

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

[EPA-HQ-OPPT-2008-0382; FRL-8372-4]

RIN 2070-AJ40

#### Lead; Fees for Accreditation of Training Programs and Certification of Lead-Based Paint Activities and Renovation Contractors

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is issuing this proposed rule to revise the existing fees for EPA's Lead-Based Paint Activities regulations and establish fees for the Renovation, Repair, and Painting rule. As specified in section 402 of the Toxic Substances Control Act (TSCA), EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's costs of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors. Specifically, this proposed rule establishes the fees that will be charged, in those States and Indian Tribes without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, for firms engaged in renovations seeking certification under 40 CFR 745.89, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

**DATES:** Comments must be received on or before September 22, 2008.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2008-0382, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2008-0382. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPPT-2008-0382. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification,

pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Marc Edmonds, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0758; e-mail address: [edmonds.marc@epa.gov](mailto:edmonds.marc@epa.gov).

For authorization status information for States, Territories, and Indian tribes contact: National Lead Information Center (NLIC) at 1-800-424-LEAD.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm who must be certified to conduct renovation activities in accordance with 40 CFR 745.89, or if you are a professional (individual or firm) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226.

This proposed rule applies only in States, Territories, and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324. Potentially affected categories and entities may include, but are not limited to:

- Building construction (NAICS code 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.

- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.

- Real estate (NAICS code 531), e.g., lessors of residential building and dwellings, residential property managers.

- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.
- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.
- Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors engaged in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 745.89, 40 CFR 745.225, and 40 CFR 745.226. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions

or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

### *A. What Action is the Agency Taking?*

EPA is issuing this proposed rule for two reasons. First, EPA is proposing to revise the existing fees for training providers, firms, and individuals under the Lead-Based Paint Activities regulations. Second, EPA is proposing to establish fees for training providers and renovation firms under the recently issued Renovation, Repair, and Painting rule. As specified in TSCA section 402, EPA must establish and implement a fee schedule to recover for the U.S. Treasury the Agency's costs of administering and enforcing the standards and requirements applicable to lead-based paint training programs and contractors. Specifically, this proposed rule establishes the fees that will be charged, in those States and Indian Tribes without authorized programs, for training programs seeking accreditation under 40 CFR 745.225, for firms engaged in renovations seeking certification under 40 CFR 745.89, and for individuals or firms engaged in lead-based paint activities seeking certification under 40 CFR 745.226.

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

This proposed rule is being issued under the authority of TSCA sections 402(a)(3) and 402(c)(3), 15 U.S.C. 2682(a)(3) and 2682(c)(3).

### *C. What Regulations Have Already Been Promulgated Under TSCA section 402?*

In 1992, Congress found that low-level lead poisoning was widespread among American children, affecting, at that time, as many as 3,000,000 children under age 6; that the ingestion of household dust containing lead from

deteriorating or abraded lead-based paint was the most common cause of lead poisoning in children; and that the health and development of children living in as many as 3,800,000 American homes was endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes. Congress further determined that the prior Federal response to this threat was insufficient and enacted Title X of the Housing and Community Development Act of 1992, Public Law 102-550 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992) (Title X). Title X established a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible and provided a leadership role for the Federal Government in building the infrastructure necessary to achieve this goal.

Title X added a new title to TSCA entitled "Title IV—Lead Exposure Reduction." Most of EPA's responsibilities for addressing lead-based paint hazards can be found in this title, with TSCA section 402 being one source of the rulemaking authority to carry out these responsibilities. Section 402(a) of TSCA directs EPA to promulgate regulations covering lead-based paint activities to ensure persons performing these activities are properly trained, that training programs are accredited, and that contractors performing these activities are certified. These regulations must contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. On August 29, 1996, EPA promulgated final regulations under TSCA section 402(a) that govern lead-based paint inspections, lead hazard screens, risk assessments, and abatements in target housing and child-occupied facilities (also referred to as the Lead-Based Paint Activities regulations) (Ref. 1). These regulations, codified at 40 CFR part 745, subpart L, contain an accreditation program for training providers and training and certification requirements for lead-based paint inspectors, risk assessors, project designers, abatement supervisors, and abatement workers. Work practice standards for lead-based paint activities are included. Pursuant to TSCA section 404, provision was made for interested States, Territories, and Indian Tribes to apply for and receive authorization to administer their own lead-based paint activities programs. Requirements applicable to State, Territorial, and Tribal programs are codified in 40 CFR part 745, subpart Q.

Section 402(a)(3) of TSCA directs the Agency to establish fees to recover the cost of administering and enforcing the standards and requirements established under TSCA section 402. Specifically, TSCA section 402(a)(3) requires EPA to impose fees on persons operating training programs accredited under Title IV of TSCA and contractors certified in accordance with TSCA section 402(a)(1). On June 9, 1999, 40 CFR part 745, subpart L, was amended to include a fee schedule for training programs seeking EPA accreditation and for individuals and firms seeking EPA certification (Ref. 2). These fees were established as directed by TSCA section 402(a)(3), which requires EPA to recover the cost of administering and enforcing the lead-based paint activities requirements in States without authorized programs.

Section 402(c) of TSCA pertains to renovation and remodeling activities. TSCA section 402(c)(3) requires EPA to revise the regulations issued under TSCA section 402(a), the Lead-Based Paint Activities regulations, to apply to renovation or remodeling activities that create lead-based paint hazards. On April 22, 2008, EPA issued a final regulation applying a revised version of the Lead-Based Paint Activities regulations to renovation, repair, and painting activities in target housing and child-occupied facilities (the Renovation, Repair, and Painting rule) (Ref. 3). Pursuant to the Renovation, Repair, and Painting rule, persons performing covered renovation activities must be properly trained, renovators and renovation firms must be certified, and persons who provide renovator training must be accredited. The requirements of the Renovation, Repair, and Painting rule become effective in stages with the entire rule becoming effective as of April 22, 2010.

#### *D. How is EPA Proposing to Revise the Existing Fees?*

40 CFR 745.238 contains the fee schedule established in 1999 for the Lead-Based Paint Activities regulations under TSCA section 402(a)(3). As discussed more fully in the economic analysis accompanying the final rule establishing the current fee schedule, EPA based a great deal of its administrative cost estimates on information from existing State lead-based paint certification and accreditation programs (Ref. 4). This was necessary because, at the time, EPA did not have direct experience in administering a lead-based paint accreditation and certification program. This is not the case today. EPA has been administering the Federal lead-based

paint accreditation and certification program for nearly a decade. As a result, EPA has its own data upon which to rely to estimate the future costs of administering the program.

To estimate the costs of administering the accreditation and certification program, EPA followed the pattern used in the economic analysis for the 1999 fee schedule. EPA directly estimated total costs for enforcement activities and Headquarters administrative activities (e.g., the cost to maintain the Federal Lead-Based Paint Program (FLPP) database, the cost to enter data into the database), since these activities cannot be linked to specific applications. Enforcement cost estimates were generated based on the actual resources currently allocated for enforcement. EPA calculated the costs for Regional administrative activities on a per application basis, (e.g., the cost to review an application, the cost to issue a certificate), because these costs depend largely on the number and type of applications received. As described in the economic analysis for this proposed rule, the information pertaining to the Regional cost of processing applications was determined by observing and recording actual Regional application processing activities over a 30-day period (Ref. 5). The total program cost for EPA Regional administrative activities would be the sum of the EPA Regional administrative costs for each type of application multiplied by the total number of that type of application received.

Since 1999, EPA has made substantial changes in the way that it administers its accreditation and certification program. The transition to the FLPP database and the associated centralized data processing has resulted in a shift in processing costs from the Regions to Headquarters. Despite inflation that has increased the cost of government labor by 35 to 40% over this time interval, EPA's cost estimates for this proposed rule indicate that the overall costs of the abatement program have declined slightly in comparison to the estimates made in 1999. In addition, although the economic analysis for this proposed rule contains fee estimates broken down by particular discipline as well as by type of application, EPA's observation of Regional application processing activities indicated that there are not likely to be substantial differences in processing costs across the disciplines. Thus, EPA's initial estimates for the revised fees do not differentiate accreditation and certification fees by discipline (as is currently the case).

EPA's initial fee estimates are as follows, rounded to the nearest \$10.

These estimates are based on average Regional administrative costs by application type, and not by discipline, with the estimated enforcement costs and estimated Headquarters administrative costs apportioned equally across all activities.

- Accreditation for Initial Training Course—\$730
- Accreditation for Refresher Training Course—\$550
- Re-accreditation for Initial Training Course—\$480
- Re-accreditation for Refresher Training Course—\$430
- Initial firm certification—\$410
- Firm re-certification—\$410
- Individual certification—\$410
- Individual re-certification—\$410

EPA considered, but is not proposing to revise the existing fees to reflect these estimates. As discussed in this unit, EPA is proposing to adjust these estimates to lower individual certification and re-certification fees for workers and for Federally-recognized Indian Tribes and Tribal employees. Nevertheless, EPA requests comment on whether these estimated fees should be imposed without such an adjustment.

One reason that EPA is proposing to adjust its estimates to lower individual certification and re-certification fees is because commenters on the 1999 fee schedule expressed concern about the fee for individual worker certification. Several believed that the total impact of training, certification, and lost wages during training would be cost-prohibitive for workers, who are typically hourly wage-earners. Other commenters contended that workers would move from firm to firm and in and out of the business, which would make the proposed worker certification fee cost-prohibitive for firms. Finally, some commenters believed that the proposed worker certification fee has a disproportionately negative impact on efforts to train and certify low-income persons from the neighborhoods most affected by lead poisoning. As a result of these comments, EPA lowered the worker certification fee by adjusting the balance of administrative and enforcement costs not directly attributable to a particular application between workers and firms. Thus, in the final rule, the individual certification fees ranged from \$520 for risk assessors to \$280 for workers. Although EPA is not proposing to differentiate among the non-worker disciplines (i.e., between risk assessors and supervisors), EPA believes that the concerns pertaining to the worker discipline expressed by these commenters are likely to be equally applicable today.

In addition, EPA has received input from stakeholders that indicates that Indian Tribes may be having difficulty paying firm and individual certification fees. While TSCA section 402(a)(3) exempts State, local government, and non-profit training programs from Federal accreditation fees, it does not provide an exemption for certification fees. It is EPA's understanding that Indian Tribes typically incur certification fees for Tribal employees who perform lead-based paint inspections and risk assessments in Tribal housing. EPA estimates that only a small number of Indian Tribes and Tribal employees will seek certification each year to perform these activities. Accordingly, if EPA were to impose only a nominal certification fee on Tribal firms (Indian Tribes seeking firm certification) and Tribal employees, and apportion the remainder of the costs for these certifications across all of the other accreditation and certification activities, the impact on the resulting fee estimates for all of the other fee activities is negligible.

Therefore, in revising the existing fees, EPA is proposing to establish the fees for worker certification and re-certification at \$100 less than other individual certifications and re-certifications. Because EPA must recover all of the estimated costs of operating the accreditation and certification program, this \$100 reduction per expected worker certification or re-certification application must be recovered through fees charged for other applications. EPA believes that it would be more equitable to spread the costs represented by the \$100 reduction over all of the fees charged to training course providers and firms. The proposed fee schedule set forth below does so. In addition, EPA is also proposing to establish nominal fees for firm certification and re-certification for Federally-recognized Indian Tribes and nominal fees for individual certification and re-certification for Tribal employees. Finally, EPA is also proposing to keep the certificate replacement fee at \$15, the certification exam fee at \$70 and the multi-jurisdiction registration fee at \$35. Accordingly, EPA is proposing to revise the existing fees in 40 CFR 745.238 as follows:

- Accreditation for Initial Training Course—\$870.
- Accreditation for Refresher Training Course—\$690.
- Re-accreditation for Initial Training Course—\$620.
- Re-accreditation for Refresher Training Course—\$580.
- Initial firm certification—\$550.

- Initial Tribal firm certification—\$20.
- Firm re-certification—\$550.
- Tribal firm re-certification—\$20.
- Individual certification (for all disciplines except worker)—\$410.
- Individual worker certification—\$310.
- Individual Tribal certification (all disciplines)—\$10.
- Individual re-certification (for all disciplines except worker)—\$410.
- Individual worker re-certification—\$310.
- Individual Tribal re-certification (all disciplines)—\$10.

As discussed in the economic analysis for this proposed rule, the estimated enforcement costs and estimated Headquarters administrative costs are not directly attributable to a specific application. EPA considered apportioning those costs in such a way as to generate fee estimates that are more similar to the current fees. The fees in the following list are based on the average Regional administrative costs by application type with the estimated enforcement costs and estimated Headquarters administrative costs apportioned in a way that makes them similar to the current fees. Although EPA is not proposing to establish fees in this manner, such an apportionment results in the following estimates:

- Accreditation for Initial Training Course—\$2,140.
- Accreditation for Refresher Training Course—\$950.
- Re-accreditation for Initial Training Course—\$1,350.
- Re-accreditation for Refresher Training Course—\$650.
- Initial firm certification—\$510.
- Firm re-certification—\$410.
- Individual certification (for all disciplines except worker)—\$440.
- Individual worker certification—\$270.
- Individual re-certification (for all disciplines except worker)—\$380.
- Individual worker re-certification—\$230.

The apportionment of the estimated enforcement and Headquarters administrative costs in this way results in a substantially higher fee for accreditation and re-accreditation of training programs, as well as for firm certification. The individual certification and re-certification fees are correspondingly lower. EPA requests comment on whether the enforcement and Headquarters administrative costs should be apportioned this way to make the revised fees being proposed in this document more consistent with the existing fees.

#### *E. What Renovation, Repair, and Painting Fees are being Proposed?*

EPA interprets the language of TSCA section 402(c)(3), which requires EPA to revise the TSCA section 402(a) regulations to apply to renovation and remodeling activities that create lead-based paint hazards, to include the establishment of fees as directed by TSCA section 402(a)(3). Therefore, EPA is also proposing to establish fees for the accreditation and re-accreditation of persons who provide renovator or dust sampling technician training and fees for the certification and re-certification of renovation firms. In accordance with the Renovation, Repair, and Painting Rule, beginning on April 22, 2009, training course providers may apply to EPA for renovator or dust sampling technician course accreditation (Ref. 3). Renovation firms may begin applying for certification to perform renovation, repair, and painting activities on October 22, 2009.

EPA's method for estimating fees to recover the costs of administering the renovation, repair, and painting accreditation and certification program is similar to the method used to estimate the proposed revisions to the existing fees in 40 CFR 745.238. Because the training provider accreditation and firm certification processes are virtually identical under the Lead-Based Paint Activities regulations and the Renovation, Repair, and Painting rule, EPA used the same estimates for Regional administrative costs in calculating all of the fees being proposed in this action. However, because the substantive provisions of the Renovation, Repair, and Painting rule will not be fully implemented until April 2010, EPA does not have actual application totals upon which to base its estimates of the number of accreditation and certification applications that will be received in the future. In addition, EPA is not currently conducting enforcement activities related to the Renovation, Repair, and Painting Program, so the enforcement costs for the program must be estimated based on projected EPA resources to be devoted to enforcement of the program, rather than on actual enforcement activities. As for the initial estimates for the Lead-Based Paint Activities regulations accreditation and certification fees, the estimated enforcement costs and estimated Headquarters administrative costs for the Renovation, Repair, and Painting rule accreditation and certification program have been apportioned equally across all activities. A more detailed description of how these costs were calculated is presented

in the economic analysis for this proposed rule (Ref. 5). Based upon its estimate of the costs of administering the Renovation, Repair, and Painting Program, EPA is proposing to establish the following fees:

- Accreditation for Initial Renovator or Dust Sampling Technician Course—\$560.
- Accreditation for Refresher Renovator or Dust Sampling Technician Course—\$400.
- Re-accreditation for Initial Renovator or Dust Sampling Technician Course—\$340.
- Re-accreditation for Refresher Renovator or Dust Sampling Technician Course—\$310.
- Initial renovation firm certification—\$300.
- Initial Tribal renovation firm certification—\$20.
- Renovation firm re-certification—\$300.
- Tribal renovation firm re-certification—\$20.

EPA is not proposing to establish individual certification and re-certification fees because the Renovation, Repair, and Painting rule does not require individuals to apply to EPA for certification. Eliminating this requirement also eliminates a significant portion of the Regional and Headquarters administrative costs that would have to be recovered by a certification fee. The portion of the enforcement costs that would have been attributed to individuals has been distributed evenly across the Renovation, Repair, and Painting Program fees for training provider accreditation and firm certification.

EPA's economic analysis for this proposed rule calculates administrative and enforcement costs for the Lead-Based Paint Activities regulations separately from those costs for the Renovation, Repair, and Painting rule. This is primarily due to the differences in estimation methods necessary for an existing, mature program, the Lead-Based Paint Activities regulations, as compared to a new program for which implementation has not yet begun. This approach results in similar fees for firm certification and re-certification under the two programs, but the Renovation, Repair, and Painting Program accreditation and re-accreditation fees are considerably lower than the corresponding fees for the Lead-Based Paint Activities regulations. The administrative and enforcement cost estimates for these two programs could be combined to yield accreditation, re-accreditation, firm certification, and firm re-certification fees that are the same for both programs. EPA requests

comment on whether the estimated costs for these two programs should be combined in such a manner.

Commenters should keep in mind that the 212,000 renovation firm certification applications that EPA expects to receive in the first year of the Renovation, Repair, and Painting Program vastly outweigh the numbers of other types of applications under either regulation that EPA expects to receive in the same time period. As a result, modest adjustments in either direction to the renovation firm certification fees will result in dramatic changes to the accreditation fees.

Although EPA believes that this action will not have a significant economic impact on a substantial number of small entities, the Agency understands that many of the firms that must comply with the Renovation, Repair, and Painting rule will be sole proprietors, many of which earn low annual revenues. EPA estimates that, of the 211,721 firms seeking certification, approximately 104,712 of them are sole proprietorships with no employees. Because the fees associated with the rule will have the greatest impact on firms earning low revenues, the Agency is considering reducing the certification fee for renovation firms that have annual revenues below \$25,000 based on gross receipts.

EPA requests comment on whether firms with annual revenues below \$25,000 should pay a reduced firm certification fee of \$100. This reduction would be offset by increasing the fees for the other firms and/or training providers. If the reduction is passed on to other firms that do not qualify for the lower fee, these firms would pay a certification fee of \$370. EPA requests comment on reducing fees for certain small businesses, whether these fees would be appropriate, what level of revenue should trigger the lower fee, or whether a measure other than gross receipts, such as number of employees, should be used to determine who qualifies for the reduced fee. The Agency also requests comment on how the reduction in fees should be distributed between training providers and firms.

When EPA estimated the number of firms that would qualify for the reduced certification fee, the Agency used data from the U.S. Census Bureau and a study published by the Joint Center for Housing Studies of Harvard University for estimates of the total numbers of firms that are sole proprietorships and earn below \$25,000 annually. EPA also relied on the following assumption from the Economic Analysis for the final Renovation, Repair, and Painting rule regarding which lessors and property

managers would seek firm certification which states "that only establishments with employees are expected to seek certification; non-employers are unlikely to have the time or manpower to perform renovations themselves and are more likely to hire an outside contractor for work that disturbs more than 6 square feet of a painted surface." EPA solicits comments on its numerical estimates of the numbers of lessors and property managers, including those without employees, that will require firm certification. The Agency is particularly interested in any data that would help in refining these estimates.

EPA also requests comments on whether the final rule should establish lower Federal fees for State and local governments seeking firm certification and their employees seeking individual certification. These governments are already exempt under TSCA section 402(a)(3) from paying Federal accreditation fees and EPA believes some additional cost savings may be justified. The Agency is aware that State and local governments may spend a significant portion of abatement program funds on certifications thereby reducing funds available for performing important public services related to abatements. To address this funding issue, EPA is considering lowering the Federal certification fees for State and local governments under the Lead-Based Paint Activities regulations and Renovation, Repair, and Painting rule. For example, governments could pay 50% of the firm and individual fees proposed in this action. If fees are decreased for governments then fees for non-government firms and individuals would have to be increased. At this time the Agency does not know how many State and local governments fall under this proposed rule and thus can not estimate how a decrease in fees for governments would effect other fees. Thus, EPA requests comment on whether certification fees should be lower for State and local governments and their employees, what those fees should be, and how to apportion the remainder of the costs for these certifications across all of the other accreditation and certification activities. The Agency also requests comment on how many State and local government firms and individuals must comply with the Lead-Based Paint Activities regulations and Renovation, Repair, and Painting rule. This information would help EPA determine the impact that lowering the fees for governments would have on accreditation and certification fees for non-government entities.

### III. References

The following is a list of the documents that are specifically referenced in this proposed rule and placed in the public docket that was established under docket ID number EPA-HQ-OPPT-2008-0382. For information on accessing the docket, refer to the **ADDRESSES** unit.

1. EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities. Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL-5389-9).

2. EPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors. Final Rule. **Federal Register** (64 FR 31092, June 9, 1999) (FRL-6058-6).

3. EPA. Lead; Renovation, Repair, and Painting Program. Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL-8355-7)

4. EPA. Office of Pollution Prevention and Toxics (OPPT). Economic Analysis of the Final TSCA Section 402(a)(3) Lead-based Paint Accreditation and Certification Fee Rule (February 1999).

5. EPA. OPPT. Economic Analysis for the TSCA Section 402 Lead-Based Paint Accreditation and Certification Fee Rule (June 2008).

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866

This action is not a "significant regulatory action" under the terms of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. EPA has prepared an economic analysis of the potential impact of this action. The impact of the fees for the Lead-based Paint Activities regulations is estimated to be \$1.2 million per year, or \$6.1 million over the next 5 years. The impact of the fees for the Renovation, Repair, and Painting Program is estimated to be \$61 million in the first year, and \$22 million in each of the following 4 years, or \$150 million over the next 5 years. EPA's analysis is contained in a document entitled *Economic Analysis of the TSCA Section 402 Lead-Based Paint Accreditation and Certification Fee Rule*. This document is available as a part of the public docket for this action.

#### B. Paperwork Reduction Act

This action does not impose any new information collection burden because this proposal would merely establish fees associated with previously promulgated accreditation and

certification application requirements. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR part 745, subpart E and subpart L, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0155 (EPA ICR number 1715). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with section 601 of RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities that are potentially directly regulated by this proposed rule include: Small businesses (including abatement and renovation contractors, environmental testing firms, and property owners and managers); small nonprofits (including day care centers, private schools, and advocacy groups); and small governments (local governments, school districts).

This proposal would result in a slight overall decrease in the fees currently assessed under the Lead-Based Paint Activities regulations. Fees for training providers will decrease with the exception of the project designer course refresher. Individual fees will decrease for the certification and recertification of risk assessors, and the certification of supervisors and project designers. Consequently, EPA estimates that this portion of the proposed rule will have

no adverse impact on small entities; in fact the small entities affected by the proposed rule will incur cost savings. With respect to the fees for the Renovation, Repair, and Painting rule, EPA estimates that there are an average of 204,958 small entities that would be affected by this proposed rule. Of these, there are an estimated 179,820 small businesses with an average impact ranging from 0.007% to 0.220%, 18,088 small non-profits with an average impact ranging from 0.006% to 0.097%, and 7,050 small governments with an average impact ranging from 0.0004% to 0.002%.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. In response to concerns about impacts on abatement workers and the firms that employ them, EPA is proposing reduced fees for worker certification. However, TSCA section 402(a)(3) requires EPA to recover the costs of administering its lead training course provider accreditation and contractor certification program through fees. To the extent that EPA lowers accreditation or certification fees for small businesses (or some subset of small businesses), larger businesses would be required to contribute more. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows

EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. EPA has prepared an economic analysis of the potential impact of this action, which is estimated to be \$156 million over the next 5 years which is an average of \$31 million per year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments may perform lead-based paint inspections, risk assessments, or abatements, or operate schools that are child-occupied facilities. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any 1 year. As explained in Unit III.C., the proposed rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the proposed rule does not significantly affect small governments. Nor does the proposed rule uniquely affect small governments, as the proposed rule is not targeted at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that perform regulated activities.

#### E. Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State

and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposal merely seeks to establish fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### F. Tribal Implications

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175, because this proposal would only establish fees, as required by TSCA section 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal Lead-Based Paint Accreditation and Certification Programs. Thus, Executive Order 13175 does not apply to this proposed rule. Nonetheless, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

#### G. Children’s Health Protection

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the

environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposal merely seeks to establish fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs.

#### H. Energy Effects

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### I. Technology Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### J. Environmental Justice

Executive Order 12898, entitled, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations

because it does not affect the level of protection provided to human health or the environment. This proposal merely seeks to establish fees, as required by TSCA sections 402(a)(3) and 402(c)(3), to recover the costs of administering the previously promulgated Federal lead-based paint accreditation and certification programs.

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

Environmental protection, Fees, Lead, Lead-based paint, Renovation.

Dated: August 13, 2008.

**Stephen L. Johnson,**  
Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 745—[AMENDED]**

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

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

2. Section 745.92 is added to subpart E to read as follows:

**§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.**

(a) *Persons who must pay fees.* Fees in accordance with paragraph (b) 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: Renovator, dust sampling technician.

(ii) *Exemption.* 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.* All firms applying to EPA for certification and re-certification to conduct renovations.

(b) *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**

Training Program	Accreditation	Re-accreditation (every 4 years)
Initial Renovator or Dust Sampling Technician Course	\$560	\$340
Refresher Renovator or Dust Sampling Technician Course	\$400	\$310
Renovation Firm	Certification	Re-certification (every 5 years)
Firm	\$300	\$300
Tribal Firm	\$20	\$20

(2) *Lost certificate.* A \$15 fee will be charged for the replacement of a firm certificate.

(c) *Certificate replacement.* Firms seeking certificate replacement must:

(1) Complete the applicable portions of the “Application for Firms” in accordance with the instructions provided.

(2) Submit the application and a payment of \$15 in accordance with the instructions provided with the application package.

(d) *Failure to remit fees.* (1) EPA will not provide certification, re-

certification, accreditation, or re-accreditation for any firm or training program that does not remit fees described in paragraph (b) of this section in accordance with the procedures specified in 40 CFR 745.89.

(2) EPA will not replace a certificate for any firm that does not remit the \$15 fee in accordance with the procedures specified in paragraph (c) of this section.

3. Section 745.238 of subpart L is amended as follows:

a. Revise the table in paragraph (c)(1).

b. Remove the phrase “to Conduct Lead-based Paint Activities” in paragraph (d)(1)(ii).

c. Remove the phrase “to Conduct Lead-based Paint Activities” in paragraph (e)(1)(ii).

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

**CERTIFICATION AND ACCREDITATION FEE LEVELS**

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Initial Course		
Inspector	\$870	\$620
Risk assessor	\$870	\$620
Supervisor	\$870	\$620
Worker	\$870	\$620
Project Designer	\$870	\$620
Refresher Course		
Inspector	\$690	\$580
Risk assessor	\$690	\$580
Supervisor	\$690	\$580
Worker	\$690	\$580
Project Designer	\$690	\$580



CERTIFICATION AND ACCREDITATION FEE LEVELS—Continued

Training Program	Accreditation	Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)
Lead-based Paint Activities—Individual	Certification	Re-certification (every 3 years, see 40 CFR 745.226(e)(1) for details)
Inspector	\$410	\$410
Risk assessor	\$410	\$410
Supervisor	\$410	\$410
Worker	\$310	\$310
Project designer	\$410	\$410
Tribal certification (all disciplines)	\$10	\$10
Lead-based Paint Activities—Firm	Certification	Re-certification (every 3 years, see 40 CFR 745.226(f)(7) for details)
Firm	\$550	\$550
Tribal Firm	\$20	\$20

\* \* \* \* \*

[FR Doc. E8-19432 Filed 8-20-08; 8:45 am]

BILLING CODE 6560-50-S

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 22**

[Docket No: OST-2008-0236]

RIN 2105-AD50

**Short-Term Lending Program (STLP)**

**AGENCY:** Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** In an effort to financially assist Disadvantaged Business Enterprises (DBEs) and other certified small and disadvantaged business (SDBs) in their execution of transportation related contracts at the local, state and federal levels, the Department of Transportation's (DOT) Office of Small and Disadvantaged Business Utilization (OSDBU) has developed the Short-Term Lending Program (STLP), under which DOT guarantees short-term lines of credit for said businesses. The program is administered through cooperative agreements between DOT's OSDBU and Participating Lenders and under the STLP's governing policies and procedures. This NPRM proposes new rules to govern the STLP.

**DATES:** Comments on the proposed rules must be received by October 20, 2008. Late comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments to this rule by any of the following methods:

- *Agency Web site:* <http://dms.dot.gov>: Follow the instructions for submitting comments on the Web site.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room 140, Washington, DC 20590.

- *Hand Delivery:* Room 140 on the ground floor of the West Building Ground Floor, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Nancy Strine, Financial Assistance Division Manager, U.S Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Room W56-497, Washington, DC 20590. Telephone: (800) 532-1169 ext. 65343 or (202) 366-5343.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Director of DOT's OSDBU has been delegated to carry out the functions vested in the Secretary of Transportation by section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 940-210, as amended) known as the Minority Business Resource Center Program, which includes a guaranteed loan program. 49 U.S.C. 332 authorizes DOT's OSDBU to establish, under the Minority Resource Center, programs that would assist DBEs and SDBs in acquiring access to working capital and to debt financing, in order to obtain transportation-related contracts wholly or partially funded by DOT. To implement this authority, OSDBU developed its Short Term Lending

Program (STLP) which offers DBE's and other certified small and disadvantaged businesses short term working capital loans at variable interest rates to perform on these transportation-related contracts.

Initially developed in 1989 as a direct loan program, the STLP was converted in 2001 to a loan guarantee program under which, private sector Participating Lenders (PLs) offer loans with a government guarantee of up to 75 percent for qualified applicants.

These loans are revolving lines of credit that provide working capital funds to assist the borrower in financing the direct labor and material costs of completing transportation contracts. The contracts that are funded are assigned to the loan as collateral, and the PL advances monies up to 85% of eligible and approved Accounts Receivable that arise from the Assigned Contract(s). The contracts must be transportation-related and receive DOT funding. Repayment comes in the form of a two-party check to the borrower and to the PL directly from the contract proceeds. The total length of time that an eligible borrower may remain in the program cannot exceed a total of five years.

DOT monitors these loans, which require contract assignments and direct joint payee check remittances for principal repayment, through its relationship with the transportation agencies and recipients that receive DOT funds and the Participating Lenders (PLs).

The STLP has undergone an extensive program review to improve its business processes and achieve operational and financial efficiencies. As part of this effort, DOT is proposing regulations to replace the internal policies and guidelines currently used to manage the program.