

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 745**

[OPPTS-62158; FRL-6017-7]

RIN 2070-AD11

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

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In this issue of the **Federal Register**, the EPA is publishing a final rule, pursuant to section 402(a)(3) of the Toxic Substances Control Act (TSCA), to establish fees for the accreditation of training programs and certification of individuals and firms engaged in lead-based paint activities. As specified in TSCA 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 action establishes the fees, 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.

A detailed rationale for the promulgation of this rule is presented in the preamble to the final rule, along with the details of the action. With this corresponding notice in the Proposed Rules Section of this **Federal Register**, EPA is providing an opportunity for the public to submit comment on the provisions of the final rule. If no significant adverse comment is submitted in response to this action, the final rule will become effective 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adverse comment is received during the comment period, those aspects of the rule addressed by the commenter(s) will be withdrawn and the public comments received will be addressed in a subsequent final rule. Any parties interested in commenting on this action should do so at this time. **DATES:** Comments must be received on or before October 2, 1998.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided below in Unit III. of the

SUPPLEMENTARY INFORMATION section of this document.

**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-62158], (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. NEB-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 number [OPPTS-62158] 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, 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](mailto: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.

Comment 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. Why Is EPA Issuing a Final Rule Simultaneously With this Proposal?**

In this same issue of the **Federal Register** EPA is publishing a final rule identical to this proposal. EPA 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 the final rule 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 rules without first providing notice and an opportunity for comment. Virtually all of the significant policy choices associated with the rule have already been made by Congress, and it 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 on the rule is "unnecessary." While not required to do so under the APA, EPA is willing to delay the effective date of the 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 the 30-day period (described in more detail below), EPA will issue a document to withdraw those aspects of the final rule which are addressed by the adverse comment before its effective date.

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 use 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 a final fee 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 the final rule in the **Federal Register**, the final rule will become effective 45 days after publication 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. This proposed rule ensures that the public is aware of its opportunity to comment, and will provide the APA-required proposal in the event that significant adverse comment is received and issuance of a subsequent final rule is necessary.

#### **V. What Action Is EPA Taking?**

For detailed information about the action, see the direct final rule which is located in the Rules section of this **Federal Register**, and are summarized below.

## VI. Do Executive Orders 12875 and 13084 Require EPA to Consult With States and Indian Tribal Governments Prior to Taking the Action in this Notice?

### A. 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 document, 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.

### B. 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 document, 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.

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

The applicability of various regulatory assessment provisions to this action are discussed in the preamble to the corresponding final rule published elsewhere in the Rules section of this issue of the **Federal Register**, and summarized below.

Under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), it has been determined that this rule is not "significant" and is not subject to OMB review. This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duties on State and local governments or impose private sector expenditures of \$100 million or more annually so as to trigger applicability of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). In addition, this action does not involve any standards that would require Agency consideration pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (Pub. L. 104-113).

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. This certification is based on an analysis that the Agency prepared for this action, which indicates that the rule should not place undue burden on small business. Information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request. This information is also included in the public record for this action as a part of the economic analysis.

### 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.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### 42 CFR Parts 1001, 1002, and 1003

RIN 0991-AA95

#### Health Care Programs: Fraud and Abuse; Revised OIG Sanction Authorities Resulting From Public Law 105-33

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rulemaking proposes revisions to the OIG's exclusion and civil money penalty authorities set forth in 42 CFR parts 1001, 1002 and 1003, resulting from the Balanced Budget Act of 1997, Public Law 105-33. These proposed revisions are intended to protect and strengthen Medicare and State health care programs by increasing the OIG's anti-fraud and abuse authority through new or revised exclusion and civil money penalty provisions.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on November 2, 1998.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-30-P, Room 5246, Cohen Building 330