

## Environmental Protection Agency

## § 745.223

4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with § 745.107 (disclosure requirements for sellers and lessors), § 745.110 (opportunity to conduct an evaluation), § 745.113 (certification and acknowledgment of disclosure), or § 745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall not be more than \$11,000 for all violations occurring after July 28, 1997; all violations occurring on or prior to that date are subject to a penalty not more than \$10,000.

[61 FR 9085, Mar. 6, 1996, as amended at 62 FR 35041, June 27, 1997]

### § 745.119 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

## Subparts G–K [Reserved]

## Subpart L—Lead-Based Paint Activities

SOURCE: 61 FR 45813, Aug. 29, 1996, unless otherwise noted.

### § 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This

subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in § 745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. This subpart applies only in those States or Indian Country that do not have an authorized State or Tribal program pursuant to § 745.324 of subpart Q.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

### § 745.223 Definitions.

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

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

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of

painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with § 745.226, unless such projects are covered by paragraph (4) of this definition;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to

temporarily, but not permanently, reduce lead-based paint hazards.

*Accredited training program* means a training program that has been accredited by EPA pursuant to § 745.225 to provide training for individuals engaged in lead-based paint activities.

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

*Certified firm* means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to § 745.226(f).

*Certified inspector* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

*Certified abatement worker* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to perform abatements.

*Certified project designer* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to prepare abatement project designs, occupant protection plans, and abatement reports.

*Certified risk assessor* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

*Certified supervisor* means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to § 745.226 to supervise and

conduct abatements, and to prepare occupant protection plans and abatement reports.

*Child-occupied facility* means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

*Clearance levels* are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

*Common area* means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

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

*Containment* means a process to protect workers and the environment by

controlling exposures to the lead-contaminated dust and debris created during an abatement.

*Course agenda* means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

*Course test* means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

*Course test blue print* means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

*Deteriorated paint* means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

*Discipline* means one of the specific types or categories of lead-based paint activities identified in this subpart for which individuals may receive training from accredited programs and become certified by EPA. For example, "abatement worker" is a discipline.

*Distinct painting history* means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

*Documented methodologies* are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

*Elevated blood lead level (EBL)* means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20  $\mu$ g/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19  $\mu$ g/dl in two consecutive tests taken 3 to 4 months apart.

*Encapsulant* means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

*Encapsulation* means the application of an encapsulant.

*Enclosure* means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

*Guest instructor* means an individual designated by the training program

manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

*Hands-on skills assessment* means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in §745.225(d), as well as any other skill taught in a training course.

*Hazardous waste* means any waste as defined in 40 CFR 261.3.

*Inspection* means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

*Interim certification* means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from EPA pursuant to §745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

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

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

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

*Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identi-

fied by the Administrator pursuant to TSCA section 403.

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

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

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

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

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

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

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

*Person* means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or

instrumentality of the Federal government.

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

*Recognized laboratory* means an environmental laboratory recognized by EPA pursuant to TSCA section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

*Reduction* means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

*Residential dwelling* means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

*Risk assessment* means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

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

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

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

*Training hour* means at least 50 minutes of actual learning, including, but

not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

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

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

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

[61 FR 45813, Aug. 29, 1996, as amended at 64 FR 31097, June 9, 1999; 66 FR 1239, Jan. 5, 2001]

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

(a) *Scope.* (1) A training program may seek accreditation to offer lead-based paint activities courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998.

(3) A training program shall not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999.

(b) *Application process.* The following are procedures a training program shall follow to receive EPA accreditation to offer lead-based paint activities courses:

(1) A training program seeking accreditation shall submit a written application to EPA containing the following information: