact the National Lead Information Center (NLIC) at 1-800-424-LEAD.

VII. What Fee System Is Being Established With this Action?

As directed by section 402(a)(3) of Title IV of TSCA, EPA is establishing fees to recover the costs of administering and enforcing the standards and regulations promulgated for the accreditation and certification program for lead-based paint activities. TSCA Section 402(a)(3)(A) precludes EPA from imposing fees for the accreditation of training programs operated by a State, local government, or nonprofit organization. As discussed below, EPA is also providing an exemption for training programs operated by federally recognized Indian Tribes. EPA will absorb the cost of exempt participants and will only collect operating costs associated with

non-exempt participants in this program.

This rule establishes fees for the certification and periodic re-certification of individuals and firms, and for the accreditation and periodic re-accreditation of training programs. Also included are fees for examinations, replacement of a lost certificate or identification card, and for multi-state registration. The multi-state registration fee will apply to individuals and to training programs intending to provide training or perform lead-based paint activities in more than one State administered by the EPA program. This fee will be applied per discipline for each additional EPA-administered State in which the applicant seeks certification/re-certification or accreditation/re-accreditation.

To develop the accreditation and certification fee levels, EPA estimated the demand for accreditation and certification in EPA-administered areas and the costs of administering and enforcing the relevant standards and regulations in these areas. Based on these estimates, EPA developed a fee schedule to cover the relevant costs. Fees for certification exams, multi-state registration, and identification card and certificate replacement were estimated based on the burdens required for Agency clerical, technical, and managerial staff to perform similar tasks.

The following are discussions of key decision points regarding distribution of cost, fee structure and accreditation fee waivers. For each key issue, the alternatives considered by the Agency are discussed, the Agency's selection is identified, and a rationale for the Agency's decision is presented. For more detailed information regarding assumptions and methods used to estimate costs and develop the fee structure please refer to the Regulatory Impact Analysis titled "Economic Assessment for the TSCA Section 402(a)(3) Lead-Based Paint Accreditation and Certification Fees Rule," which can be found in the docket for this action.

A. How Will Costs Not Related to Application Processing be Distributed?

Not all costs of administration and enforcement are attributable to specific applications. Although EPA Regional administrative costs depend directly on the number and type of accreditation or certification applications received, EPA enforcement and Headquarters administrative costs generally cannot be estimated based on the number of applications. Accordingly, EPA Regional administrative costs are

estimated and allocated on a per application basis. The Agency evaluated the following two alternatives for allocating EPA enforcement costs and Headquarters administrative costs to all entities covered by the rule:

1. *Fixed amount per application.* In this approach, EPA calculated a fixed amount per application by dividing the sum of the cost of all enforcement and EPA Headquarters administrative activities over the 5-year projection period by the estimated number of accreditations, re-accreditations, certifications, and re-certifications over the same period. The same amount of these costs would have been attributed to each application.

2. *Fixed ratio of Regional administrative costs to enforcement and Headquarters administrative costs.* In the second approach, EPA calculated a fixed ratio for allocating enforcement and Headquarters administrative costs by dividing the sum of these costs by Regional administrative costs. The Regional administrative costs for each type of accreditation or certification was multiplied by this fixed ratio to determine the portion of enforcement and Headquarters administrative cost each applicant would pay.

A comparison of the fee levels shows that they tend to be higher for training programs using the fixed ratio approach, and higher for individuals using the fixed amount approach. The much higher number of individual certifications means that individuals will be attributed more of the enforcement and EPA Headquarters administrative costs than training programs if a fixed amount is applied. The much higher EPA Regional administrative costs per accreditation, in comparison to those costs for an individual certification, means that training programs will be attributed more of the enforcement and Headquarters administrative costs than individuals if a fixed ratio is applied.

The Agency has chosen the fixed amount approach to distribute fixed activity costs. The fixed amount approach was selected because it most equitably divides enforcement and headquarters administrative costs among program participants. The Agency feels the fixed ratio approach by linking enforcement burden to application processing cost unduly allocates a larger portion of these costs to training providers.

B. What Types of Fee Structures Were Considered?

EPA estimated fee levels for two fee structure options: Stratified Average Cost and Simplified Average Cost. The

Stratified Average Cost option estimates fee levels for different types of participants based on the administrative burden they impose on government. The Simplified Average Cost option estimates average fee levels for broad groups of training programs, firms, and individuals and generally does not vary according to the relative burden that a fee payer within this larger group imposes on the government. The two fee structure options result in categories of fees as outlined below:

1. *Stratified Average Cost— i. Training programs.* Fees depend on whether the training program is applying for accreditation or re-accreditation of an initial or refresher training course in each of five disciplines. Under this option the estimated accreditation fee and the estimated re-accreditation fee for four categories of refresher training courses are the same. This occurs since both the EPA Regional administrative cost, based on State data, and the fixed ratio applied for enforcement and EPA Headquarters administrative costs are estimated to be equal for these four categories.

ii. *Firms.* Firms are charged a fee only when they apply for certification. (Firms are not required to periodically re-certify.) This fee does not vary.

iii. *Individuals.* Fees vary by discipline and differ depending on whether the individual is applying for initial certification or re-certification.

2. *Simplified Average Cost— i. Training programs.* Fees do not vary by discipline or by initial versus refresher course. Instead, they depend on whether the training program is applying for accreditation or re-accreditation of a training course, thereby resulting in two separate fee levels.

ii. *Firms.* Firms are charged a fee only when they apply for certification. This fee does not vary.

iii. *Individuals.* Fees vary by two groups of disciplines: (a) Inspectors, risk assessors, and supervisors and (b) workers and project designers. The fees do not depend on whether the individual is applying for initial certification or re-certification, thereby resulting in only two separate fees.

The stratified average cost approach results in a wide range of fee levels. The Simplified Average Cost approach estimates fee levels by calculating an average EPA burden of accreditation or certification. As a result, under the Simplified Average Cost approach some training programs and individuals have to pay more or less than the actual burden incurred by EPA to accredit or certify them. A comparison of fees under the two approaches shows that

some training programs and some individuals could be charged over three times as much under the Simplified Average Cost approach. Certification fees of firms are not affected, however, since a single fee category is estimated for them under both fee structure options.

The Agency has selected the stratified average cost option to determine fee structure. Under this option, fees that more closely reflect the administrative burden per application type are imposed. EPA believes that the simplified average cost option, while providing a simplified fee structure, does not equitably or fairly distribute program cost nor accurately reflect the demands on the agency.

C. What Are the Accreditation Fee Waivers?

Today's rule includes the statutorily-prescribed exemption from user fees for training programs operated by State and local governments, and non-profit organizations. Title IV of TSCA does not address how Indian Tribes should be viewed for purposes of fees, and EPA does not believe that Congress considered whether to grant fee waivers to Indian Tribes when it specified these exemptions. EPA is thus filling a statutory gap in providing a fee waiver for Indian Tribes. This is consistent with EPA's view that eligible Indian Tribes may operate lead-based paint worker certification and training programs in lieu of the Federal government. See 61 FR 45805-45808 (August 29, 1996). EPA's action in exempting Tribal training programs from the requirement to pay user fees recognizes that Tribes are government entities that should not be singled out from States and local governments for the payment of user fees. Although EPA believes it is authorized to provide the fee waiver as a gap-filling measure, EPA could, in the alternative, achieve the same result by interpreting the term "local government" in section 402(a)(3) to include Indian Tribes.

TSCA section 402(a)(3) states that EPA may waive the training program accreditation fee for firms for the purpose of training their own employees. EPA has decided not to adopt a policy of waiving accreditation fees for firms who wish to train their own employees. None of the nine States contacted by EPA allow such a waiver under their lead accreditation programs. By allowing such a waiver the Agency feels that there would be a greater need for enforcement activities to ensure only persons who meet training requirements are awarded course completion certificates. Also, the availability of

training courses for small firms and individuals may suffer due to decreased demand for these training services. Furthermore, a waiver of this type will further increase competitive pressures on for-profit training programs, and would diminish returns to the U.S. Treasury.

VIII. How Are the Fees Adjusted for Full Cost Recovery, Inflation, and Other Factors?

EPA will review and modify the fees established by 40 CFR 745.238 periodically to assure that charges continue to reflect EPA's costs. Fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the **Federal Register**.

IX. How Do I Pay the Fees?

Each fee payment described in this rule shall be in U.S. currency and shall be paid by check or money order. Individuals, firms or training programs shall submit fee payments in accordance with instructions provided with the application materials. No application will be considered complete until payment is made and final certification/accreditation shall be dependent on the payment of the applicable fees.

X. How Can I Apply for Accreditation or Certification?

The application requirements can be found in 40 CFR 745.225 and 745.226. In addition, the Agency has prepared application packages and guidance on applying. This material is available from EPA through the National Lead Information Center at 1-800-424-LEAD.

XI. Why Is EPA Issuing this Action as a Final Rule Yet Allowing an Opportunity for Public Comment?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As such, two independent bases exist which qualify this action for the "good cause" exemption in the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) that allows agencies in limited circumstances to issue final rules without first providing notice and an opportunity for comment. Virtually all of the significant policy choices associated with this rulemaking have already been made by Congress, and this rule is in most respects merely a technical application of statutory directive.

There are three major components to the rulemaking. First, the rule is based on an estimate of EPA administrative and enforcement costs. EPA is clearly in the best position to provide this estimate, as it necessarily involves consideration of internal EPA operating procedures, costs, and personnel practices. Thus, it is unlikely that the public will be able to provide meaningful comment on this aspect of the rulemaking.

Second, the rule reflects a policy choice on how EPA costs are to be distributed among those required to pay fees. Although those participants paying the highest fees under the rule may prefer that EPA flatten the fee structure so that their fees would be reduced, EPA has already considered this option and has determined that such an approach would be inequitable. In light of EPA's policy choice, the assessment of individual fees turns on a technical assessment of EPA administrative and enforcement costs for each category of participant. Once again, it is unlikely that the public can provide meaningful input on EPA's estimates of its own program costs.

The third component of the rule relates to fee waivers. Although the rule largely incorporates statutory directives in this regard (as to State and local governments, and non-profit training providers), it also provides a fee waiver for Indian Tribes, and specifies that contractors training their own employees will not be entitled to a fee waiver. Since the fee waiver for Indian Tribes is consistent with the statutory waivers provided for States and local governments, is consistent with EPA treatment of Indian Tribes for purposes of authorizing Tribal lead-based paint programs under 40 CFR 745.320-745.339, and relieves (rather than imposes) a regulatory requirement, EPA does not expect that the public would provide adverse comment on the Tribal fee waiver.

EPA recognizes that there may be some who are dissatisfied by the Agency's decision not to waive fees for contractors training their own employees, but EPA does not expect that the public can suggest a basis for a fee waiver that will override the objective of maximizing recovery of EPA costs associated with this program. Thus, EPA believes that providing an opportunity for public comment is unnecessary. While not required to do so under the APA, EPA is willing to delay the effective date of this rule pending the unlikely receipt of significant adverse comments that would inform the decision in ways not already considered. Such a delay seems

prudent to avoid the possibility and the resultant confusion, of adjusting the fees once the application process has started. If significant adverse comment is received during a 30-day period (described in more detail below), EPA will issue a notice to withdraw those aspects of this final rule which are addressed by the adverse comment.

The Agency is scheduled to begin receiving applications for accreditation of training providers in September of 1998. The Agency believes that it is critically important for the necessary fees to be established prior to the initiation of the application period. Without established fees, it will be more difficult for applicants to determine the extent to which they may wish to participate in the program. Without a fee rule in place, EPA would need to assess fees on a case-by-case basis, based on actual EPA costs in reviewing individual applications and on estimated future administrative and enforcement costs. This approach would burden EPA with the requirement of keeping track of all time spent processing individual applications. The use of a case-by-case assessment would undoubtedly prolong the application process and result in uncertainty to potential program applicants who would not know the amount of fees they will be required to pay until their application is fully processed. Delaying issuance of the rule to allow an opportunity for public comment would require issue of the case-by-case assessment process in the interim pending finalization of a fee rule and would not, therefore, be in the public interest.

Although the Agency believes that it is appropriate to issue this action immediately as a final rule, EPA is providing an opportunity for the public to submit comment on it. If no significant adverse comment is submitted within 30 days of publication of this rule in the **Federal Register**, this action will become effective 45 days after publication in the **Federal Register** without any further action by the Agency. If, however, a significant adverse comment is received during the comment period, those aspects of the rule addressed by the commenters will be withdrawn and the public comments received will be addressed in a subsequent final rule. EPA is today issuing a companion proposed rule elsewhere in this issue of the **Federal Register** to ensure that the public is aware of its opportunity to comment, and to provide the APA-required proposal in the event that significant adverse comment is received and

issuance of a subsequent final rule is necessary.

XII. How Do Other Regulatory Assessment Requirements Apply to this Action?

A. Executive Order 12866

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993) it has been determined that this is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). EPA has, however, prepared an economic analysis of the potential impact of this action, which is estimated to be \$5.6 million over the next 5 years. The analysis is contained in a document entitled "Economic Analysis of the TSCA Section 402(a)(3) Lead-Based Paint Accreditation and Certification Fee Rule." This document is available as a part of the public record for this action and is briefly summarized in Unit VII of this preamble.

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 will not have a significant economic impact on a substantial number of small entities. As indicated in Unit I. of this preamble, within the EPA-Administered universe, the potentially affected entities consist of the following three basic types of entities: (a) individuals engaged in lead-based paint activities; (b) firms engaged in lead-based paint activities; and (c) for-profit entities providing lead-based paint training. The potential impact of this action on small entities within this universe is described in Chapter 6 of the economic analysis, as referred to in Unit XII.A. of this preamble.

In estimating the universe of potentially impacted small entities, EPA used the definitions provided by the Small Business Administration (SBA). As explained in Unit VII.C. of this preamble, this rule provides fee waivers for State and local governments, Indian Tribes and non-profit organizations that operate a training program for their employees. As such, these entities are not affected by this rule. With regard to individuals, to the extent that "individuals" are in business for themselves, EPA considered that entity to be a firm with one employee. The analysis assumes that firms are likely to pay all or a portion of their employee's certification fees. As a result, the small entity impact analysis focuses on the potential impacts on two distinct types of affected entities, i.e., firms engaged in lead-based paint activities (including

individuals in business for themselves), and for-profit entities providing lead-based paint training.

EPA estimates that 1,541 firms engaged in lead-based paint activities will be certified during the first five years in the EPA-administered program universe. Using the revenue distribution for SIC 1799 and 8734, EPA estimates that approximately 98 percent of these firms qualify as "small" under the SBA definition for small businesses. However, even if the Agency assumes that the firms pay all of the certification fees for their employees, the impact is still estimated to be less than 1 percent of annual revenues for all of these firms.

Within the EPA-administered program universe, EPA estimates that there will be 52 training providers accredited during the first five years in the EPA-administered program universe. Of the 52, only 60 percent of these training providers are estimated to be for-profit entities, i.e., required to pay a fee. Using the revenue distribution for SIC 1799, EPA estimates that virtually all of these for-profit training providers qualify as "small" under the SBA definition of small business. Although it is estimated that 12 of these 31 fee paying for-profit training providers may incur impacts that are slightly higher than 3 percent of their revenue, the data also suggests that these for-profit training providers have greater revenues than the SIC 1799 revenue distribution suggests. For example, using the revenue distribution of Massachusetts and Ohio training providers, only one of the 31 for-profit training providers is estimated to have a potential impact of greater than 1 percent of annual sales.

As indicated above, additional details regarding the Agency's basis for this certification are presented in Chapter 6 of the economic analysis, which is included in the public record for this action. In addition, information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request.

C. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements that require additional approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. The information collection referenced in this rule (i.e., those included in 40 CFR 745.238) have already been approved by OMB under control number 2070-0155 (EPA ICR #1715.02). EPA does not believe that this rule has any impact on the existing burden estimate or collection

description, such that additional approval by OMB is necessary.

Specifically, ICR 1715.02 identifies and quantifies the burden associated with submission of applications by individuals, firms, and training programs. The burden estimates are based on the following required submissions:

1. *Firms.* A certification letter.

2. *Training program.* An application which includes the following: (i) The training programs name, address, and telephone number, (ii) a list of courses for which it is applying for accreditation, (iii) a statement signed by the training program manager that clearly indicates how the training program meets the minimum requirement for accreditation, or a statement that indicates that the training program will use the EPA developed curriculum if available, (iv) a copy of the course test, a description of the activities and procedures for conducting the assessment of hands on skills, and a description of the facilities and equipment for lecture and hands on training, and (v) a quality control plan, which outlines procedures for periodic revision of training materials and exams, annual reviews of instructors, and adequacy of training facilities.

3. *Individuals.* For supervisors, risk assessors, and inspectors an application which includes the submission of proof of: (i) Completion of an accredited training course, (ii) passing the course test, (iii) meeting the educational and/or experience requirements (if applicable), and (iv) passing the third party exam. For project designers and abatement workers an application which includes submission of proof of: completion of a training course, passing the course test, and meeting educational and/or experience requirements (if applicable).

EPA is in the process of preparing forms to simplify the application and notification process. These forms, when complete will be forwarded to OMB.

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.

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.

Comments may be sent on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing applicant burden, including through the use of automated collection techniques. Send comments on the ICR to the EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4), EPA has determined that this regulatory action is not subject to the requirements of sections 202 and 205. The rule would not impose an enforceable duty on any State, local or Tribal governments because all such entities are exempt from fee payment under the rule. The rule is not expected to result in expenditures by the private sector of \$100 million or more in any given year. This 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 12875 and 13084

1. *Executive Order 12875.* Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. As explained in more detail in Unit IV. of this preamble, the statutory waivers provided for States and local governments are being extended to Indian Tribes. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

2. *Executive Order 13084.* 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. As explained in more detail in Unit IV. of this preamble, the statutory waivers provided for States and local governments are being extended to Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. 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 determined that lead-based paint hazards are more prevalent in minority and low-income households. Therefore, the national strategy of eliminating lead-based paint hazards and reducing children's lead exposure targets a problem affecting a greater share of minorities and low-income households. Because the cost of lead-based paint activities is the same for lower-and-upper-income households, several Federal agencies have established grant programs that will provide financial support to reduce the prevalence of lead poisoning among disadvantaged children. However, it appears that minorities and low income households have to forego a larger share of their income to reduce children's exposure to lead-based paint hazards.

G. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that 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. EPA has determined that 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 XII.A. of this preamble). Furthermore, although this 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 a user fee schedule and does not address environmental health or safety risk.

H. 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), Pub. L. 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.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of October 19, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental Protection, Fees, Hazardous Substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: August 25, 1998.

Carol M. Browner,

Administrator.

Therefore, 40 CFR part 745 is amended as follows:

PART 745— [AMENDED]

1. The authority citation for part 745 continues 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 the following three new definitions in alphabetical order to read as follows:

§ 745.223 Definitions.

* * * * *

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.

* * * * *

Nonprofit means an entity that has qualified for an exemption from Federal taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3).

* * * * *

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.

* * * * *

3. In § 745.225 by adding paragraph (b)(4) to read as follows:

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

* * * * *

(b) * * *

(4) A training program applying for accreditation must submit the appropriate fees in accordance with § 745.238.

* * * * *

4. In § 745.226 by adding paragraph (a)(6) to read as follows:

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

(a) * * *

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

* * * * *

5. By adding § 745.238 to read as follows:

§ 745.238 Fees for accreditation and certification of lead-based paint activities.

(a) *Purpose.* To establish and impose fees for certified individuals and firms engaged in lead-based paint activities and persons operating accredited training programs under section 402(a) of the Toxic Substances Control Act (TSCA).

(b) *Persons who must pay fees.* Fees in accordance with paragraph (c) of this section must be paid by:

(1) *Training programs.* (i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: inspector; risk assessor; supervisor; project designer; abatement worker. (ii) Exemptions, no fee shall be imposed on any training program

operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals. (2) *Firms and individuals.* All firms and individuals seeking certification and re-certification from EPA to engage in lead-based paint activities in one or

more of the following disciplines: inspector; risk assessor; supervisor; project designer; abatement worker. (c) *Fee amounts—*(1) *Certification and accreditation fees.* Initial and renewal certification and accreditation fees are specified in the following table:

CERTIFICATION AND ACCREDITATION FEE LEVELS

	Accreditation ¹	Re-accreditation ¹	Certification	Re-certification
Training program.				
Initial Course Inspector	\$2,500	\$1,600	.....	.....
Risk assessor	1,760	1,150	.....	.....
Supervisors	3,250	2,050	.....	.....
Workers	1,760	1,150	.....	.....
Project designers	1,010	710	.....	.....
Refresher Course				
Inspector	1,010	710	.....	.....
Risk assessor	1,010	710	.....	.....
Supervisors	1,010	710	.....	.....
Workers	1,010	710	.....	.....
Project designers	640	490	.....	.....
Individual.				
Inspector .....	.....	.....	\$520	\$420
Risk assessor .....	.....	.....	470	390
Supervisor .....	.....	.....	400	350
Worker .....	.....	.....	360	320
Project designer .....	.....	.....	470	390
Firm .....	.....	.....	540	.....

¹ Fees will be adjusted periodically based on adjustments accounting for changes in participation and operating costs.

(2) *Certification examination fee.* Individuals required to take a certification exam in accordance with § 745.226 will be assessed a fee of \$70 for each exam attempt. (3) *Multi-state registration fee.* An individual or training program certified or accredited in an EPA-administered State or Indian Tribe may wish to provide training or perform lead-based paint activities in additional EPA-administered States or Indian Tribes. A fee of \$35 per discipline will be assessed for each additional EPA-administered State or Indian Tribe in which an individual or training program applies for certification/re-certification or accreditation/re-accreditation. (4) *Lost identification card or certificate.* A \$15 fee shall be charged for replacement of an identification card or certificate. (See replacement procedure in paragraph (e) of this section.) (d) *Application/payment procedure—*(1) *Certification and re-certification in one or more EPA-administered state—*(i) *Individuals.* Submit a completed application (titled “Application for Individuals to Conduct Lead-based Paint Activities”), the materials

described at § 745.226, and the application fee described in paragraph (c) of this section. (ii) *Firms.* Submit a completed application (titled “Application for Firms to Conduct Lead-based Paint Activities”), and the application fee described in paragraph (c) of this section. (2) *Accreditation and re-accreditation in one or more EPA-administered state.* Submit a completed application (titled “Accreditation Application for Training Programs”), the materials described at § 745.225, and the application fee described in paragraph (c) of this section. (3) *Application forms.* Application forms and instructions can be obtained from the National Lead Information Center at: 1-800-424-LEAD. (e) *Identification card replacement and certificate replacement.* (1) Parties seeking identification card or certificate replacement shall complete the applicable portions of the appropriate application in accordance with the instructions provided. The appropriate applications are:

(i) *Individuals.* “Application for Individuals to Conduct Lead-based Paint Activities”. (ii) *Firms.* “Application for Firms to Conduct Lead-based Paint Activities”. (iii) *Training programs.* “Accreditation Application for Training Programs”. (2) Submit application and payment in the amount specified in paragraph (c)(4) of this section in accordance with the instructions provided with the application package. (f) *Adjustment of fees.* (1) EPA will collect fees reflecting the costs associated with the administration and enforcement of subpart L of this part with the exception of costs associated with the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, and nonprofit organization. In order to do this, EPA will periodically adjust the fees to reflect changed economic conditions. (2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the **Federal Register**.

(g) *Failure to remit a fee.* (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1000, 1001, 1002 and 1005

RIN 0991-AA87

Health Care Programs: Fraud and Abuse; Revised OIG Exclusion Authorities Resulting From Public Law 104-191

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule addresses revisions to the OIG's administrative sanction authorities to comport with sections 211, 212 and 213 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, along with other technical and conforming changes to the OIG exclusion authorities set forth in 42 CFR parts 1000, 1001, 1002 and 1005. These revisions serve to expand the scope of certain basic fraud authorities, and revise and strengthen the current legal authorities pertaining to exclusions from the Medicare, Medicaid and all other Federal health care programs.

EFFECTIVE DATE: October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619-0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996

On September 8, 1997, the Office of Inspector General (OIG) published proposed rulemaking (62 FR 47182) addressing the program exclusion

provisions set forth in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191. Among other things, the HIPAA provisions revised or expanded the authorities pertaining to exclusion from Medicare and the State health care programs. With respect to the OIG's program exclusion authorities, the HIPAA provisions served to (1) broaden the OIG's mandatory exclusion authority; (2) establish minimum periods of exclusion for certain permissive exclusions; and (3) establish a new permissive exclusion authority applicable to individuals with ownership or control interest in sanctioned entities.

(The Balanced Budget Act (BBA) of 1997, Public Law 105-33, also enacted new or expanded exclusion and civil money penalty authorities. Among the provisions in the BBA, section 4331(c) amended sections 1128(a) and (b) of the Act to (1) provide that the scope of an OIG exclusion extends beyond Medicare and the State health care programs to all Federal health care programs (as defined in section 1128B(f) of the Act)¹, and (2) enable the OIG to directly impose exclusions from all Federal health care programs. While regulations implementing the BBA exclusion provisions are being developed under separate rulemaking by the Department, for purposes of clarity, we are conforming language in this final rule to be consistent with the statute and the expanded scope of an OIG exclusion that encompasses all Federal health care programs. As a result, in all references in this preamble and in the regulations, as amended, we are substituting the phrase "Medicare and the State health care programs" with the phrase "Medicare, Medicaid and all other Federal health care programs." Additional regulatory changes in 42 CFR part 1001 with regard to this expanded scope of an OIG exclusion will be specifically addressed in the BBA-implementing regulations referenced above.)

Because the new HIPAA statutory provisions afford the Department some policy discretion in their implementation, the OIG developed proposed rulemaking to address both the new statutory provisions of HIPAA and other technical revisions to the

OIG's exclusion authorities, that were previously codified in 42 CFR parts 1000, 1001, 1002 and 1005. The proposed rule established a 60-day public comment period during which interested parties were invited to submit written comments to the OIG on these proposed changes.

II. Summary of the Proposed Rule

1. The HIPAA Exclusion Provisions

The proposed rule set forth the Department's three new exclusion authorities to be codified in 42 CFR part 1001 as follows:

- *Mandatory OIG exclusion from Medicare and State health care program participation.* Section 211 of HIPAA expanded the OIG's minimum 5-year mandatory program exclusion authority to cover any felony conviction under Federal, State or local law relating to health care fraud, even if governmental programs are not involved. Felony convictions relating to controlled substances were also made a basis for a mandatory exclusion. Accordingly, we proposed to revise § 1001.101 to address the mandatory provisions set forth in new sections 1128(a)(3) and (4) of the Act. To appropriately restrict the imposition of mandatory program exclusions to only those individuals and entities who might reasonably be expected to have future contact with Medicare, Medicaid and all other Federal health care programs, we proposed to limit applicability of this provision only to those individuals or entities that (1) are or have been health care practitioners, providers or suppliers; (2) hold or have held a direct or indirect ownership or control interest in a health care entity; or (3) are or have been officers, directors, agents or managing employees of such an entity, or are or have ever been employed in any capacity in the direct or indirect provision of health care items or services.

- *Establishment of minimum periods of exclusion for certain permissive exclusions.* The proposed rule addressed the establishment of minimum periods of exclusion in 42 CFR part 1001 ranging from 1 to 3 years for permissive exclusions from the Medicare, Medicaid and all other Federal programs. In accordance with section 212 of HIPAA—

(1) A standard period of exclusion of 3 years would be established for convictions of misdemeanor criminal health care fraud offenses; criminal offenses relating to fraud in non-health Federal or State programs; convictions relating to obstruction of an investigation of health care fraud; and

¹ In accordance with section 1128B(f) of the Act, the term "Federal health care program" means (1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the health insurance program under 5 U.S.C. 89; or (2) and State health care program, as defined in section 1128(h) of the Act.