

Dated: February 19, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

■ For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

## Appendix B—[Amended]

■ 2. Table 2 of Appendix B to part 300 is amended by revising the entry under “Griffiss Air Force Base”, “New York” to read as follows:

### Appendix B to Part 300—National Priorities List

\* \* \* \* \*

TABLE 2—FEDERAL FACILITIES SECTION

| State | Site name               | City/county | Notes (a) |
|-------|-------------------------|-------------|-----------|
| NY    | Griffiss Air Force Base | Rome        | P         |

(a) P = Sites with partial deletion(s).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

[EPA–HQ–OPPT–2008–0382; FRL–8404–2]

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:** Final rule.

**SUMMARY:** EPA is issuing this final 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 final 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:** This final rule is effective April 20, 2009.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2008–0382. 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., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket 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 (7404T), 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).

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

- 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 contractors and 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**.

## II. Background

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

EPA is revising the existing fees for training providers, firms, and individuals under the Lead-based Paint Activities Regulations. EPA is also establishing fees for training providers and renovation firms under the Renovation, Repair, and Painting Rule published in the **Federal Register** issue of April 22, 2008 (Ref. 1). 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 final 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 final 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 Title IV, 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. 2). 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 also 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 for the U.S. Treasury the cost of administering and enforcing the standards and requirements established under TSCA section 402 and applicable to lead-based paint training programs and contractors. 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. 3). 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. In the **Federal Register** issue of April 22, 2008, EPA issued a final rule covering renovation, repair, and painting activities in target housing and child-occupied facilities (the Renovation, Repair, and Painting Rule) (Ref. 1). 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 or dust sampling training must be accredited. As described in 40 CFR 745.81, 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. Proposed Rule

In the **Federal Register** issue of August 21, 2008, EPA issued a proposed rule to revise the existing fees for

training providers, firms, and individuals under the Lead-based Paint Activities Regulations and to establish fees for training providers and renovation firms under the Renovation, Repair, and Painting Rule (Ref. 4). 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. As explained in the preamble of the proposal for this rule, 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).

To estimate the costs of administering the accreditation and certification program, 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 final 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 is the sum of the EPA Regional administrative costs for each type of application multiplied by the total number of that type of application received.

### III. Provisions of the Final Rule

This final rule revises fees for training providers, firms, and individuals under the Lead-based Paint Activities Regulations and establishes fees for training providers and renovation firms under the Renovation, Repair, and Painting Rule. The Agency based these fees on the cost of administering and enforcing the Lead-based Paint Activities Regulations and the estimated cost of administering and enforcing the

Renovation, Repair, and Painting Rule. The fees in this final rule are the same as those published in the proposed rule with one exception. After consideration of the comments on the proposed rule, EPA decided to assess a single fee of \$550 for firms that apply for certification under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule on a single application in States where EPA implements both programs. For Tribal government entities, the fee is \$20. The combined firm certification is explained in more detail in Unit IV.D. Accordingly, EPA revised the existing fees in 40 CFR 745.238 for the Lead-based Paint Activities Regulations 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
- Combined lead-based paint activities and renovation firm certification—\$550
- Combined lead-based paint activities and renovation firm certification for Tribal firms—\$20
- 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

This final rule also establishes the following fees for the Renovation, Repair, and Painting Rule:

- 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
- Combined lead-based paint activities and renovation firm certification—\$550

- Combined lead-based paint activities and renovation firm certification for Tribal firms—\$20
- Initial Tribal renovation firm certification—\$20
- Renovation firm re-certification—\$300
- Tribal renovation firm re-certification—\$20

### IV. Summary of Public Comments and EPA Responses

The Agency received comments from eight commenters on the proposed rule. The comments are included in the docket for this rulemaking. The Agency's responses to these comments are also provided in the docket. Responses to the most significant comments are included in this unit. This unit addresses comments regarding the methods used to establish fee amounts as well as the fee amounts established by this final rule for:

- Certification of Tribal governments and their respective employees.
- Certification of State and local governments and their respective employees.
- Certification of very small firms.

#### A. Methods Used to Establish Fees

With respect to the overall fee schedules, one commenter stated that the Renovation, Repair, and Painting Rule fees should be based on cost data from accreditations and certifications under the Department of Housing and Urban Development's (HUD) Lead Safe Housing Rule. The commenter asserted that the HUD program is analogous to EPA's Renovation, Repair, and Painting Rule in terms of accrediting and certifying training providers and firms. Two other commenters stated that the fee amounts and methods used to establish the fees for the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule are reasonable.

EPA disagrees that data from HUD's Lead Safe Housing Rule should have been used to determine the costs of accreditations and certifications. HUD's Lead Safe Housing Rule establishes certain requirements for renovations performed in target housing; however, the rule does not require HUD to accredit and certify training providers and firms. Consequently, HUD would not have information about the cost of administering an accreditation and certification program.

#### B. Certification Fees for Tribal Governments and Their Employees

The proposed rule included a reduced fee for Tribal governments of \$20 for Tribal firm certification and \$10 for the

individual certification of a Tribal employee. EPA received two comments regarding the lower fees for Tribes. One commenter agreed that the individual fee was appropriate and that EPA should extend the lower fees to low-income workers and non-profit organizations. Another commenter stated that a lower fee should be based on need and that not all Tribes face the same financial constraints.

The Agency agrees that the lower certification fees for Tribal governments and their employees are appropriate. While some Tribal governments may have adequate funding to pay these fees, Tribal governments overall would benefit from lower fees. Therefore, the final rule includes a \$20 fee for the firm certification of a Tribal government and \$10 for the individual certification of an employee of a Tribal government. EPA estimates that only a small number of Tribal governments will seek certification. Thus the lower Tribal fees will have a negligible impact on fees for other firms and individuals. Moreover, establishing a need-based fee schedule would introduce additional administrative (verification) and enforcement costs, changing the cost analysis. In sum, while some Tribal governments may have ample resources, the increased costs of implementing a need-based system do not, on balance, justify doing so.

One commenter asked if a Federal agency whose primary focus is the support of Tribes would qualify for the reduced Tribal fee. Under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule, only a Tribal government and its employees are eligible for the lower fee. Federal agencies and other non-Tribal governments can not take advantage of the lower fee.

#### *C. Certification Fees for State and Local Governments and Their Employees*

EPA sought comment on whether the costs to State and local governments should be shifted to non-government firms and individuals in order to lower certification fees for State and local government firm and individual certifications. These governments are already exempt under TSCA section 402(a)(3) from paying Federal accreditation fees. As stated in the preamble to the proposal, EPA considered further reducing the financial impact of Federal fees on State and local governments. As an example of a potential fee, the Agency suggested a 50% reduction in the proposed certification fees. EPA did not make an estimate of how many State governments would be able to take

advantage of this lower fee but instead requested comment on what the number would be.

The Agency received several comments on lowering the fee for States and local governments. One commenter was in support of a lower fee stating that a 50% fee reduction was appropriate. Three commenters opposed the lower fees. One of the commenters in opposition stated that there is no basis for a lower fee especially if the decreasing fees would be recovered by non-government firms and individuals. Another commenter objected on the basis that businesses will pay the fees for their employees and State and local governments should do the same.

After considering the issue, the Agency has decided not to shift costs to non-governmental firms and individuals in order to lower certification fees for State and local governments. The Agency did not receive any comments from State and local governments and therefore did not acquire any specific information on whether lower fees for these governments are necessary. More importantly, EPA did not receive any information concerning the number of government entities and employees that would take advantage of the lower fees making it difficult to even approximate the number of entities and employees that would be eligible for the lower fee and the amount of the costs that would have to be shifted to other firms and individuals in order to be recouped.

#### *D. Certification Fees for Very Small Firms*

In the proposed rule, EPA requested comment on whether firms with annual revenues below \$25,000 seeking certification under the Renovation, Repair, and Painting Rule should pay a reduced firm certification fee of \$100 in order to reduce the impact of the fees on small entities. Several commenters expressed support for the lower fee. One commenter stated that the lower fee makes sense but should be further graduated according to a firm's annual revenue. Another commenter claimed that the idea has merits but that any associated increase in fees should be borne solely by other firms and not training providers. One commenter opposed the lower fee claiming that the \$300 fee is not burdensome. Another commenter was in favor of the reduced fee provided that the definition of annual revenues was included revenue from all work by the firm and not just lead abatement work.

After consideration of the comments and further analysis, the Agency decided not increase fees on other firms and training providers in order to lower

fees for renovation firms earning below \$25,000 of revenue per year. Establishing a lower fee or graduated fee schedule based upon gross receipts would introduce additional administrative and enforcement cost associated with verifying that firms were entitled to a lower fee. Thus, not only would the difference in fees need to be shifted to other entities, but the increased administrative and enforcement costs would also need to be recouped. Furthermore, the Agency generally agrees that a \$300 fee for a 5-year certification, i.e., \$60 per year, is not overly burdensome and that the difference in paying \$100 or \$200 as opposed to \$300 would not have a significant impact. Thus, after weighing the equities of increasing fees on other firms to cover the cost associated with a fee reduction for very small businesses against the burden of a \$300 fee amortized over 5 years, the Agency determined that such a reduced fee structure could not be justified.

One commenter claimed that EPA should not charge a firm two certification fees if it applies for certification under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule. The commenter believes it is unfair to charge two fees for a single firm.

In light of this comment, the Agency decided to assess a single fee of \$550 for firms that apply for certification under the Lead-based Paint Activities Regulations and the Renovation, Repair, and Painting Rule on a single application. For Tribal government entities, the fee is \$20. Firms that apply on separate applications will have to pay the appropriate fee for each. The lower fee would only apply when a single firm applies for both certifications on the same firm application in a State where EPA implements both programs. EPA is charging a lower fee because it is less costly to process a single application instead of separate applications for each program. The Agency agrees that it is appropriate to pass along this cost savings to firms. Moreover, the impact of doing so will be limited. The Agency does not expect many firms to take advantage of this due to difference in the length of certifications under each program. Certifications for the Renovation, Repair, and Painting Rule last for 3 years while certifications under the Renovation, Repair, and Painting Rule are good for 5 years. Therefore, it is unlikely that a firm already certified under the Lead-based Paint Activities Regulations will apply for recertification at the same time it applies for certification under the

Renovation, Repair, and Painting Rule. Compared to the large number of firms that will seek certification under the Renovation, Repair, and Painting Rule, there are very few firms certified under the Lead-based Paint Activities Regulations. Thus, this change will have a negligible impact on fees for other entities.

## V. References

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

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

2. USEPA. 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).

3. USEPA. 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).

4. USEPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-Based Paint Activities and Renovation Contractors; Proposed Rule. **Federal Register** (73 FR 49378, August 21, 2008) (FRL-8372-4).

5. USEPA. Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Section 402 Lead-Based Paint Program Accreditation and Certification Fee Rule. January 27, 2009.

6. USEPA. OPPT. Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities. March 2008.

## VI. 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 analysis of the potential impact of this action, which is briefly summarized here. The impact of the fee amendments to 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 Rule, which were addressed and accounted for during the development of that rule, 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 two documents, entitled *Economic Analysis for the TSCA Section 402 Lead-Based Paint Program Accreditation and Certification Fee Rule* (Ref. 5) and *Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities* (Ref. 6). These documents are available in the docket for this final rule.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden because this final rule merely established 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 final 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 final 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 final rule include: Small businesses (including abatement and renovation contractors, environmental testing firms, and property owners and managers); small non-profits (including child day care centers, private schools, and advocacy groups); and small governments (local governments, school districts).

This final rule 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 final rule will have no adverse impact on small entities; in fact the small entities affected by the final rule will incur cost savings.

With respect to the fees for the Renovation, Repair and Painting Rule, EPA does not believe that the firm certification fee of \$300 (which, over 5 years, is \$60 per year) established in this final rule to implement the requirements of the Renovation, Repair, and Painting Rule would have a significant economic impact on a substantial number of small entities. Overall, EPA estimated that there are approximately 204,956 small entities that would be affected by the Renovation, Repair, and Painting Rule. Of these, there are an estimated 179,818 small businesses with an average impact from the fees 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%. The impact was measured by comparing the cost of the fees incurred by the entity to the entity's revenue.

Moreover, the impacts of the fees for the Renovation, Repair, and Painting Rule on small entities were also addressed and accounted for during the development of that rule. As provided for in section 605 of RFA, the fees established in this final rule to implement the Renovation, Repair and Painting Rule are so closely related to the Renovation, Repair, and Painting Rule that EPA considers it and the analysis EPA did pursuant to the Renovation, Repair, and Painting Rule to be one rule for the purposes of

sections 603 and 604 of RFA. Indeed, the economic analysis for the Renovation, Repair, and Painting Rule (Ref. 6) included projected fees that were slightly higher than those being established in this final rule. Accordingly, in order to avoid duplicative action, EPA is also relying on the analysis of that Renovation, Repair, and Painting Rule, as supplemented by the economic analysis accompanying this final rule, as satisfying EPA's obligations under RFA. Specifically, pursuant to section 603 of RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed Renovation, Repair, and Painting Rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities on a range of issues, including training and certification fees. As required by section 604 of RFA, the Agency also prepared a final regulatory flexibility analysis (FRFA) for the final Renovation, Repair, and Painting Rule which took into account the fees (albeit taking into account slightly higher projections) being established in this final rule. The FRFA also addressed the issues raised by public comments on IRFA, which was part of the proposed rule. Accordingly, the impacts of the fees for the Renovation, Repair, and Painting Rule on small entities have been adequately addressed for purposes of RFA.

Although this final 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 final rule on small entities. In response to concerns about impacts on abatement workers and the firms that employ them, EPA 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.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, requires Federal agencies to assess the effects of their regulatory actions to determine if such actions impose Federal mandates on State, local, and Tribal governments and the private sector. This rule does not contain a Federal mandate under UMRA 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. 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, which were addressed and accounted for during the development of that rule, 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. Thus, this final rule is not subject to the requirements of sections 202 and 205 of UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it 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 VI.C., the final rule is expected to result in small government impacts well under 1% of revenues. EPA has determined therefore that the final rule does not significantly affect small governments. Additionally, EPA has determined that the final rule does not uniquely affect small governments, as the final 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. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" 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 final 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 final rule merely establishes 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 final 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 solicited comment on the proposed rule from State and local officials.

#### F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). This final rule would only 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 13175 does not apply to this final rule.

#### G. Executive Order 13045

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 final rule merely establishes 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. Executive Order 13211

This final 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. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-

113, section 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### J. Executive Order 12898

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 final 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 action merely establishes 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.

#### VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. 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, Administrative practice and procedure, Children, Fees, Housing, Lead, Lead-based paint, Renovation.

Dated: March 12, 2009.

**Lisa P. Jackson,**  
Administrator.

■ Therefore, 40 CFR chapter I 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, 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) *Non-exempt training programs.* 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 non-profit 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:

| Training Program                                                            | Accreditation | Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details) |
|-----------------------------------------------------------------------------|---------------|------------------------------------------------------------------------|
| 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 see 40 CFR 745.89(b))                  |
| Firm                                                                        | \$300         | \$300                                                                  |
| Combined Renovation and Lead-based Paint Activities Firm Application        | \$550         | \$550                                                                  |
| Combined Renovation and Lead-based Paint Activities Tribal Firm Application | \$20          | \$20                                                                   |
| 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) | * | * | * |   |

| 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                                                                  |
| 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 (each discipline)                                      | \$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                                                                  |
| Combined Renovation and Lead-based Paint Activities Firm Application        | \$550         | \$550                                                                  |
| Combined Renovation and Lead-based Paint Activities Tribal Firm Application | \$20          | \$20                                                                   |
| Tribal Firm                                                                 | \$20          | \$20                                                                   |

\* \* \* \* \*

[FR Doc. E9-6167 Filed 3-19-09; 8:45 am]

BILLING CODE 6560-50-S

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102-34

[FMR Amendment 2009-02; FMR Case 2006-102-1; Docket 2008-0001; Sequence 06]

RIN 3090-AH68

### Federal Management Regulation; Motor Vehicle Management

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the Federal Management Regulation (FMR)

by revising coverage of Motor Vehicle Management. This final rule is a result of comments received on an interim rule published in the **Federal Register** on May 12, 2006 (71 FR 27636), and from members of the Federal Fleet Policy Council (FEDFLEET). This final rule also incorporates other administrative changes.

**DATES:** *Effective Date:* This final rule is effective March 20, 2009.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat (VPR), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Jim Vogelsinger, Office of Governmentwide Policy, Asset Management Policy (MTA), Washington, DC 20405, telephone (202) 501-1764. Please cite FMR Amendment 2009-02, FMR case 2006-102-1.

## SUPPLEMENTARY INFORMATION:

### A. Background

An Interim Rule was published in the **Federal Register** on May 12, 2006 (71 FR 27636). This final rule revises the FMR's coverage on Motor Vehicle Management (41 CFR part 102-34) to reflect the policy and administrative changes suggested by comments received on the interim rule from members of FEDFLEET. Other administrative changes will make the regulation accurately reflect current motor vehicle management terminology, update references, and clarify requirements.

This part has been renumbered. Deletions of and changes to previous sections follow:

Deleted § 102-34.20—What types of motor vehicle fleets are there? (The definitions for “Domestic fleet” and “Foreign fleet” are moved to § 102-