

Prepublication Copy Notice:

The EPA Administrator signed the following *Federal Register* document on February 10, 2016:

Title: Final Rule; Lead-based Paint Programs; Amendment to
Jurisdiction-Specific Certification and Accreditation Requirements
and Renovator Refresher Training Requirements

FRL: 9941-61

Docket No.: EPA-HQ-OPPT-2014-0304

This is a **prepublication version** of the document that EPA is submitting for publication in the *Federal Register*. While the Agency has taken steps to ensure the accuracy of this prepublication version of the document, **it is not the official version** of the document for purposes of public comment or judicial review. Please refer to the official version of the document that will appear in a forthcoming *Federal Register* publication, which is currently expected to occur within 10 work days of the signature date.

Once the official version of the document publishes in the *Federal Register*, the prepublication version of the document posted on the agency's internet will be replaced with a link to the document that appears in the *Federal Register* publication. At that time, you will also be able to access the on-line docket for this *Federal Register* document at <http://www.regulations.gov>.

For further information about the docket and, if applicable, instructions for commenting, please consult the ADDRESSES section in the front of the *Federal Register* document.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2014-0304; FRL-9941-61]

RIN 2070-AK02

Lead-based Paint Programs; Amendment to Jurisdiction-Specific Certification and Accreditation Requirements and Renovator Refresher Training Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing revisions to the Lead Renovation, Repair, and Painting (RRP) rule, and the Lead-based Paint (LBP) Activities rule. The revisions are intended to improve the day-to-day function of these programs by reducing burdens to industry and EPA, and by clarifying language for training providers, while retaining the protections provided by the original rules. First, EPA is modifying the requirement that the renovator refresher training for individuals have a hands-on component. Second, the Agency is removing jurisdiction-specific certification and accreditation requirements under the LBP Activities program in States where EPA administers the program. Previously, this program required that training providers, firms and individuals seek certification in each jurisdiction (e.g., a State) where the organization or person wanted to work. Third, EPA is adding clarifying language to the requirements for training providers under both the RRP and LBP Activities programs.

DATES: This final rule is effective [*insert date of publication in the Federal Register*].

ADDRESSES: The docket for this action, identified by docket identification (ID) number HQ-OPPT-2014-0304, is available at <http://www.regulations.gov> or at the Office

of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

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 or individual who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226, or if you are an individual who must be certified to conduct renovation activities in accordance with 40 CFR 745.90. This rule applies only in States, territories, and tribal areas that do not have authorized programs pursuant to 40 CFR 745.324. For further

information regarding the authorization status of States, territories, and Tribes, contact the National Lead Information Center at 1-800-424-LEAD (5323).

The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- 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 buildings 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.

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

This final rule is being issued under the authority of Sections 402(a) and 402(c)(3) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2682(a) and 2682(c)(3).

C. What Action is the Agency Taking?

EPA is making minor revisions to the RRP rule that published in the **Federal Register** on April 22, 2008 (Ref. 1) and the Lead-based Paint Activities rule that published in the **Federal Register** on August 29, 1996 (Ref. 2). EPA is modifying the requirement that the renovator refresher training for individuals have a hands-on component. The Agency is also removing jurisdictions under the LBP Activities program in States where EPA administers the program. Previously, this program required that training providers, firms and individuals seek certification in each jurisdiction (e.g., a State) where the organization or person wanted to work. In addition, EPA is adding clarifying language to the requirements for training providers under both the RRP and LBP Activities programs.

D. Why is the Agency Taking this Action?

The proposed revisions are intended to improve the day-to-day function of these programs by reducing burdens to industry and the EPA and by clarifying language for training providers, while retaining the benefits of the original rules.

E. What are the Estimated Incremental Impacts of this Action?

EPA has prepared an economic analysis (EA) of the potential incremental impacts associated with this rulemaking (Ref. 3). This analysis, which is available in the docket, is discussed in more detail in Unit III. The following is a brief outline of the estimated incremental impacts of this rulemaking.

- *Overall costs.* This rule is estimated to result in cost savings of \$1.8 million to \$3.4 million per year.

- *Paperwork burdens.* The rule affects information collection activities by training providers that wish to offer e-learning refresher training and is estimated to have an incremental total estimated annual burden of 2,656 hours. Burden is defined at 5 CFR 1320.3(b).

- *Small entity impacts.* This rule does not have a significant impact on a substantial number of small entities.

- *Effects on State, local, and Tribal governments.* This rule does not have an intergovernmental mandate, any significant or unique effects on small governments, or Federalism or Tribal implications.

II. Discussion of Comments on the Proposal and the Final Rule

This unit discusses the final rule, including what was proposed and the public comments received on the proposed rule. A separate document that summarizes the comments received that were relevant to the proposal and EPA's responses has been prepared and is available in the docket for this rulemaking (Ref. 4).

A. Hands-on Training

To become certified as a renovator, a person must successfully complete a renovator course accredited by EPA or by a State, territorial, or tribal program authorized by EPA. To gain initial certification, individual renovators must complete an 8-hour training course. People who had taken an EPA, Department of Housing and Urban Development (HUD), or EPA/HUD model renovation training course could take the 4-hour refresher renovator training in lieu of the 8-hour initial course. Trainings are taught either in a classroom or via electronic learning (e-learning). E-learning is a web-based training that is not lead by an instructor where the student can take the training at his or her own pace. Requirements specific to e-learning are found at 40 CFR 745.225. To maintain

certification, renovators must complete a renovator refresher course before their certification expires. If the renovator does not complete the course within the required timeframe, the individual must retake the initial 8-hour course to become certified again.

The 8-hour initial training includes hands-on training in testing for lead in paint, methods for minimizing the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and cleaning verification. Activities covered include the use of EPA-recognized test kits, setting up barriers, covering furniture, ducts, and carpeted floors with plastic, mopping floors, bagging waste, and determining that the work area has been adequately cleaned. Each student performs these activities in front of an instructor who determines if the student is proficient in each one. Students must be deemed proficient in order to pass the class and become a certified renovator. The current version of the renovator refresher course includes hands-on training in testing paint for lead and cleaning verification.

On January 15, 2015, EPA proposed to eliminate the hands-on requirement in the renovator refresher course. Over 140 comments on its proposal were received. Comments both supported and opposed the proposed change. After carefully weighing the issues at stake and considering the concerns raised by commenters, the Agency is promulgating a modified version of the proposal. Specifically, EPA will allow renovators to take a refresher course without hands-on training once every other certification. Once a renovator takes the refresher course without the hands-on training, their next refresher training must include hands-on training. The certification from the refresher course without hands-on training will last for 3 years. Taking the course without hands-on training is optional but once a renovator takes the course, their next refresher course must

include hands-on training and be taken within 3 years of their previous certification. The certification from taking a course with hands-on training will last for 5 years.

Many commenters stated that allowing the refresher course to be taught entirely via e-learning would result in more trained contractors. One commenter stated the e-learning course would allow for wider adoption of the rule resulting in higher compliance. Another commenter stated that this will benefit homeowners by having more trained renovators in the field. One commenter who is in favor of e-learning training stated that when he took his initial renovator training, he spent 2 days traveling to and from the training and another day taking the class. E-learning training would have saved this person travel costs and time away from work. EPA agrees that a refresher training taught entirely online via e-learning would result in more renovators taking the training. Without the hands-on requirement, renovators seeking recertification would be able to take the course entirely via e-learning without having to travel to a training location to perform the hands-on activities. This change will make it easier for renovators to take the refresher training, especially renovators who live far from a training facility. Renovators will save time and travel costs by taking the course from a single location, possibly their own home. Although the e-learning training will only be allowed for every other refresher training, EPA believes that the associated burden and cost savings will lead to more renovators taking the refresher training and becoming recertified. Having more renovators take the refresher training will lead to a higher number of certified renovators, resulting in a workforce better able to perform renovations in a lead-safe manner.

Many commenters believe that an in-class course provides better training than an e-learning course. One commenter stated that students learn more when they can interact with other students and share information. Many commenters stated that students learn

better by performing hands-on activities. One commenter stated that it is important for students to practice what they learn and get immediate feedback from instructors.

Another commenter stated that people who work with their hands, such as renovators, learn better from doing rather than watching. While EPA believes that renovators can sufficiently learn the RRP requirements via e-learning training, the Agency understands the commenters' concerns about students missing out on potential benefits of hands-on training and interaction with trainers and students when they take an e-learning course.

These concerns are another reason EPA shortened the certification period for the renovator course that does not include hands-on training to 3 years and required in-class training every other certification. This way, renovators who may learn more in a classroom setting will not be able to take the e-learning course perpetually without ever having classroom refresher training. Further, they will have to take the in-class training sooner, after only 3 years from when they completed the e-learning course.

Many commenters were concerned that training providers would have difficulty verifying the identity of the person taking the course. One commenter stated that it would be difficult, if not impossible, to verify that the person taking the training is, in fact, the individual who receives certification. Another commenter pointed out that a classroom-based course reduces the potential for misrepresentation and fraud that can take place in an online learning situation. As one training provider explained, there are measures that it takes to verify student identity in an e-learning course but admitted that there is no guarantee that the person taking the course is who they claim to be. Several commenters suggested possible solutions, such as tracking IP addresses or taking a picture of the student without notice to verify their identity. These commenters' suggestions, as well as others, do not appear to be practical methods to verify student identity. EPA has already

employed more practical methods of verifying student participation when accrediting a training program to offer these refresher training courses for renovation: Each student is assigned a unique identifier to launch and re-launch the course, each student completes periodic knowledge checks equivalent to the number and content of those in EPA's model course, and each student is tested with at least 20 questions and scores at least 80% for successful completion. EPA recognizes the possibility that someone could have another person take the course for him or her; however, there are potential penalties for those who do this. Pursuant to 18 U.S.C. section 1001, it is a criminal violation to knowingly and willfully make a false or fraudulent statement in any matter within EPA's jurisdiction. Furthermore, if a renovator is tempted to have someone else take the course for them, they will know that they will have to take the course in person for their next certification, ensuring that their identity can be verified, because the e-learning course can only be taken once every other certification.

EPA understands that there may be disadvantages to e-learning training. However, the Agency expects that the associated burden and cost savings of the rule will lead to more renovators taking the refresher training and becoming recertified than would have done so otherwise. The Agency believes the benefits of having more renovators take the refresher training, leading to a higher number of certified renovators, will outweigh any disadvantages of the final rule.

B. Jurisdictions

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. 5). These fees were established as directed by TSCA section 402(a)(3), which requires EPA to recover the cost of administering and enforcing

the LBP Activities requirements in States without authorized programs. The fee schedule created a multi-jurisdiction registration fee which applies to individuals, firms and training programs that provide training or perform lead-based paint activities in more than one State administered by the EPA program. This fee is applied per discipline for each additional EPA-administered State in which the applicant seeks certification/recertification or accreditation/reaccreditation. An EPA-administered jurisdiction is either an individual State without an authorized program or all Tribes without authorized programs in a given EPA Region.

The multi-state jurisdiction fee of \$35 was based on the estimated burdens required for Agency clerical, technical, and managerial staff to perform tasks associated with adding jurisdictions to a certification or accreditation. Tasks include entering the information into a database, approving or disapproving the application and generating and mailing a certificate to the applicant. After years of implementing the LBP Activities Program, the Agency believes that separate certifications for each EPA-administered State jurisdiction are not necessary. In particular, EPA does not believe it is necessary for the Agency to certify or accredit the same applicant multiple times; certification in one EPA-administered State jurisdiction should be sufficient to perform work in any other EPA-administered State. Accordingly, the Agency is eliminating the requirement for separate certifications in each EPA-administered State jurisdiction in the LBP Activities Program. Regulated entities will no longer have to send an application and fees to EPA for the purpose of adding additional EPA-administered State jurisdictions to their certification or accreditation. Now when a regulated entity applies to EPA and receives certification in the LBP Activities Program, they will be able to work in any EPA-administered State.

EPA received many comments on its proposal to remove jurisdictions from the LBP Activities Program. Most comments were in support of eliminating jurisdictions. Commenters who opposed the proposed removal were confused about what EPA was proposing, believing that the Agency was going to change the requirements for States to become authorized to implement the LBP Activities Program. The Agency is not changing the State authorization requirements, nor did it propose to do so. EPA is promulgating the revisions as proposed by eliminating jurisdictions in the LBP Activities Program administered by EPA.

Now that jurisdictions in EPA's LBP Activities Program have been removed, firms, individuals and training providers will receive one certificate that will allow them to work in all EPA-administered States instead of one certificate per State. Certificates issued before this final rule are still valid until their expiration and regulated entities will not need their certificates replaced because of this rule. In addition, a previous certification in a single EPA-administered jurisdiction allows firms, individuals and training providers to perform lead-based paint activities in all EPA-administered jurisdictions until the expiration of that certification.

C. Clarification Regarding Training Provider Application Requirements

EPA is clarifying the application regulations for accredited training providers under the RRP rule (Ref. 1) and LBP Activities rule (Ref. 2). It was brought to the Agency's attention that the regulations did not specifically state what constituted a violation of the regulations at 40 CFR 745.225. For example, some other regulatory provisions, such as 40 CFR 745.87, specifically list various activities that are considered a violation of TSCA. Accordingly, the Agency proposed to add clarifying language explaining that training providers must follow the requirements in that section. EPA

believes that accredited training providers already understand this, but EPA proposed to add the clarifying language to ensure understanding of the requirements – similar to what has been done in other regulations. This clarifying language does not change any requirements for accredited training providers.

The Agency received few comments on the clarification. Most of the comments expressed general support for the proposed change. One commenter said that the current requirements are specific and the clarification is not necessary. EPA disagrees with this comment. The language in 40 CFR 745.225 did not specifically say that a failure to follow the requirements of that section was a violation. While it is likely that many training providers already understand that, EPA believes it is important to make it clear in the regulations in order to eliminate any confusion about what constitutes a violation. Therefore, EPA is finalizing the changes as proposed by adding the clarifying language to 40 CFR 745.225.

D. Correction to Training Notification Requirements

The regulatory text of the final RRP rule in 2008 (Ref. 1) inadvertently omitted a requirement for accredited providers of renovation training to provide notification to EPA after each training course the provider delivers. The provision was designed to supply important information regarding certified renovators for EPA's compliance monitoring efforts. In 2009, EPA issued a rule (Ref. 6) to correct this omission by amending 40 CFR 745.225(c)(14) to require post-course notifications from accredited providers of renovator or dust sampling technician training. The 2009 rule also included conforming changes to 40 CFR 745.225(c)(14)(iii) to include the correct name of the sample post-course notification form and to make it clear that all methods of post-course notification are available to both renovation training providers and LBP Activities training providers. As

amended, 40 CFR 745.225(c)(14) required renovation training providers to notify EPA no later than 10 business days following course completion. Although EPA identified this requirement in its cost estimates in 2008, the regulatory provision was subsequently overwritten by another rulemaking. Specifically, in a 2011 rule (Ref. 7), the regulatory language inadvertently removed the regulatory text that was added to 40 CFR 745.225(c)(14)(i) by the 2009 rule. In January 2015, EPA proposed to add the same language back to 40 CFR 745.225(c)(14)(i) that was included in the 2009 rule.

EPA received several comments about the correction to the notification regulations. Two commenters said they had no objection to the correction. Another commenter said simply that he supported the proposed change. No commenters opposed making the correction. EPA is promulgating the revision as proposed.

E. Notifications for E-learning Trainers

As explained in the preamble to the proposed rule, EPA considered modifying the requirements regarding online training notifications by requiring training providers that teach the e-learning refresher course to submit notifications via the internet. For years, training providers have had the option of submitting notifications electronically via EPA's Central Data Exchange (CDX). The CDX system is designed to streamline the notification process for training providers and EPA alike, and to perform basic validations of electronic submissions that reduce common errors in notifications otherwise submitted on paper. Submitting notification via the internet reduces the burden on the training providers and the Agency, as well as saving taxpayer dollars.

The Agency requested comment on whether it should require training providers to submit online notifications for the refresher course that does not include hands-on training. EPA received one comment submitted by a training provider who supported the

requirement. No commenters opposed the change. Based on the benefits of online notifications, EPA is promulgating a requirement that training providers that teach the renovator refresher course without hands-on training must submit their post-training notifications via the internet. Most, if not all, of the refresher courses without hands-on training will be taught via e-learning since there will be no need for students to take the course in person. EPA believes that trainers who teach an e-learning course clearly have the technical knowledge and ability to submit their post-training notifications via the internet and it is therefore appropriate to promulgate this requirement. As stated later in this Unit, these trainers will not have to submit pre-training notifications; therefore, this requirement only applies to post-training notifications.

EPA also requested comment on how it should modify the notification requirements to accommodate training taught entirely via e-learning. Training providers submit both a pre-training and post-training notification for each course that they teach. Now that the renovator refresher training can be taught entirely online via e-learning, there will be no classroom session for which to notify EPA for the e-learning class. Consequently, pre-training notifications will not be required for such courses. Because the training provider will still need to send to EPA the names of the students who completed the e-learning course, post-training notifications are still required.

EPA received several comments regarding how it should modify the post-training notification requirements. One commenter said that EPA should be notified as soon as the student completes the course. Another commenter stated that post-training notifications should be sent quarterly, or at most monthly. EPA believes that submitting notifications at the time the student finishes the course would be too burdensome for training providers. Furthermore, it is not necessary for student information to be submitted the

same day the course is completed. On the other hand, with quarterly notifications, information for some students would not be submitted to EPA for almost three months after the training was completed. There are times when EPA uses the information from notifications to verify whether a certain person is a certified renovator. A delay of three months increases the likelihood of this information not being available when the Agency needs it. As a compromise, and as one of the commenters suggested, the Agency is requiring the notifications to be submitted every month. Specifically, for renovator refresher courses without hands-on training, training providers must submit post-training notifications to EPA anytime from the first to tenth day of the month that includes the required information on students who completed the course in the previous month.

The Agency is requiring training providers that teach the refresher training entirely online via e-learning to include the expiration of the renovator's certification in the post-training notification. Now that renovator certifications can be either 3 or 5 years, it is important to have the expiration date on the notification so EPA can tell when the renovator's certification expires and whether he or she took the course that is taught entirely online via e-learning. The Agency is also requiring course completion certificates for all renovator courses to include the expiration of the certification. Because of the two different certification timeframes, it is important for the certificate to clearly state when the certification expires. This information may be of help to various parties including homeowners and training providers. Homeowners may want to verify that the certified renovators working in their homes are currently certified. Training providers who teach the refresher training are required to verify whether the student is eligible to take the refresher training which would be difficult to do without knowing when the renovator's certification expires.

F. Grandfathering

In the 2008 RRP rule (Ref. 1), EPA created a grandfather provision that allowed renovators who have taken an EPA, Department of Housing and Urban Development (HUD), or EPA/HUD model renovation training course, to take the 4-hour refresher renovator training in lieu of the 8-hour initial course to receive their initial certification. In a subsequent rulemaking, the regulations were changed (Ref. 7) to allow renovators to take advantage of the provision only if they had taken the prerequisite course before October 4, 2011. Now that the Agency is allowing a refresher course that does not have a hands-on requirement, the grandfather provision would have allowed a student to receive initial renovator certification by taking an e-learning refresher course that does not have hands-on training. EPA received several comments about the grandfather provision. Commenters were concerned that, under the proposal, renovators would be able to take the refresher course without hands-on training as their initial renovator training.

EPA believes that it is important for renovators to have hands-on training when they receive their initial certification. To address commenters' concerns, EPA will ensure that all renovators have hands-on training when they get their initial certification, by requiring renovators who take advantage of the grandfather provision to take a refresher training that includes hands-on training. Therefore, only renovators that have received their initial certification under the RRP program may take the renovator refresher course that does not include hands-on training.

III. Economic Analysis

EPA's economic analysis of the potential costs and savings associated with this action (Ref. 3), is available in the docket and is briefly summarized in this Unit.

The rule amendments do not preempt regulations by states, territories, or tribal

governments that have their own authorized lead programs, so these estimates only reflect changes in EPA-administered jurisdictions.

Over 500,000 renovators have been trained and certified under the federal RRP program since renovator training became mandatory in 2010. Since a large number of renovators received their initial certification in the first year of the program, there will be some initial cyclicalities in the annual number of renovators recertified. However, this cyclicalities will decrease over time as trained renovators exit the industry and are replaced by new entrants. EPA's analysis makes the simplifying assumptions that under the existing regulation (where all refresher training is valid for 5 years) there will be a steady state average of 100,000 renovators per year with expiring certifications, and 30,000 renovators per year will leave the industry and be replaced by new entrants who must take the initial training course. So an average of 70,000 renovators per year would take the refresher course in the baseline.

In the baseline, both initial and refresher renovator training must have a hands-on component, and renovator certification and recertification are both valid for 5 years. EPA considered several options for revising the hands-on requirement for renovator refresher training. The options differed in terms of the length of time for which recertification based on refresher training without a hands-on component would be valid, as well as the number of training cycles in which hands-on refresher training would have to be taken (i.e., every other time, every third time, or never). The options that EPA analyzed are summarized in Table 1. The final rule reflects the refresher training requirements in Option 4(c).

Table 1. Options for Renovator Refresher Training Analyzed in the Economic Analysis

Option	Period for which recertification is valid based on refresher training with a hands-on component	Period for which recertification is valid based on refresher training without a hands-on component	Number of training cycles in which hands-on refresher training must be taken
Existing rule	5 years	Not allowed	1
Option 1	5 years	5 years	0
Option 2	5 years	5 years	2
Option 3(a)	5 years	2 years	0
Option 3(b)	5 years	3 years	0
Option 4(a)	5 years	2 years	2
Option 4(b)	5 years	2 years	3
Option 4(c)	5 years	3 years	2
Option 4(d)	5 years	3 years	3

The final rule is Option 4(c).

Allowing refresher training to be taught without the hands-on component will reduce costs for training providers because they will no longer have to purchase the supplies required for hands-on training. As a result, the average cost per student of providing such a course is expected to be \$45 less than the baseline cost. Some or all of these savings may be passed on to the students in the form of lower tuition.

Refresher training without a hands-on component can be taken entirely online via e-learning. Most training providers currently offering the classroom portion of a renovator training course online charge the same tuition whether the class is taken in person or online, suggesting that the costs of providing e-learning and in-person training are similar. But renovators taking a course entirely via e-learning will avoid the time and associated expenses needed to travel to a training site, at an average savings of \$144 per person.

Due to the cost savings, as many as 400 training providers might offer refresher training via e-learning if the hands-on requirement is revised, and many renovators will take their training via e-learning. But some renovators will still choose to take their training in person even when they are eligible for an e-learning class. EPA considered three different scenarios for how renovators might respond if the hands-on requirement is modified, assuming that 50%, 75%, or 90% of renovators would choose to take their training online if they are allowed to do so. This means that at least 10%, 25%, or 50% of renovators would choose to take all of their training in person under each option. And under Options 2 and 4, renovators who chose to take training without a hands-on component would have to take hands-on training in a subsequent training cycle. So under these options, the number of renovators being trained in person in any given year exceeds 10%, 25%, or 50% of the total number of renovators trained that year. Table 2, lists the annual number of renovators trained under each option. To simplify the analysis, renovators are assumed to take training without a hands-on component via e-learning, although the rule would also allow such training to be taken in person. The range in the results for each option reflects the different scenarios for the number of renovators electing to take e-learning training.

Table 2. Average Annual Number of Renovators Trained by Option

Option	New renovators taking initial training	Renovators taking in-person refresher training	Renovators taking online-only refresher training	Total renovators taking refresher training
Existing rule	30,000	70,000	0	70,000
Option 1	30,000	7,000 to 35,000	35,000 to 63,000	70,000
Option 2	30,000	33,000 to 49,000	21,000 to 37,000	70,000
Option 3(a)	30,000	7,000 to 35,000	88,000 to 158,000	123,000 to 165,000
Option 3(b)	30,000	7,000 to 35,000	58,000 to 105,000	93,000 to 112,000
Option 4(a)	30,000	50,000 to 59,000	27,000 to 49,000	86,000 to 100,000
Option 4(b)	30,000	39,000 to 53,000	43,000 to 78,000	96,000 to 117,000
Option 4(c)	30,000	43,000 to 55,000	25,000 to 44,000	80,000 to 88,000
Option 4(d)	30,000	31,000 to 48,000	36,000 to 65,000	84,000 to 96,000

The final rule is Option 4(c).

The rule amendments also change the notification requirements for training courses. Post-training notifications will have to include the expiration date for each renovator's certification, but it takes a negligible effort for the training provider to submit this information. Training providers will not be required to submit pre-notifications for e-learning courses that have no in-person component, which will reduce the total number of submissions by between 4,000 and 7,000 per year. The amendments also allow training providers to submit post-notifications once a month for e-learning courses that have no in-person component, instead of no later than ten business days following course completion. Such monthly notifications would have to be submitted through EPA's CDX system, but approximately 92% of notifications are already submitted via CDX. Assuming that 400 training providers offer e-learning refresher training, up to 4,800 post-training notifications could be submitted for e-learning training each year. This is a reduction compared to the number of post-training notifications that would be submitted

if the amendments did not allow monthly reporting for e-learning training, and it is partially offset by a reduction in the number of post-training notifications for in-person classes.

And the rule removes the \$35 multi-jurisdiction registration fee that individuals, firms, and training providers currently pay when they apply to perform lead-based paint activities or provide training for that program in additional EPA-administered jurisdictions. In a typical year, these entities apply to work in a total of 431 additional jurisdictions.

The rule requires training providers to include the expiration date of the renovator's certification in the post-training notification, but the time required to do this is negligible. The rule also clarifies the requirements for the time-frame to submit post-training notifications for in-person training courses. The burden and cost of this activity were already accounted for in previous economic analyses and ICRs for the lead program, and are not repeated here in order to avoid double-counting these costs. Another revision adds clarifying language explaining that training providers must follow the regulations. This does not affect the estimated cost of compliance because it does not change any requirements for accredited training providers.

Table 3, presents the total cost savings of the rule options, including modifying the notification requirements for training providers, and removing the multi-jurisdiction fee. The final rule, which is Option 4(c), is estimated to result in cost savings of \$1.8 million to \$3.4 million per year (in 2014 dollars). The rule reduces the cost of providing and taking refresher training enough that compliance costs decrease even though reducing the certification period to 3 years for renovators taking refresher training without a hands-on component is projected to increase the total number of renovators

trained per year.

Table 3. Total Annualized Cost Savings of Minor Amendments Rule

Option	Description of Modifications to Refresher Training Recertification Requirements	Total Cost Savings (\$ million per year)
Option 1	Training without hands-on valid for 5 years	\$8.2 to \$12.4
Option 2	Training without hands-on component valid for 5 years. Hands-on training required every other recertification period.	\$3.9 to \$7.0
Option 3(a)	Training without hands-on valid for 2 years.	\$1.8 to \$3.4
Option 3(b)	Training without hands-on valid for 3 years.	\$4.5 to \$8.2
Option 4(a)	Training without hands-on valid for 2 years. Hands-on training required every 2 cycles.	\$0.5 to \$1.0
Option 4(b)	Training without hands-on valid for 2 years. Hands-on training required every 3 cycles.	\$0.9 to \$1.6
Option 4(c) – Final Rule	Training without hands-on valid for 3 years. Hands-on training required every 2 cycles.	\$1.8 to \$3.4
Option 4(d)	Training without hands-on valid for 3 years. Hands-on training required every 3 cycles.	\$2.7 to \$5.0

Cost savings for all options reflect revisions to the renovator refresher training requirements, changes to the pre- and post-training notifications, and the removal of the multi-jurisdiction registration fee. Recertification based on refresher training with a hands-on component is valid for 5 years under all of the options.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For

assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

3. EPA. Economic Analysis for the Lead-Based Paint Program Minor Amendments Final Rule (Economic Analysis). October 2015.

4. EPA. Response to Public Comments; Lead-based Paint Programs; Amendment to Jurisdiction-Specific Certification and Accreditation Requirements and Renovator Refresher Training Requirements Rulemaking. October 2015.

5. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors; Final Rule. **Federal Register** June 9, 1999 (64 FR 31091) (FRL-6058-6).

6. Lead; Minor Amendments to the Renovation, Repair, and Painting Program; Final Rule. **Federal Register** July 15, 2009 (74 FR 34257) (FRL-8422-7).

7. Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Final Rule. **Federal Register** August 5, 2011 (76 FR 47918) (FRL-8881-8).

8. EPA. Information Collection Request (ICR) for TSCA sections 402 and 404 Training, Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting. EPA ICR No. 2502.02 and OMB No. 2070-0192. October 2015.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866, October 4, 1993 (58 FR 51735) and 13563, January 21, 2011 (76 FR 3821) and any changes made in response to OMB recommendations are documented in the docket.

EPA prepared an economic analysis of the potential cost savings associated with this action (Ref. 3), which is available in the docket and is briefly summarized in Unit III.

B. Paperwork Reduction Act (PRA)

The information collection requirements in this rule have been submitted to OMB for review and approval under the PRA, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR No. 2502.02 and the OMB Control No. 2070-0192 (Ref. 8). The ICR document provides a detailed presentation of the estimated burden and costs predicted as a result of this action. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

Respondents/affected entities: The rule affects information collection activities by training providers that wish to offer e-learning refresher training and by renovators that attend training.

Respondent's obligation to respond: Although training providers have the option of choosing whether to offer such training, once an entity chooses to do so, the information collection activities contained in this rule become mandatory.

Estimated number of respondents: 25,048 per year, of which 400 are training

providers, 9,859 are renovators who take refresher training more frequently because their previous training did not include a hands-on component, and 14,789 are renovators who do not travel to refresher training because they utilize e-learning.

Frequency of response: 1, on occasion.

Total estimated burden: 15,472 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated burden cost: \$724,073 (per year), includes \$0 annualized capital or operation & maintenance costs.

Change in approved burden: The total burden in OMB's inventory for the existing, approved ICR for the lead paint program is 6,463,297 hours (OMB Control No. 2070-0195, EPA ICR No. 2507.01). With the addition of the 15,472 hours related to this rule amendments (which qualifies as a program change), the total annual burden for the lead paint program is estimated to be 6,478,769 hours. This is comprised of a reduction of 26,620 hours for renovators that take e-learning training and thus do not travel to a training site, an increase of 39,436 hours for more frequent training of renovators who took their previous training without a hands-on component, and 2,656 hours due to additional training provider activities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

Eliminating multi-jurisdiction registration fees saves money for entities that wish to perform LBP activities in multiple jurisdictions. The rule also allows training providers (many of which are small businesses) additional flexibility in how they offer training. E-learning training is already allowed for the classroom component of both initial and refresher training, and training providers can choose whether or not to offer it. The amended rule still allows training providers to choose what type of training to offer because they can continue to offer refresher training with a hands-on component, begin offering e-learning training without the hands-on component, or offer both types of training.

Training providers that voluntarily choose to start offering e-learning refresher training without a hands-on component would incur costs for some activities (e.g., applying for a new accreditation) but they would reduce other expenses (e.g., supplies for the hands-on training). See the Economic Analysis (Ref. 3) for additional information on the potential costs and savings of these activities. Because there is no requirement mandating that training providers offer an e-learning refresher course, training providers will not choose to offer e-learning training unless the savings from doing so exceed the

costs, or if they can recover their costs through tuition charges, increased volume of business, or other means. The rule requires training providers to include the expiration date of the renovator's certification in the post-training notification, but the time required to do this is negligible.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The rule amendments do not preempt regulations by states, territories, or tribal governments that have their own authorized lead programs, so those jurisdictions are not required to change their programs.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132, August 10, 1999 (64 FR 43255). 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.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175, November 9, 2000 (65 FR 67249). The rule amendments do not preempt regulations by tribal governments that have their own authorized lead programs, so those jurisdictions are not required to adopt these amendments. Tribal governments can serve as training providers, and those training providers that choose to offer e-learning refresher renovator training would incur costs for some activities (such as applying for a new accreditation) but they would reduce other expenses (such as supplies for the hands-

on training). However, there is no requirement mandating that training providers offer an e-learning refresher course. So training providers will not choose to offer e-learning training unless the savings of doing so exceed the costs, or if they can recover their costs through tuition charges or other means. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045, April 23, 1997 (62 FR 19885) because it is not an economically significant regulatory action as defined by Executive Order 12866, and because EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action does not establish an environmental standard intended to mitigate health or safety risks. Furthermore, the requirements in the lead program will continue to protect children, since renovators will still be required to take an 8 hour initial training that includes a hands-on component; they will still have to take regular refresher training; the refresher training will have to include a hands-on component every other training cycle; refresher training without a hands-on component will only be valid for 3 years; and renovators will still have to comply with the work practice requirements for renovation, repair or painting activities that disturb lead-based paint.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a significant energy action as defined in Executive Order 13211,

May 22, 2001 (66 FR 28355), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rule is not likely to have any adverse energy effects because it does not require any action related to the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rule does not involve technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C. 272 note.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898, February 16, 1994 (59 FR 7629). This action does not directly affect the level of protection provided to human health or the environment. The rule removes multi-jurisdiction fees for the LBP Activities program, revises the hands-on requirement for refresher renovator training, and changes the notification requirements for training providers. However, renovators will still be required to take an 8 hour initial training that includes a hands-on component; they will still have to take regular refresher training; the refresher training will have to include a hands-on component every other training cycle; refresher training without a hands-on component will only be valid for 3 years; and renovators will still have to comply with the work practice requirements for renovation, repair or painting activities that disturb lead-based paint.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 et seq., and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

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

Dated: February 10, 2016

Gina McCarthy

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. In § 745.90:

a. Revise paragraph (a)(2)

b. Revise paragraph (a)(4)

The revisions read as follows:

§745.90 Renovator certification and dust sampling technician certification.

(a) * * *

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011 may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.

* * * * *

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under §745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator

refresher course accredited by EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year certification.

Individuals who take a renovator refresher course that does not include hands-on training will be certified for 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will be certified for 5 years. Individuals who take the renovator refresher without hands-on training must, for their next refresher course, take a refresher course that includes hands-on training to maintain renovator certification.

* * * * *

3. In § 745.225:

- a. Add new paragraph (a)(4).
- b. Revise the introductory text of paragraphs (c), (d), and (e).
- c. Add new paragraph (c)(8)(vii)
- d. Revise paragraph (c)(13)(i)
- e. Revise paragraphs (c)(14)(i) and (e)(2), (3), (4) and (5)(viii).
- f. Add new paragraph (c)(14)(ii)(D)(7)

The additions and revisions read as follows:

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

(a) * * *

(4) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved

terms of the application and all of the requirements and limitations specified in any accreditation documents issued to training programs.

* * * * *

(c) *Requirements for the accreditation of training programs.* A training program accredited by EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

* * * * *

(8) * * *

(viii) For renovator course completion certificates, the expiration date of certification.

* * * * *

(13) * * *

(i) The training manager must provide EPA with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered except for any renovator course without hands-on training delivered via electronic learning. The original notification must be received by EPA at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course.

* * * * *

(14) * * *

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling, or lead-based paint activities course. This notification must be received by EPA no later than 10 business days following course completion.

Notifications for any e-learning renovator refresher course that does not include hands-on training must be submitted via the Central Data Exchange no later than the 10th day of the

month and include all students trained in the previous month.

(ii) * * *

(D) * * *

(7) For renovator refresher courses, the expiration date of certification.

* * * *

(d) *Minimum training curriculum requirements.* A training program accredited by EPA to offer lead-based paint courses in the specific disciplines listed in this paragraph (d) must ensure that its courses of study include, at a minimum, the following course topics.

* * * *

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program accredited by EPA to offer refresher training must meet the following minimum requirements:

(4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (b) of this section. If so, EPA shall use the approval procedure described in paragraph (b) of this section. In addition, the minimum requirements contained in paragraphs (c)(1) through (c)(5), (c)(6)(viii) and (c)(7) through (c)(14), and (e)(1),through (e)(3) of this section shall also apply.

(5) * * *

(viii) The requirements in paragraphs (c)(1) through (c)(5), (c)(6)(viii) and (c)(7) through (c)(14) of this section apply to refresher training providers.

* * * * *

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component. Renovators must take a refresher course that includes hands-on training at least every other recertification.

(3) Except for renovator and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course. Renovators must take a refresher course that includes hands-on training at least every other recertification.

* * * * *

4. In § 745.238:

- a. Remove paragraph (c)(3).
- b. Redesignate paragraphs (c)(4) and (5) as (c)(3) and (4).
- c. Revise the headings for paragraphs (d)(1) and (2).
- d. Revise paragraph (e)(2).

The amendments read as follows:

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

* * * * *

(d) * * *

(1) *Certification and re-certification* (i) * * *

(2) *Accreditation and re-accréditation.* * * *

* * * * *

(e) * * *

(2) Submit application and payment in the amount specified in paragraph (c)(3) of this section in accordance with the instructions provided with the application package.

* * * * *