

**40 CFR Part 745, Subpart E:
Residential Property Renovation**

State, Territorial, and Tribal Program Authorization Guidance

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CHAPTER 1. INTRODUCTION

A. PURPOSE OF THIS DOCUMENT

This guidance document has been developed to assist States, Territories and Federally-recognized Indian Tribes (Tribes) who are seeking authorization of Lead-Based Paint Renovation Programs pursuant to 40 C.F.R., Part 745, subpart E and Section 404 of the Toxic Substances Control Act (TSCA). This document does not establish any new Agency policy or position and is not intended to replace or supplant any Federal regulation. Rather, this document is intended to clarify and explain an existing Federal regulation, and any factual or interpretive deviation from the regulation shall be construed in favor of the regulatory language or preamble of the final rule. Please consult the final rule or your Regional Lead Coordinator (RLC) with any questions.

Section 402(a) of TSCA directed the Agency to promulgate regulations governing lead-based paint activities to ensure that individuals engaged in such activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified. Section 404(a) of TSCA provides that any State that wishes to administer and enforce these regulations may submit an application to the Administrator for authorization of such a program. The Federal lead-based paint activities program is codified at 40 C.F.R. Part 745 subpart L. Regulations governing the authorization of State, Territorial, and Tribal programs are codified at 40 C.F.R. Part 745, subpart Q.

Section 402(c)(3) of TSCA directed the Agency to revise the regulations under Section 402(a) to apply to renovation and remodeling activities that create lead-based paint hazards. In 2008, EPA promulgated regulations for the conduct of renovations for compensation in target housing and child-occupied facilities (codified at 40 C.F.R. Part 745 subpart E). EPA also modified the Pre-Renovation Education (PRE) provisions in 40 C.F.R. Part 745, subpart E. At the same time, EPA amended the regulations for the authorization of State, Territorial or Tribal programs at 40 C.F.R. Part 745, subpart Q, to also apply to renovation and remodeling activities. Several rulemakings have amended the RRP Rule since 2008, including the procedures and requirements for State and Tribal program authorization. This guidance addresses the authorization of State and Tribal Pre-Renovation Education (PRE) and Renovation, Repair and Painting (RRP) programs, including any revised requirements related to changes in Part 745 subparts E, L, and Q.

B. BACKGROUND

Title X of the Housing and Community Development Act of 1992, also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) was enacted to develop a national strategy to build an infrastructure necessary to eliminate lead-based paint hazards in housing and to establish a workable framework for lead-based paint hazard evaluation and reduction. Title X amended TSCA by adding Title IV—Lead Exposure Reduction. Section 402 of Title IV directed EPA to establish regulations to ensure that individuals engaged in lead-based paint activities are properly trained, that training programs are accredited, and that contractors are certified. The statute also directed the Agency to develop standards for the conduct of these

activities. EPA promulgated regulations that govern lead-based paint activities, including inspections, risk assessments, lead hazard screens, and abatement in target housing and child-occupied facilities, as well as regulations for pre-renovation education pursuant to Section 406(b) of TSCA and hazard identification pursuant to Section 403 of TSCA. Currently, there are 45 States and Tribes that have authorized lead-based paint activities programs.

On January 10, 2006, pursuant to Section 402(c)(3) of TSCA, EPA issued a proposed regulation covering renovation performed for compensation in target housing. The proposal contained requirements designed to address lead-based paint hazards created by renovation, repair and painting activities that disturb lead-based paint. EPA also proposed to allow interested States, Territories, and Tribes the opportunity to apply for and receive authorization to administer and enforce all of the elements of the new renovation provisions. EPA received 250 comments on the proposal and some commenters observed that the proposal did not cover buildings where children under the age of six visit regularly, such as day care centers, pre-schools and kindergarten classrooms. As a result, on June 5, 2007, EPA issued a Supplemental Notice of Proposed Rulemaking to add child-occupied facilities to the universe of buildings covered. On April 22, 2008, under the authority of Section 402(c)(3), 404, 406 and 407 of TSCA, EPA issued the final RRP rule. The RRP Rule was fully effective April 22, 2010.

Shortly after the RRP Rule was finalized, several petitions were filed challenging the RRP Rule. As part of a settlement agreement, EPA agreed to propose certain changes to the RRP Rule regarding the opt-out, recordkeeping, and other miscellaneous provisions. On May 6, 2010, EPA finalized the Opt-Out Rule, effectively eliminating the opt-out provision. The Rule also made minor changes to the recordkeeping, certification, accreditation and state authorization requirements. The Opt-Out Rule was effective July 6, 2010. EPA also agreed to separately propose changes to the RRP Rule regarding clearance and dust wipe testing, paint chip sampling by certified renovators, the training program accreditation application process, standards for e-learning in accredited training programs, minimum enforcement provisions for authorized state and tribal renovation programs, and minor revisions to the training and certification requirements for renovators. On July 15, 2011, EPA finalized the Clearance Rule. The Clearance Rule does not promulgate clearance and dust wiping testing requirements, but includes several revisions to the RRP Rule. In addition to the areas of revision listed above, EPA also clarified the requirements for vertical containment on exterior renovation projects, the prohibited or restricted work practice provisions, and the requirements for high efficiency particulate air (HEPA) vacuums. The Clearance Rule is effective October 4, 2011.

As provided in Section 404(a) of TSCA, and consistent with EPA's Policy for the Administration of Environmental Programs on Indian Reservations, any State or Tribe that seeks to administer and enforce the regulations developed pursuant to Section 402 or 406 may submit an application to the Administrator for authorization of such a program. Also, because TSCA § 3(13) defines the term State to mean any State or territory or possession of the United States, it should be understood that the term State in this document also means any territory or possession of the United States. As provided in Section 404(b), the Administrator will approve such an application if a State or Tribal program is found to be at least as protective as the Federal program, and if it provides adequate enforcement. For any State, or Tribe that does not have a 402 or 406 program authorized by the Agency, the Federal program will go into effect.

C. EPA'S APPROACH TO AUTHORIZING STATE AND TRIBAL PROGRAMS

Agency regulations, as amended by the RRP Rule, provide that "States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce the PRE provisions of subpart E of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce all of subpart E of this part pursuant to this subpart effective June 23, 2008." Although authorization for both the PRE Rule and the RRP Rule constitutes a complete Lead-Based Paint Renovation Program (Renovation Program), and EPA believes that a State or Tribal, Renovation Program is more effective where both are authorized, authorization for both is not required.

It is the intention of EPA to maximize the number of State and Tribal programs approved. The Agency believes that this was the intention of Congress and that this program can be better managed and implemented at the State and Tribal level. The Agency has pursued the goal of maximizing the number of State and Tribal authorized programs using several strategies. First, the Agency has consulted with many States and Tribes during the development of both the Federal Renovation Program and the requirements for program approval. The goal of these consultations was to produce a regulation that is both an appropriate and protective model for States and Tribes to emulate an effective and functional Federal Renovation Program. The procedures for program approval outlined here are intended to allow the authorization of State and Tribal programs that are unique, while promoting national consistency. Second, the Agency has produced this document to assist States and Tribes in applying for program authorization by making the application process as easy and straightforward as possible. This authorization process can be used either for those States and Tribes that have received prior approval for a Federally-authorized Lead-Based Paint Activities Training and Certification Program under TSCA Section 402(a), or for those that do not have an authorized Lead-Based Paint Activities Training and Certification Program under TSCA Section 402(a). Furthermore, EPA encourages States to use Program Certification as described in Chapters 2.D and 2.E of this guidance document where and as appropriate. The advantage of this method of program authorization is that the State's program is deemed authorized at the time the Agency receives the complete application. This method is not available to Tribes because Tribes must first demonstrate to the Agency that they meet the criteria at 40 CFR § 745.324(b)(4) for Treatment as a State ("TAS"). Although Tribes may be able to demonstrate that they have been approved for "Treatment as a State" for any other environmental program (satisfying two of the four TAS criteria), the Agency must make a separate determination that a Tribe has adequate jurisdictional authority and administrative and programmatic capability regarding its lead program before it can determine that the Tribe should be treated as a State.

This document describes EPA's expectations and the statutory and regulatory criteria for program approval and provides sample letters and other materials that should facilitate the application process.

Finally, the Agency will continue to devote considerable resources, both at the regional and headquarters levels, to working with State or Tribal regulatory agencies and legislatures as

they develop their enabling legislation or regulations, through their submission of an application for program authorization.

Using this guidance with its appendices will help States and Tribes to develop a successful authorization application. Appendix A is a list of all the items that should be covered in the application and appendix B lists select definitions for the Federal Renovation Program. Comparing the definitions in Appendix B and the regulations with the definitions in the State or Tribal application will help to identify any differences that will need to be resolved prior to approval. Appendix C is a series of worksheets that guide an applicant through the application process; a step by step process outline and template that can make it easier to identify and resolve variations from the Federal Renovation Program.

D. THE FEDERAL RENOVATION PROGRAM

On August 29, 1996, the Agency published the requirements and standards that constitute the Federal Program for the training and certification of lead-based paint activities professionals (codified at 40 C.F.R. Part 745, subpart L). These regulations became effective on August 31, 1998, in States and Indian Country without authorized programs. On June 22, 2008, the Agency published the requirements and standards for renovation activities that disturb lead-based paint in target housing and child-occupied facilities (the RRP Rule, codified at 40 C.F.R. Part 745, subpart E).

Subsequently, EPA finalized several rules modifying and clarifying the Federal Program requirements. The Fee Rule finalized on March 20, 2009, established fees for certification and accreditation for the Federal Renovation Program and revised fees for the Federal Lead-Based Paint Activities Program. The Minor Amendments to RRP Rule, finalized on July 15, 2009, requires accredited training providers to submit post-course notifications, including photographs of successful trainees, following all renovator and dust sampling technician courses. The Opt-Out Rule, finalized on May 6, 2010, eliminated the opt-out provision and made several minor changes to the recordkeeping, certification, accreditation and state authorization requirements.

The Clearance Rule, finalized on July 15, 2011, allows paint chip sampling by certified renovators, and revised the training program accreditation application process, standards for e-learning in accredited training programs, minimum enforcement provisions for authorized state and tribal renovation programs, and the training and certification requirements for renovators. It also clarifies the requirements for vertical containment on exterior renovation projects, the prohibited or restricted work practice provisions, and the requirements for high efficiency particulate air (HEPA) vacuums.

On the date that the Agency approves a State or Tribe's application for program authorization, the requirements of that State or Tribe's program will apply in lieu of the Federal Program. If the Agency withdraws a State or Tribe's program authorization, the Federal Program will become effective in that State or Tribe on the date that the withdrawal is effective.

Implementation of the Federal Program occurs primarily through EPA's regional offices. Because the Federal Renovation Program will be considered the benchmark or standard against

which State and Tribal programs are evaluated, a description of the Federal Renovation Program is found below.

1. Federal Renovation Program Description

(a). Scope of Rule

The regulations governing renovations are codified at 40 C.F.R. Part 745, subpart E. These regulations consist of two distinct and complementary rules. The PRE Rule establishes requirements for providing information on lead poisoning and lead based paint hazards to owners, occupants, parents and guardians, prior to disturbing lead based paint in pre-1978 residences and child-occupied facilities. The RRP Rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. These regulatory requirements are briefly outlined and summarized below. Please refer to the appropriate regulatory citations for complete information on the requirements.

(b). Applicability

The applicability of both the PRE Rule and the RRP Rule is described in detail at 40 C.F.R. § 745.82. The rules apply to all renovations performed for compensation in target housing and child-occupied facilities except:

- (1). Renovations affecting components that have been determined to be lead-based paint free by a certified inspector or risk assessor or a certified renovator using an EPA-recognized test kit;
- (2). Renovations involving only minor repair and maintenance;
- (3). Emergency renovations, which are exempt from the PRE Rule and from the training, certification, and work practice requirements of the RRP Rule to the extent necessary to respond to the emergency;
- (4). Renovations involving owner-occupied target housing where the owner-occupant has provided the renovation firm with a signed statement indicating that the renovation will occur in the owner's residence, no child under age 6 or pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the RRP Rule's work practices;

(c). Pre-Renovation Education Requirements

The PRE requirements are described in detail at 40 C.F.R. § 745.84. The PRE rule requires renovation firms to provide a lead hazard information pamphlet to the owners and occupants of target housing before beginning renovations. The final RRP Rule amended the PRE Rule by:

- (1). Requiring a new pamphlet "Renovate Right" be distributed;

- (2). Extending the pre-renovation education requirements to child-occupied facilities; and
- (3). Modifying the definition of minor repair and maintenance, this is not subject to the pre-renovation education requirements).

(d). Renovation, Repair and Painting Requirements

(1). Training Provider Accreditation

The requirements for accreditation of training programs are described in detail at 40 CFR § 745.225. To become an accredited training provider, an entity must submit an application and pay a fee. Among other things listed in 40 CFR § 745.225, the application must include documentation of the appropriate education, training and work experience of the training manager and principal instructor(s). A training provider wishing to use a course other than EPA's recommended model course, such as one approved by an authorized State or Indian Tribe, must also submit the course materials and agenda with the application to EPA for review.

Courses for renovators and dust sampling technicians must cover all of the curriculum requirements identified in 40 CFR § 745.225, last a minimum of 8 hours, and include 2 hours of hands-on training in the course topics outlined in 40 CFR § 745.225(d). Refresher courses for all disciplines except project designer must also include a hands-on component. Specific standards for electronic learning are set forth in 40 CFR § 745.225.

Once accredited, training providers must seek re-accreditation every 4 years. Further, they must amend their accreditation application within 90 days whenever there is a change to the information presented in their most recent accreditation or re-accreditation application. All training records must be retained for a period of 5 years. Photographs on course completion certificates are an accurate and recognizable image of the trainee and at least one square inch in size.

(2). Renovator and Dust Sampling Technician Training and Certification

The training and certification requirements for Renovators and Dust Sampling Technicians are described in detail at 40 C.F.R. §§ 745.225, 745.90(a) & 745.89. To become a Certified Renovator or Certified Dust Sampling Technician, an individual must successfully complete an accredited renovator or dust sampling technician course. 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 in lieu of the initial renovator training course to become a certified renovator. Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but are not currently certified in the discipline, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training. The certified individual must then complete an accredited refresher course every 5 years.

(3). Firm Certification and Responsibilities.

Firm responsibilities are described in detail at 40 C.F.R. § 745.85, 86 and 89(d). Renovations must be performed by certified firms using certified renovators and other trained individuals. In order to become certified to conduct renovations, a firm must submit an application and pay a fee. Certified renovation firms must be re-certified every 5 years.

When conducting a renovation, a renovation firm must ensure that:

- a. Renovations are performed by Certified Renovators or by persons trained by a Certified Renovator;
- b. A Certified Renovator is assigned to each renovation;
- c. All renovations are performed in accordance with the work practice requirements;
- d. The pre-renovation education requirements have been performed; and
- e. The recordkeeping requirements are met.

(4). Certified Renovator Responsibilities

Certified Renovator responsibilities are described in detail at 40 C.F.R. § 745.90(b). Certified Renovators must:

- a. Perform the cleaning verification and either perform or direct workers who perform the required set-up (warning signs, containment) and post-renovation cleaning;
- b. Provide training to workers on the work practices required by § 745.85(a) they will be using in performing their assigned tasks;
- c. Be physically present at the work site when the warning signs are being posted, while containment is being established, and while the post-renovation cleaning is performed;
- d. Regularly direct work being performed by other individuals to ensure that the work practices required by § 745.85(a) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;
- e. Be available, either on-site or by telephone, at all times that renovations are being conducted;
- f. When requested by the party contracting for renovation services, use an EPA-approved test kit to determine whether components to be affected by the renovation contain lead-based paint;
- g. Have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate; and
- h. Prepare the required records required by § 745.86(b)(1)(ii) and (6).

(5). Dust Sampling Technician Responsibilities.

Dust Sampling Technician responsibilities are described in detail at 40 C.F.R. § 745.90(c). Certified Dust Sampling Technicians may be used to perform optional dust clearance testing after renovation activities. Their responsibilities include:

- a. Collecting dust samples;
- b. Sending collected samples to an EPA-recognized laboratory;
- c. Comparing the results to established clearance levels; and
- d. Having with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(6). Work Practice Standards.

Work Practice Standards are described in detail at 40 C.F.R. § 745.85. The work practice standards were developed to minimize exposure to lead-based paint hazards created during renovation, remodeling and painting activities, taking into account reliability, effectiveness, and safety. The work practice standards include:

- a. Warning signs directing occupants and bystanders to remain clear of the work area;
- b. Containment of the work area to prevent the spread of dust and debris, including a requirement of vertical containment for exterior renovations projects within 10 feet of the property line;
- c. A prohibition on certain dangerous work practices:
 - Open flame burning or torching
 - Machines that remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle guns, abrasive blasting or sandblasting, unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation
 - Operating a heat gun above 1100 degrees Fahrenheit
- d. A requirement for the proper transportation and disposal of waste; and
- e. A specific post-renovation cleaning protocol, followed by a visual inspection and cleaning verification.

(7). Recordkeeping.

Recordkeeping requirements are detailed at 40 C.F.R. § 745.86. Renovation firms must maintain records to demonstrate compliance with the PRE Rule and the RRP Rule, including:

- a. Copies of pamphlet acknowledgement forms;
- b. Records prepared by a certified renovator after collecting paint chip samples; and
- c. Documentation and certification that work practice requirements were followed.

2. Revisions to Federal Renovation Program

Changes to the Federal Renovation Program will necessitate certain actions by authorized State or Tribal Renovation programs, applicants pending authorization for a State or Tribal Renovation program, and new applicants. When EPA publishes in the Federal Register revisions to the Federal Renovation Program requirements:

- (a). A State or Tribe with a renovation program approved before October 4, 2011 must demonstrate that it meets the new requirements no later than the first report that it submits pursuant to Sec. 745.324(h) but no later than October 4, 2013.
- (b). A State or Tribe with an application for approval of a renovation program submitted but not approved before October 4, 2011 must demonstrate that it meets the new requirements either by amending its application or in the first report that it submits pursuant to Sec. 745.324(h) but no later October 4, 2013.
- (c). A State or Tribe submitting its application for approval of a renovation program on or after October 4, 2011 must demonstrate in its application that it meets the requirements of the new renovation program requirements.

CHAPTER 2. PROGRAM AUTHORIZATION & APPLICATION PROCESS

A. INTRODUCTION

This chapter provides an overview of the elements that must be contained in a State, Territorial or Tribal application for program authorization. The chapter briefly describes each of these components and, in some cases, provides sample correspondence that may aid States and Tribes in developing their own applications. Appendix C provides a template for the application.

B. PURPOSE OF PROGRAM AUTHORIZATION

Section 404(a) of TSCA allows any State to seek authorization to administer and enforce a Renovation Program in lieu of the Federal Renovation Program. The implementing regulations are at 40 C.F.R. §§ 745.320 through 327, and in accordance with EPA's Policy for the Administration of Environmental Programs on Indian Reservations, also apply to authorization of Tribal programs. Upon authorization of a State or Tribal program, the requirements of the State or Tribe's laws and regulations will apply in lieu of the Federal Renovation Program. In addition, Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with any requirement of an approved State or Tribal program. See also 40 C.F.R. § 745.324(f). Although EPA reserves its right to exercise its enforcement authority under TSCA, once EPA approves a State or Tribal program, the State or Tribe will be responsible for administering and enforcing the program in that State or Tribal area. States and Tribes will still be responsible for reporting program implementation progress to EPA.

The Summary on Progress and Performance reports required by 40 C.F.R. § 745.327(d) must summarize the results of implementing the State or Tribal program and will be used by EPA for purposes of oversight. Initially, these reports must be submitted annually, but after the

first 3 years of authorization, EPA may extend the reporting interval to every two years if the reports demonstrate successful program implementation. See 40 C.F.R. § 745.324(h).

C. APPROVAL CRITERIA EXPLAINED

Section 404(a) provides that upon application by a State, the Agency may authorize such State to administer and enforce the standards, regulations, or other requirements established under Section 402 or 406 of TSCA. EPA's regulations for State and Tribal authorization were established pursuant to and in accordance with Section 404 of TSCA and EPA's Policy for the Administration of Environmental Programs on Indian Reservations. Specifically, pursuant to Section 404(b), the Agency may only approve a Renovation Program if the Administrator finds that:

“(1) the State program is at least as protective of human health and the environment as the Federal program under [Section 402, Section 406 or both] ..., and

(2) such State program provides adequate enforcement.”

A State or Tribal program can, however, be more protective than the Federal program. Specifically, Section 404(e) states:

“Nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements which are more stringent than those imposed by this title.”

1. “At Least as Protective as”

In making its determination regarding whether the State or Tribal Renovation Program is “at least as protective as” the Federal Renovation Program, the Agency will consider the Program Analysis, which is described in Chapter 3 (Section C) and the template “regulatory crosswalks” that are provided in appendix C. The Program Analysis addresses each of the program elements identified at 40 C.F.R. § 745.326. That analysis should highlight the differences between the Federal program and the applicant's program and provide an explanation of why the applicant believes that these differences do not make their program any less protective than the Federal program. This comparison should focus on the individual program elements (*e.g.*, procedures for the accreditation of renovation training programs) and explain why the program element, as a whole is at least as protective as the equivalent element of the Federal program. That is, a conclusion that one of the program elements is less protective than the Federal program generally cannot be offset by a conclusion that another program element is more protective than the Federal program.

2. “Adequate Enforcement”

To provide maximum flexibility, two processes are available for approving the compliance and enforcement program portion of a State or Tribal Renovation Program. Depending on the status of their compliance and enforcement programs, States or Tribes may

apply for either: (1) final approval of the compliance and enforcement program portion of the State or Tribal Renovation Program; or (2) interim approval subject to a specific expiration date. See 40 C.F.R. § 745.320(d) and 745.327(a). The basis for receiving either interim approval or final approval is described in Chapter 4.

D. APPLICATION PROCESS

1. Public Notice

Before the State or Tribe can develop an application, it must provide public notice of intent to seek authorization and an opportunity for public hearing on its application. The State or Tribe is free to determine the method it will employ to provide this public notice and, if necessary, to conduct hearings. See 40 C.F.R. § 745.324(a)(2).

2. Application Contents

Any State or Tribe that is seeking program authorization must complete and submit an application to the Agency according to the requirements at 40 C.F.R. § 745.324.

The following are the components of a State or Tribal program application, along with other recommended materials that will facilitate application review. These components are described in more detail in Chapter 2 E. of this document:

- (a). Cover sheet;
- (b). A summary of the State, Territorial or Tribal program;
- (c). A transmittal letter from the Governor or Tribal chairperson (or equivalent official) requesting program approval;
- (d). An Attorney General or Tribal equivalent's statement that the State or Tribe's laws and regulations provide the adequate legal authority to administer and enforce this program;
- (e). A Renovation Program description, including:
 - (1). an enforcement and compliance program description that must include an analysis comparing the program to the Federal program and demonstrate how the program is as protective as the Federal program;
 - (2). copies of all applicable State or Tribal statutes and regulations; and
 - (3). for any Tribe, documentation that the Tribe is eligible for Treatment as a State and a map or other information that identifies the extent of the territory over which the Tribe exercises jurisdiction.
- (f). For States: An **optional** certification, signed by the Governor or Attorney General, that the State program meets the criteria established for program authorization. (Not available for Tribes.) (This option allows for instant authorization of the program upon receipt of the certification by EPA. The State's program will be deemed authorized until EPA either disapproves the application or withdraws the State's authorization.)

3. Application Submission

When complete, the State or Tribe should submit three (3) copies of the entire application to their regional EPA office at the address given at the end of this document.

Section 404(b) of TSCA requires the Agency to provide notice and an opportunity for a public hearing before approving an application for authorization. Based on the regulations at 40 C.F.R. § 745.324(a)(4), the Agency will publish in the Federal Register a notice announcing the receipt of a State or Tribe's complete application, a summary of the State or Tribal program (discussed below), the location of copies of the application available for public review, and the dates and times that the application will be available for public review and a request for public comment. The public comment period will not be less than 45 days. EPA will consider comments it receives during its review of the application.

In addition, within 60 days of submission of a complete State or Tribal application, EPA will, if requested, hold a public hearing in each State or Indian Country seeking program authorization. See § 745.324(a)(5). This opportunity for public hearing is separate and distinct from the opportunity for public hearing that the State or Tribe must offer before developing an application for approval.

4. Agency Review

With respect to States that seek authorization using the Program Certification method, the State program is deemed authorized until such time as the EPA disapproves the program application or withdraws the State authorization. The Program Certification method is only available to States.

With respect to applications that do not contain a State program certification, once the Agency receives a complete application, it will have 180 days to approve or disapprove the application. See § 745.324(e) and (d). The State or Tribal program will be deemed authorized at the time the Agency approves the application. Authority for State and Tribal program authorization has been delegated to EPA's Regional Administrators.

EPA encourages States and Tribes to engage in frequent communication with EPA's Regional offices before submitting an application. Pre-application consultation and coordination between applicants and their Regional EPA contacts is the key to timely and successful processing of authorization applications. The applicant will need to decide on the type, coverage and scale of its program assess existing and needed statutes and regulations as well as existing and needed resources. Because EPA can only act on a "complete" application, EPA recommends that States and Tribes submit at least one draft submittal (without Governor, Attorney General, or Tribal equivalent's signature) of all parts of the application. It is EPA's expectation that this will significantly reduce the processing time for the final application. At the end of this document is a list of EPA's Regional Lead Contacts. They will serve as the primary EPA contact as the State or Tribe goes through the process of applying for authorization. Their advice and counsel will be useful in making the application successful for States and Tribes.

As a State or Tribe begins developing its application, the applicant and the EPA region, working together, can identify any legislative or regulatory modifications that may need to be made to satisfy the “at least as protective as” and “adequate enforcement” criteria. EPA also recommends that the State Attorney General or Tribal equivalent’s office, be consulted during these early reviews so that later conflict may be avoided. The EPA regional counsels’ staff will also be available to the State Attorney General or Tribal equivalent’s staff for consultation on legal matters. Many problems can be avoided if these contacts are established before a State or Tribe submits its official application.

E. COMPONENTS OF AN APPLICATION

1. Cover Sheet

At the end of this document is a cover sheet that can be used and included with the application to facilitate the processing of the application. The information on the sheet will allow EPA to quickly identify the name of the primary contact within the State or Tribe and identify the documents that have been included in the authorization application. A more complete checklist of documents is included in appendix A and a separate, optional, worksheet document is included in appendix C.

2. Program Summary

The Program Summary is a short (2 pages maximum) summary of the State or Tribal program. See § 745.324(a)(3)(ii). If the State or Tribe has an existing Lead-Based Paint program, this summary should include the changes to its existing program, where applicable. This summary will be used by the Agency to provide notice to the residents of the State or Tribe for which the State or Tribe is seeking a new program authorization or changes to its existing program authorization. The summary should describe which parts of subpart E are included in the application (RRP, PRE or both) the activities and building types covered by the State or Tribal program, provide a short summary of the certification and accreditation requirements, a short description of the work practice standards included in the program, information distribution requirements, and any additional material the State or Tribe chooses to include.

3. Governor’s Letter

A letter from the Governor or Tribal equivalent officially transmits the State or Tribe’s application for approval of its program and acts as a formal request for EPA’s review of the application. See § 745.324(a)(3)(i). It is recommended that the letter to EPA include a reference to the Federal statute, a specific request for authorization of the State or Tribal Renovation Program, and the Governor or Tribal equivalent’s signature. It is also recommended that the letter designate the State or Tribal agency that is responsible for administering and enforcing the program and that will serve as the key point of contact for the Renovation Program. In order to facilitate the processing of the application, included below is a sample letter that may be used as part of a State or Tribal application.

Ms. Susan Smith
Regional Administrator
Region XX
U.S. Environmental Protection Agency
Street Address
City, State, Zip Code

Dear Ms. Smith:

In accordance with Section 404 of the Toxic Substances Control Act, I am forwarding an application for authorization of the Lead-Based Paint Renovation Program for (State, Territory or Tribe). The application has been forwarded directly to the Environmental Protection Agency's Region XX program office for review. I believe you will find it contains the provisions necessary to implement an effective Renovation Program.

Should you require further information, please contact (Director) of (Lead Agency). Thank you for your assistance.

Sincerely,

Joseph Amori
Governor

Enclosures

cc: Regional Lead Coordinator, Office Address of RLC

4. Attorney General's Statement

States or Tribes applying for program authorization must submit an Attorney General or Tribal equivalent's statement that certifies that the statutes and regulation of the State or Tribe provide adequate authority to administer and enforce a Renovation Program as described in the State or Tribe's application. See §§ 745.324(a)(3)(iv) and 745.324(c)(1). This statement must include citations to the specific statutes and regulations providing that legal authority. If the application is for Program Certification, all statutes and regulations cited by the Attorney General must be fully effective by the time the program is approved.

The Tribal legal certification (the equivalent to the Attorney General's statement) may also be submitted and signed by an independent attorney retained by the Tribe for representation in matters before EPA or the courts pertaining to the Tribe's program. The certification shall include an assertion that the attorney has the authority to represent the Tribe with respect to the Tribe's authorization application.

Where a State or Tribe has incorporated by reference any Federal regulations, the Attorney General or Tribal equivalent should demonstrate the authority to adopt State or Tribal regulation in this manner. The Attorney General or Tribal equivalent should cite the State or Tribal statutes and regulations, listing the comparable Code of Federal Regulations citation and effective date. A sample letter has been included below that may be used as part of a State or Tribal application.

Ms. Susan Smith
Regional Administrator
Region XX,
U.S. Environmental Protection Agency
Street Address
City, State, Zip Code

Dear Ms. Smith:

I hereby certify pursuant to my authority as (Insert Official Title) and in accordance with Section 404 of the Toxic Substances Control Act, and 40 CFR § 745.324 that the laws and regulations of (State, Territory or Tribe) provide adequate legal authority to administer and enforce the Lead-Based Paint Renovation Program as described in the enclosed application and submitted. The statutes and regulatory citations below have been lawfully adopted at the time this statement is signed and will be effective by the time this program is approved.

The statutory and regulatory authorities providing adequate legal authority are:

(number the statutes and regulations cited)

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.(etc.)

Sincerely,

Jane Wilson
Attorney General

5. Program Description

The purpose of the program description section is to provide an overview and analysis of a State or Tribe's Renovation Program. See § 745.324(b). This section of the application should include a simple narrative that describes the program and an analysis of the applicant's program as it relates to the Federal program. Information requested includes the name of the State or

Tribal agency that will be responsible for administering and enforcing the program and that will serve as the key point of contact for the Renovation Program, the name of a contact in that agency, a description of the program, and an analysis of the State or Tribe's programmatic and enforcement provisions. Because this section makes up the bulk of an application, it is discussed in greater detail in Chapter 3.

Two processes are available for approving the compliance and enforcement program portion of the State or Tribal program. These different processes are designed to provide maximum flexibility to applicants. Depending on the status of their compliance and enforcement programs, States or Tribes may apply for either: (1) final approval of the compliance and enforcement programs portion of the State or Tribal Renovation Program; or (2) interim approval subject to a specific expiration date. The basis of receiving either interim approval or final approval is described in Chapter 4.

6. Program Certification (Available only to States)

Section 404(a) of TSCA provides that a State may also certify to the Agency that its program meets the criteria for program authorization, *i.e.*, the State program is at least as protective as the Federal Renovation Program found at 40 C.F.R. § 745 Subpart E and the State has authority to adequately enforce such State renovation program. This optional certification must be presented to EPA in the form of a letter from the Governor or the Attorney General to the Regional Administrator. This certification must be supported by the analysis of the State program contained in the program description portion of the application. If this certification is included in a State application, the State's program will be deemed authorized until such time as EPA disapproves the program application or withdraws the program authorization. A sample program certification letter is shown below.

Ms. Susan Smith
Regional Administrator
Region XX, U.S. EPA
Street Address
City, State, Zip

Dear Ms. Smith:

I hereby certify in accordance with Section 404(a) of the Toxic Substances Control Act and 40 C.F.R. § 745.324, (c), that based on the analysis conducted as part of this application, the laws of (State or Tribe) as described in this application are at least as protective as the Federal Lead-Based Paint Renovation Program found at 40 C.F.R. Part 745, subpart E and provide authority to adequately enforce compliance with our Renovation Program.

Sincerely,

Joseph Amori
Governor

CHAPTER 3. PROGRAM DESCRIPTION

A. INTRODUCTION

The Program Description is a critical part of a State or Tribal Program application. It must effectively demonstrate that the State or Tribal Program is at least as protective as the Federal Program. As required under 40 C.F.R. § 745.324(b), this part of the application must include the following:

1. The name, addresses, phone numbers, and email addresses of the State or Tribal agency that is responsible for administering and enforcing the program and the name of an official point of contact for EPA¹. This information can be included in the cover sheet for the application package.
2. A narrative description of the program that demonstrates that the program contains all of the elements specified in § 745.326.
3. An analysis of the programmatic elements of the State or Tribal program that compares the program to the Federal Renovation Program. The analysis must demonstrate how the program is at least as protective as the elements in the Federal program at subpart E.

¹ If more than one agency is responsible for administering and enforcing the program, the State or Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and to serve as the primary contact with EPA. If this is the case, the State or Tribe must also describe the functions to be performed by each agency, and how the program will be coordinated by the primary agency to ensure consistency and effective administration of the Renovation Program within the State or Tribe. See 40 C.F.R. § 745.324(b)(1)(iii).

4. A description of State or Tribal lead-based paint compliance and enforcement program that demonstrates that the program contains all of the elements specified at § 745.327.

EPA will use this information in evaluating the protectiveness of the program. Appendix C provides a template for the application and the Program Description.

B. NARRATIVE DESCRIPTION OF PROGRAM

A State or Tribal application must include a description of the program that demonstrates that the program contains all of the elements specified in 40 C.F.R. § 745.326. Generally, this must include the following:

1. Pre-Renovation Education:
 - (a). Procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities as well as the parents and guardians of children using child-occupied facilities before renovations for compensation are performed.
2. Renovation, Repair and Painting:
 - (a). Procedures and requirements for the accreditation of Renovator and Dust Sampling Technicians training programs²;
 - (b). Procedures and requirements for the certification of Renovators and Dust Sampling Technicians;
 - (c). Procedures and requirements for the certification of firms and/or individuals;
 - (d). Requirements that all renovations be conducted by appropriately certified individuals and/or firms;
 - (e). Work practice standards for the conduct of renovations; and
 - (f). Development of the appropriate infrastructure or government capacity to effectively carry out the State or Tribal RRP program.
3. All Programs:
 - (a). Development of the appropriate infrastructure or government capacity to effectively carry out the State or Tribal program.

For detailed requirements relating to pre-renovation education, refer to 40 C.F.R. § 745.326(b), § 745.84 and page 24 of appendix C. For detailed requirements relating to renovation, repair and painting, refer to 40 C.F.R. § 745.326 and pages 27, 30, 32 and 34 of appendix C.

² State and Tribes are not required to incorporate the Dust Sampling Technician discipline if their programs otherwise require dust sampling to be performed only by a certified inspector or risk assessor.

The program description must also show that the State or Tribal Program will provide adequate enforcement. Applications must include a description of the compliance and enforcement program, including copies of all policies, certifications, plans, reports, and other materials, and demonstrate that the program contains all elements specified at § 745.327. Detailed requirements for compliance and enforcement programs are discussed in Chapter 4.

Finally, this section should also include the special program description requirements for Tribes, if applicable. See § 745.324(b)(4)(i)-(iii). A Tribal application must contain a map, legal description, or other information that identifies the geographical extent of the territory over which the Tribe exercises jurisdiction. In addition, the application must include a demonstration that the Tribe:

- (1). Is recognized by the Secretary of the Interior;
- (2). Has an existing government that exercises substantial governmental duties and powers;
- (3). Has adequate civil regulatory jurisdiction over renovation activities and the entities regulated by the Tribe's Renovation Program; and
- (4). Is reasonably expected to be capable of administering its Renovation Program.

If EPA has already determined that a Tribe has met the requirements in (1) and (2) above for another EPA program, the Tribe need only provide the renovation-specific information in (3) and (4) above.

C. PROGRAM ANALYSIS

In this section, the State or Tribe is asked to conduct an evaluation of its own program. The analysis must demonstrate that each element of the program meets the objectives as described in 40 C.F.R. § 745.326. The analysis must compare the State or Tribal Renovation Program to the Federal Renovation Program, note any significant differences, and explain why, in these instances, the State or Tribal program is at least as protective, on an element by element basis, as the Federal program. If the State or Tribe incorporated the Federal Regulations by reference or duplicated the Federal Regulations, an abbreviated, comparative analysis may be sufficient, but if the State or Tribe has drafted its own legislation and/or regulations, a detailed analysis will be necessary for EPA to evaluate the application. The analyses of the program elements section complement and expand on the previous section of the application.

The required "Program Elements" for PRE and RRP programs are also listed in appendix C, with a "crosswalk" of Federal and applicant citations for each element, in order to ensure that any variations are addressed and can be resolved. Page 42 of appendix C asks for all differences between the Federal Renovation Program to be identified, and for the applicant to explain why and how the variations for each element are as protective as the Federal program.

CHAPTER 4. ENFORCEMENT AND COMPLIANCE PROGRAM DESCRIPTION

A. INTRODUCTION

This section of the program description provides information regarding the State or Tribal enforcement and compliance program for renovation activities. If a State or Tribe does not qualify to receive final approval for the compliance and enforcement portion of the State or Tribal Renovation Program, such State or Tribe may apply for interim approval. Interim approval of the compliance and enforcement portion of the State or Tribal Renovation Program can be granted by EPA once only and will be subject to a specific expiration date. For the purposes of interim and final approval, States and Tribes are not required to provide duplicate copies of information that was submitted with their Renovation Program authorization applications. Appendix C provides a step by step guide to identifying and describing components of an enforcement and compliance program for renovation activities, for determining when the requirements for final versus interim approval are met, and for identifying variations from the requirements that will need to be resolved.

Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization. However, a Tribe that receives authorization for its Renovation Program must enter into a Memorandum of Agreement with the EPA Regional Administrator that provides for the timely and appropriate referral to EPA for those criminal enforcement matters over which the Tribe does not have the authority. See 40 CFR § 745.327(e).

B. INTERIM APPROVAL

The requirements for interim approval can be found at 40 C.F.R. § 745.327(a)(1). To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must:

1. Demonstrate it has the legal authority and ability to immediately implement Enforcement and Compliance Element 1—Adequate Standards, Regulations, and Authority (40 C.F.R. § 745.327(b)(1)-(4)). This section should include a statement that the State or Tribe, during the interim approval period, will carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Tribe addresses any significant risks posed by noncompliance with PRE and or RRP requirements;
2. Present a plan with time frames identified for implementing in the field each component of Enforcement and Compliance Element 2—Performance Component (40 C.F.R. § 745.327(c)(1)-(7)). All components of Element 2 must be fully implemented no later than 3 years from the date of EPA’s interim approval of the compliance and enforcement program portion of the State or Tribal Renovation Program. A statement of resources must be included in the State or Tribal plan that identifies what resources the State or Tribe intends to devote to the administration of the compliance and enforcement portion of its Renovation Program; and
3. Agree to submit to EPA the Summary on Progress and Performance of Renovation Program compliance and enforcement activities. The content requirements for the Summary on Progress and Performance can be found at 40 C.F.R. § 745.327(d).

Any interim approval granted by EPA for the compliance and enforcement portion of a State or Tribal Renovation Program will expire not later than 3 years from the date of EPA’s

interim approval. One hundred and eighty days before this expiration date, a State or Tribe must apply to EPA for final approval. Final approval will be given to any State or Tribe that has in place all three elements described above. If a State or Tribe does not receive final approval for the compliance and enforcement portion of a State or Tribal Renovation Program, by the date 3 years after the date of EPA's interim approval, the Administrator or his or her designee will, by such date, initiate the process to withdraw authorization of the State or Tribal program as specified at 40 C.F.R. § 745.324(i).

C. FINAL APPROVAL

Final approval of the compliance and enforcement program portion of a State or Tribal Renovation Program can be granted by EPA either through the Section 404 application process described at 40 C.F.R. § 745.324(a) or, for States or Tribes that previously received interim approval as described above, through a separate application addressing only the compliance and enforcement portion of a State or Tribal Renovation Program as described in 40 C.F.R. § 745.327(a)(2).

In order for the compliance and enforcement program portion of a State or Tribal Renovation Program to be considered adequate for final approval through the Section 404 application described at 40 C.F.R. § 745.324(a), a State or Tribe must in its application:

1. Demonstrate that it has the legal authority and ability to immediately implement the components of the Enforcement and Compliance Element 1—Adequate Standards, Regulations, and Authority; and Enforcement and Compliance Element 2—Performance Component;
2. Submit a statement that identifies the resources (e.g. fiscal and personnel) that the State or Tribe intends to devote to the administration of the State or Tribal renovation compliance and enforcement program; and
3. Agree to submit to EPA the Summary on Progress and Performance of renovation compliance and enforcement activities pursuant to 40 C.F.R. § 745.327(d).

For States or Tribes that previously received interim approval to receive final approval, a State or Tribe must in its application:

1. Demonstrate that it has the legal authority and ability to immediately implement the components of the Enforcement and Compliance Element 1—Adequate Standards, Regulations, and Authority; and Enforcement and Compliance Element 2—Performance Component;
2. Submit a statement that identifies the resources (e.g. fiscal and personnel) that will be devoted by the State or Tribe to the administration of the State or Tribal, renovation compliance and enforcement program;
3. Agree to submit to EPA the Summary on Progress and Performance of renovation compliance and enforcement activities; and
4. To the extent not previously submitted as part of the application process, submit copies of all applicable State or Tribal statutes, regulations, standards, and other material that provide the State or Tribe with authority to administer and enforce the renovation

compliance and enforcement program, and copies of the policies, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established at 40 C.F.R. § 745.327(b) and (c) for compliance and enforcement program approval.

D. ENFORCEMENT AND COMPLIANCE ELEMENT 1 –
ADEQUATE STANDARDS, REGULATIONS AND AUTHORITY

The regulatory requirements for Element 1 can be found at 40 C.F.R. § 745.327(b). At a minimum, a renovation compliance and enforcement program must include components 1-4 discussed below.

1. *Renovation Requirements.* 40 C.F.R. § 745.327(b). State or Tribal renovation compliance and enforcement programs will be considered adequate if the State or Tribe demonstrates, in its application at Section 745.324(b)(2), that it has established a program that contains all of the elements specified in 40 C.F.R. § 745.326.
2. *Authority to Enter.* 40 C.F.R. § 745.327(b)(2). State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint violations may occur for purposes of conducting inspections. State or Tribal officials must also have authority to enter a training program's place of business, and a renovation firm's place of business or work site. Finally, State or Tribal officials must have authority to take samples and review records as part of the inspection process.
3. *Flexible Remedies.* 40 C.F.R. § 745.327(b)(3). State or Tribal renovation compliance and enforcement programs must provide for a diverse and flexible array of enforcement authorities and remedies. These authorities and remedies must be reflected in an enforcement response policy, and include the following:
 - (a). Authority to issue Warning Letters, Notices of Noncompliance, Notices of Violation, or the equivalent;
 - (b). Authority to assess administrative or civil fines, including a maximum penalty authority for any violation in an amount no less than \$5,000 per violation per day;
 - (c). Authority to assess the maximum penalties or fines for each instance of violation and, if the violation is continuous, the authority to assess penalties or fines up to the maximum amount for each day of violation, with all penalties assessed or collected being appropriate for the violation after consideration of factors as the State or Tribe determine to be relevant, including the size or viability of the business, enforcement history, risks to human health or the environment posed by the violation, and other similar factors;
 - (d). Authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to recover penalties;

- (e). Authority to suspend, revoke, or modify the accreditation of any training provider or the certification of any individual or firm;
 - (f). Authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, without the necessity of a prior suspension or revocation of a trainer's accreditation or a firm's or individual's certification; and
 - (g). Authority to apply criminal sanctions, including recovering fines; and Authority to enforce its authorized program using a burden of proof standard, including the degree of knowledge or intent of the respondent that is no greater than it is for EPA under TSCA.
4. *Adequate Resources*. 40 C.F.R. § 745.327(b)(4). An application must include a statement identifying the resources (fiscal and personnel) that will be devoted to the compliance and enforcement program. These requirements are also described in detail on page 46 of Appendix C.

E. ENFORCEMENT AND COMPLIANCE ELEMENT 2 –
PERFORMANCE COMPONENT

For final approval of a State or Tribal renovation compliance and enforcement program, the program must include the components set forth below. (See 40 C.F.R. § 745.327(c)). For purposes of reviewing an application for a State or Tribal renovation compliance and enforcement program, these components can be documented to EPA through submission of the applicable State or Tribal standards and documents associated with each element.

1. *Training*.
2. *Compliance assistance*.
3. *Sampling techniques*. (This is not required for PRE only applications)
4. *Tracking renovation tips and complaints*.
5. *Targeting renovation inspections*.
6. *Follow-up to renovation inspection reports*.
7. *Renovation compliance monitoring and enforcement*.

These requirements are described in detail in 40 C.F.R 745.327(c) and on page 52 of appendix C.

F. ENFORCEMENT AND COMPLIANCE ELEMENT 3 –
SUMMARY ON PROGRESS AND PERFORMANCE

A State or Tribal renovation compliance and enforcement program must agree to submit a Summary on Progress and Performance report, which summarizes the results of implementing the renovation compliance and enforcement program. See 40 C.F.R. § 745.327 (d). This report is not required at the time of application but in subsequent years. This State or Tribal summary is a component of the report required at 40 C.F.R. § 745.324(h). The written summary must be provided to the Regional Administrator for the EPA Region in which the State or Tribe is

located. The report must include a summary of the scope of the regulated community within the State or Tribe (which would include the number of individuals and firms certified in lead-based activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Tribe to these activities and any other lead-based paint administrative and compliance or enforcement activities.

STATE OR TRIBAL PROGRAM AUTHORIZATION APPLICATION

*TSCA Section 402/404 Lead-Based Paint Renovation Program
U.S. Environmental Protection Agency*

State/Tribe/Territory

Applying for (circle one or both):

Pre-Renovation Education

Renovation, Repair, and Painting

Contact Name: _____

Agency: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

E-Mail: _____

The following documents (with a check mark) are included, in order, with this application.

_____ A summary of the State or Tribal program;

_____ A transmittal letter from the Governor or Tribal equivalent;

_____ An Attorney General or Tribal equivalent's statement that the State's or Tribe's laws and regulations provide the necessary legal authority to administer and enforce this program;

_____ A program description, including an enforcement and compliance program description and, for any Tribe, documentation that the Tribe is eligible for Treatment as a State (This must include an analysis comparing the program to the Federal Program and demonstrating how the program is as protective as the Federal Program);

_____ Copies of all applicable State or Tribal statutes and regulations; and

_____ **OPTIONAL. For States Only: A certification, signed by the Governor, that the State program meets the criteria established for program certification (40 C.F.R. § 745.324(d))**

APPENDIX A

AUTHORIZATION CHECKLIST FOR RRP & PRE

- Name of responsible agency.
- Point of contact name and contact information.
- Primary Agency designation (where applicable).
- Roles & responsibilities of each participating agency (where applicable), and how coordination will be addressed.
- Program Elements
 - 1) Procedures & requirements for the distribution of lead hazard information to owners, occupants, parents and guardians of target housing and child-occupied facilities, before renovation for compensation, that include:
 - (a) clear standards that trigger information distribution requirements;
 - (b) procedures for distributing lead hazard information to owners, occupants, parents and guardians; and
 - (c) a requirement that the pamphlet Renovate Right or an EPA approved substitute be provided.
 - 2.1) Procedures & requirements for the accreditation of Renovator and Dust Sampling Technician¹ training programs that include:
 - (a) curriculum requirements;
 - (b) training hour requirements;
 - (c) hands-on training requirements;
 - (d) trainee competency & proficiency requirements;
 - (e) requirements for training program quality control;
 - (f) procedures for the reaccreditation of training programs; and
 - (g) procedures for the oversight of training programs.

or

- 2.2) Procedures and regulations, for the purposes of certification, for the acceptance of training offered by an accredited training provider in a State authorized by EPA.
- 3) Procedures & requirements for the certification of individuals and/or firms that:
 - (a) ensure Renovator and Dust Sampling Technician training by accredited training programs;

¹ If a State or Tribal program can demonstrate that it is as protective as the Federal program without requirements for a Dust Sampling Technician, *e.g.*, a State or Tribe has requirements for Certified Inspectors or Certified Risk Assessors to do clearance sampling, the State or Tribe program may be authorized without requirements for a Dust Sampling Technician discipline.

- (b) stipulate appropriate education or experience qualifications;
 - (c) establish procedures for recertification;
 - (d) require conduct in accordance with State or Tribal work practice standards; and
 - (e) establish procedures for suspension, revocation or modification.
- 4) Requirements that all renovations be conducted by appropriately certified contractors using properly trained individuals.
- 5) Procedures & requirements for the certification of Renovators and Dust Sampling Technicians that:
- (a) ensure training by accredited training programs;
 - (b) establish procedures for recertification;
 - (c) require conduct in accordance with State or Tribal work practice standards; and
 - (d) establish procedures for suspension, revocation or modification.
- 6) Work practice standards for Renovations that include:
- (a) lead safe work practices; and
 - 1. prohibited practices
 - 2. containment
 - 3. cleaning
 - 4. cleaning verification
 - 5. waste transportation and disposal
 - (b) record keeping.
- 7) Adequate infrastructure/capacity to effectively carryout a program.
- 8) An analysis of the submitted program that compares the program to the Federal Program, and which demonstrates how it is “at least as protective” as the Federal Program.
- 9) Demonstration of Adequate Enforcement Procedures (for final approval)
(if applying for interim approval follow the check list below)
Each of the following enforcement elements (including copies of all relevant policies, certifications, plans, reports or other supporting materials):
- (a) A statement of resources which identifies what resources will be devoted to administering compliance and enforcement components of the program.
 - (b) A commitment to submit to EPA the required Summary on Progress and Performance.
 - (c) A demonstration of legal authority and ability to immediately implement the following:
 - 1. authority to enforce procedures and requirements for pre-renovation notification activities;
 - 2. authority to enforce the accreditation of training programs;
 - 3. authority to enforce the certification of Renovators & Dust Sampling Technicians;
 - 4. authority to enforce the adopted work practice standards;
 - 5. authority to enforce the certification of Renovation Firms;
 - 6. authority to enter premises for inspection purposes;

- 7. authority to engage flexible remedies that includes warning letters, administrative and civil actions (all applicants) and criminal actions (excluding Tribes)
 - (d) A training program for enforcement officers and enforcement personnel.
 - (e) A compliance assistance program for the public and regulated community.
 - (f) An ability to react to tips and complaints.
 - (g) An ability to target inspections.
 - (h) An ability to implement a compliance monitoring and enforcement program that ensures the correction of violations.

ADDITIONAL APPLICATION REQUIREMENTS SPECIFIC TO INDIAN TRIBES

- A map, legal description, or other information sufficient to identify the geographical extent of the territory over which the tribe exercises jurisdiction.
- A demonstration that the Tribe:²
 - (1) is recognized by the Secretary of the Interior;
 - (2) has an existing government exercising substantial governmental duties and powers;
 - (3) has adequate civil regulatory jurisdiction over the subject matter and entities regulated; and
 - (4) is reasonably expected to be capable of administering the Federal Program for which it is seeking authorization.
- If the Tribal legal certification is submitted by an independent attorney, the certification must include an assertion that the attorney has the authority to represent the Tribe for this purpose.

REQUIREMENTS APPLICABLE TO INTERIM APPROVAL STATUS

- Interim approval of the compliance and enforcement program portion of the Renovation Program may be granted by EPA only once, and is subject to a specific expiration date.
- Any interim approval granted by EPA for the compliance and enforcement portion of the program must expire no later than 3 years from the date of EPA's interim approval. If the applicant does not receive final approval by this deadline, EPA shall, by that date, initiate the process to withdraw the applicant's authorization.
- In the compliance and enforcement portion of the program description, the applicant must address the following items in its authorization application:
 - (1) Demonstrate that it can immediately implement the compliance and enforcement element of the EPA rule relating to "Standards, Regulations and Authority".
 - (2) Demonstrate that it will carry out compliance and enforcement activities to address significant risks posed by noncompliance with renovation requirements.

² If EPA has previously determined that a Tribe has demonstrated (1) and (2), only (3) and (4) are required.

- (3) Present a plan for implementing the compliance and enforcement element of the EPA rule relating to “performance” within 3 years.
- (4) Submit a statement of resources that will be devoted to the administration of the compliance and enforcement program.
- (5) Agree to submit to EPA the Summary on Progress and Performance (annually).

APPENDIX B

SELECT TERMS & DEFINITIONS

The terms defined below are necessary for a basic understanding of the Federal program. For a complete listing of all key definitions, readers must refer to 40 C.F.R. § 745, subpart E, L and Q, as well as in TSCA sections 401 and 402.

Accredited training program (745.223) 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 and renovation.

Certified firm (745.83, 745.223) means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal or local government agency; or a nonprofit organization. A certified firm is a firm that performs lead-based paint activities or renovation, repair and painting activities to which EPA has issued a certificate of approval pursuant to 745.89 or 745.226(f).

Cleaning verification card (745.83) means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Certified inspector (745.223) 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 risk assessor (745.223) 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.

Child-occupied facility (745.83) means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, 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 visits last 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. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Common Area (745.223) 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 center, garages, and boundary fences.

Component or Building Component (745.83) means specific design or structural elements or fixtures of a building or residential dwelling 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, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry Disposable Cleaning Cloth (745.83) means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Dust Sampling Technician (745.90(c), 745.85(c)) is a certified professional who has taken an accredited Dust Sampling Training course and may take dust wipe samples for renovation projects where clearance is required in lieu of cleaning verification as permitted by 745.85(c).

Dust Sampling Technician Course (745.225(c)(6)(vii)) must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements are specified at 745.225(d)(7). Hands-on training activities must cover dust sampling methodologies.

Emergency Renovations (745.82(b)) are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations.

HEPA Vacuum (745.83) means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

Indian Country (745.323) means (1) all land within the limits of any American Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or outside the limits of a State; and (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

Indian Tribe (or Tribe) (745.323) means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

Interim Controls (745.83) 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 (15 U.S.C. § 2681(9), 40 CFR § 745.103) means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Minor repair & maintenance activities (745.83) are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by §745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Pamphlet (745.83) means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 C.F.R. § 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term “pamphlet” also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

Post-renovation cleaning verification (745.85(b)) means the use of disposable cleaning cloths as specified in 40 C.F.R. § 745.85(b) to wipe the windowsill, uncarpeted floor and countertops of the renovation work area and compare them to a cleaning verification card to determine if the work area has been adequately cleaned.

Recognized test kit (745.83) means a commercially available kit recognized by EPA under §745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

Renovation (745.83) means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 C.F.R. § 745.223). The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Renovator (745.83) means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovation course accredited by EPA or an EPA-authorized State or Tribal program.

Renovator Course (745.225(c)(6)(vi)) must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements are specified at 745.225(d)(6). Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

Target housing (15 U.S.C. § 2681(17)) means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing).

Training hour (745.83) 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 hands-on experience.

Wet disposable cleaning cloth (745.83) means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Work area (745.83) means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

APPENDIX C

**State and Tribal Renovation Program Description
Subpart E for RRP &/or PRE (406(b))**

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I. Application Process Highlights

A. Public Notice

Before the State or Tribe can develop an application, it must provide public notice of intent to seek authorization and an opportunity, if requested during public notice, for public hearing on its application. Also, because TSCA Section 3(13) defines the term State to mean any State or territory or possession of the United States, it should be understood that the term State in this document also means any territory or possession of the United States. The State or Tribe should conform with applicable State or Tribal Administrative Procedure requirements to provide this public notice and, if necessary, to conduct hearings.

B. Application Contents

Any State or Tribe that is seeking program authorization must complete and submit an application to the Agency according to the requirements at 40 CFR 745.324.

The following are the components of a State or Tribal program application:

- (1) Cover sheet;
- (2) A summary of the State or Tribal program;
- (3) A transmittal letter from the Governor, or Tribal equivalent;
- (4) An Attorney General or Tribal equivalents' statement that the State or Tribe's laws and regulations provide the necessary legal authority to administer and enforce this program;
- (5) A program description, including a program analysis, an enforcement and compliance program description, and, for any Tribe, documentation that the Tribe is eligible for treatment as a State;
- (6) Copies of all applicable State or Tribal statutes and regulations, policies and procedures; and
- (7) For States only: An **optional** certification, signed by the Governor, that the State program meets the criteria established for program authorization (this certification is not available to Tribes).

C. Application Submission

When complete, the State or Tribe should submit three (3) copies of the entire application to its Regional EPA office.

Section 404(b) of TSCA requires the Agency to provide notice and an opportunity for public hearing on a State or Tribal application for authorization. Accordingly, the Agency will publish in the Federal Register a notice announcing the receipt of a State or Tribe's

application, a summary of the State or Tribal program (discussed below), the location of copies of the application available for public review, and the dates and times that the application will be available for public review. Individuals may at that time submit a request to the Agency for a public hearing on the State or Tribal application. This opportunity for public hearing is separate and distinct from the public notice that a State or Tribe must provide before developing an application for program approval.

D. Agency Review

With respect to States that seek authorization using the Program Certification method, the State program is deemed authorized until such time as the EPA disapproves the program application or withdraws the State authorization. The Program Certification method is only available to States.

With respect to all other applications, once the Agency receives a complete application, it will have 180 days to approve or disapprove the application. If a State or Tribe does not have an authorized Renovation Program by April 22, 2010, EPA shall, by such date, administer and enforce all of the relevant provisions of the Federal program in that State or Tribe.

The program shall be authorized only if the Regional Administrator finds that the State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program and provides adequate enforcement. If a State or Indian Tribe does not have an authorized program by August 31, 1998, EPA shall, by such date establish and enforce the provisions of the Federal program in that State or Indian Country.

II. State or Tribal Programs Authorization Application Contents

- A. Transmittal Letters, Program Summaries and Statutes, Rules, Standards, Policies and Procedures**

(continued on next page)

II.A.1. Cover Sheet

The next page provides a helpful cover sheet that may be filled out and included with your application. The sheet provides the name of the primary contact within the State or Tribe and a list of the documents that are contained in your application.

State or Tribal Program Authorization Application

*TSCA § 402/404 Renovation Program
U.S. Environmental Protection Agency*

State or Tribe

Applying for (circle one or both):

Pre-Renovation Education

Renovation, Repair, and Painting

Contact Name: _____

Agency: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

E-Mail: _____

The following documents (with a check mark) are included, in order, with this application.

_____ A summary of the State or Tribal program;

_____ A transmittal letter from the Governor ;

_____ An Attorney General's or Tribal equivalent's statement that the State's or Tribe's laws and regulations provide the necessary legal authority to administer and enforce this program ;

_____ A program description, including an enforcement and compliance program description and, for any Tribe, documentation that the Tribe is eligible for Treatment as a State (This must include an analysis comparing the program to the Federal Program and demonstrating how the program is as protective as the Federal Program);

_____ Copies of all applicable State or Tribal statutes and regulations; and

_____ **OPTIONAL. For States Only: A certification, signed by the Governor, that the State program meets the criteria established for program authorization**

II.A.2. Transmittal Letter from State Governor or Tribal Equivalent Requesting Program Approval (§ 745.324(a)(3))

A letter from the Governor or Tribal equivalent officially transmits the State or Tribe's application for approval of its program and acts as a formal request for EPA approval. The letter to EPA should include reference to the Federal statute, a request for authorization of the State or Tribal program, and the Governor or Tribal equivalent's signature. The letter also designates the State or Tribal agency that is responsible for administering and enforcing the program and that will serve as the key point of contact for the Renovation Program. A sample letter has been included on the adjacent page that contains all the necessary information and may be used as part of a State or Tribal application.

Ms. Susan Smith
Regional Administrator Region XX
U.S. Environmental Protection Agency
Street Address
City, State, Zip Code

Dear Ms. Smith:

In accordance with Section 404(a) of the Toxic Substances Control Act, I am forwarding an application for authorization of the Lead Based Paint Renovation Program for (State or Tribe). The application has been forwarded directly to the Environmental Protection Agency's Region XX program office for review. I believe you will find it contains the provisions necessary to implement an effective Renovation Program.

Should you require further information, please contact, (Director) of (Lead Agency). Thank you for your assistance.

Sincerely,

Joseph Amori
Governor

Enclosures

cc: Regional Lead Coordinator, Office Address of RLC

II.A.3. Attorney General or Tribal Equivalent's Statement (§ 745.324(a)(3)(iv) and (c))

A State or Tribe must submit a written statement signed by the Attorney General or Tribal equivalent, certifying that the laws and regulations of the State or Tribe provide adequate legal authority to administer and enforce the State or Tribal Renovation Program. This statement shall include citations to the specific statutes and regulations providing that legal authority. The Tribal legal certification (the equivalent to the Attorney General's statement) may also be submitted and signed by an independent attorney retained by the Tribe for representation in matters before EPA or the courts pertaining to the Tribe's program. The certification shall include an assertion that the attorney has the authority to represent the Tribe with respect to the Tribe's authorization application.

Where a State or Tribe has incorporated by reference any Federal regulations, the Attorney General or Tribal equivalent, should demonstrate the authority to adopt the State or Tribal regulations in this manner. The Attorney General or Tribal equivalent, should cite the State or Tribal statutes and regulations, listing the comparable CFR cite and effective date.

A sample letter has been included on the adjacent page that may be used as part of a State or Tribal application.

Ms. Susan Smith
Regional Administrator
Region XX
U.S. Environmental Protection Agency
Street Address
City, State, Zip Code

Dear Ms. Smith:

I hereby certify pursuant to my authority as (Insert Official Title) and in accordance with Section 404(a) of the Toxic Substances Control Act, and 40 CFR § 745.324 that the laws and regulations of (State or Tribe) provide adequate legal authority to administer and enforce the Lead-Based Paint Renovation Program as described in the enclosed application and submitted. The statutes and regulatory citations below have been lawfully adopted at the time this statement is signed and will be effective by the time this program is approved.

The statutory and regulatory authorities providing adequate legal authority are:

(number the statutes and regulations cited)

- 1.
- 2.
- 3.
- 4.
- 5.
6. (etc.)

Sincerely,

Jane Wilson
Attorney General

II.A.4. Summary of State or Tribal Program (§ 745.324(a)(3)(ii))

A summary of the State or Tribal program must be included in the application. The summary should be a short (1-2 page) description of the State or Tribe's program. The summary should describe the activities and building types covered by the program, provide a short summary of the pre-renovation notification requirements, renovation certification and accreditation requirements, a short summary of the renovation work practice standards included in the program, and any additional material the State or Tribe chooses to include.

After a State or Tribe submits an application, the Agency will publish a Federal Register notice announcing the receipt of the State or Tribal application, a summary of the program, and a request for public comment. EPA will use the program summary provided by the State or Tribe in the Federal Register notice to provide notice to residents of the State or Tribe.

**II.A.4. Summary of State or Tribal Program
(§ 745.324(a)(3)(ii))**

II.A.5. Public Notice and Hearing Summary (§ 745.324(a)(2))

Before developing an application for authorization, a State or Tribe must disseminate a public notice of intent to seek such authorization and provide an opportunity for a public hearing. The application should reflect how the public participation requirements were met. Requirements for such procedures should be covered by the State or Tribal Administrative Procedures Act. The application should include detail as to whether or not a public hearing was held, as well as a record of comments received with the State or Tribe's response to the comments. The State or Tribe's initial and final notice should reflect adequately the details of the public participation.

**II.A.5. Public Notice and Hearing Summary
(§ 745.324(a)(2))**

II.A.6. Copies of Statutes, Rules, Standards and other Materials (§ 745.324(a)(3)(v))

Copies of all applicable State or Tribal statutes, regulations, standards, and other materials (i.e. policies, administrative procedures, etc.) that provide the State or Tribe with the authority to administer and enforce a Renovation Program must be included in the application. Applicable materials should be attached here.

Common authorities that will typically need to be shown by the State or Tribe include: pre-renovation education statute and regulations, renovation, repair and painting statute and regulations, administrative hearing procedures, penalty authorities (both criminal and civil penalty authorities), authority to incorporate by reference federal regulations (if applicable), authority to immediately suspend activities in response to immediate threats to human health or the environment, authority to suspend, revoke or modify certifications and accreditations.

II.A.6. Copies of Statutes, Rules, Standards and other Materials (§ 745.324(a)(3)(v))

Please list attached statutes, regulations, standards, and other materials:

- 1.
- 2.
- 3.
- 4.
- 5.
6. (etc. as needed)

II.A.7. Program Certification for States (*optional*) (§ 745.324(d))

Section 404(a) of TSCA provides that a State may also certify to the Agency that its program meets the criteria for program authorization. This optional certification must be presented to EPA in the form of a letter from the Governor or the Attorney General to the Regional Administrator. This certification must reference the program analysis contained in the program description portion of the application as the basis for concluding that the State program is at least as protective as the Federal program and provides for adequate enforcement. If this certification is included in a State application, the State's program will be deemed authorized until the Regional Administrator disapproves or withdraws the program's authorization. A program shall not be deemed authorized pursuant to this subpart to the extent that jurisdiction is asserted over Indian Country, including non-member fee lands within an Indian reservation. If the application does not contain such certification, the State program will be authorized only after the Regional Administrator authorizes the program.

A sample letter is included on the adjacent page.

Ms. Susan Smith
Regional Administrator
Region XX
U.S. Environmental Protection Agency
Street Address
City, State, Zip Code

Dear Ms. Smith:

I hereby certify in accordance with Section 404(a) of the Toxic Substances Control Act, and 40 CFR § 745.324(c), that based on the analysis conducted as part of this application the laws of (State) are at least as protective as the Federal Lead-Based Paint Renovation Program found at 40 CFR Part 745 Subpart E and State law provides adequate authority to enforce compliance with our Renovation Program.

Sincerely,

Joseph Amori
Governor

II. State or Tribal Programs Authorization Application Contents

B. State or Tribal Program Description

(continued on next page)

II.B.1. State or Tribal Primary and/or Secondary Administering Agencies (§ 745.324(b)(1))

-
- a. A State or Tribe seeking to administer and enforce a program must submit a description of the program. The description of the State or Tribal program must include:
- the name of the State or Tribal agency(s) that is or will be responsible for administering and enforcing the program;
 - the name of the official in the agency(s) designated as the point of contact with EPA; and
 - addresses and phone numbers where the official(s) can be contacted.
- b. Where more than one agency is or will be responsible for administering and enforcing the program, the State or Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA.
- c. In the event that more than one agency is or will be responsible for administering and enforcing the program, the application must also include a description of the functions to be performed by each agency. The description shall explain how the program will be coordinated by the primary agency to ensure consistency and effective administration of the lead-based paint training accreditation and certification program within the State or Tribe.
-

II.B.1. State or Tribal Primary and/or Secondary Administering Agencies (§ 745.324(b)(1))

- a. Please list the name of the State or Tribal agency(s) that is or will be responsible for administering and enforcing the program, the name of the official in the agency(s) designated as the point of contact with EPA, and addresses and phone numbers where the official(s) can be contacted:

Agency: _____

Contact Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

Agency: _____

Contact Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

b. Where more than one agency is or will be responsible for administering and enforcing the program, please designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA:

Primary Agency: _____

Secondary Agency (or Agencies): _____

c. In the event that more than one agency is or will be responsible for administering and enforcing the program, please include a description of the functions to be performed by each agency:

II.B.2. Program Elements (§ 745.326(a)(1))

To demonstrate that the State or Tribal pre-renovation education program is at least as protective as the Federal program, the State or Tribal application must include a description of the program that demonstrates that the program contains all of the following elements:

- Procedures and Requirements for the distribution of lead hazard information to owners and occupants of target housing and child occupied facilities before renovations for compensation
- Appropriate Infrastructure or Government Capacity

a. Pre-Renovation Education

The State or Tribe must have procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

II.B.2.a. Program Elements - Procedures and requirements for pre-renovation education (§ 745.326(b))

<i>Procedures and Requirements for the distribution of lead hazard info. to owners and occupants of target housing & child-occupied facilities prior to renovations for compensation:</i>	<i>40 CFR Part 745 Subpart E reference (Federal Program)</i>	<i>Applicant's Citation Reference:</i>	<i>Indicate if varies from Federal Program (**)</i>	<i>Reason given for variation</i>
Clear standards for identifying renovation activities that trigger the information distribution requirements:	§ 745.80(a) § 745.82 § 745.83 § 745.84			
Procedures for distributing the lead hazard information to owners and occupants of housing & child-occupied facilities prior to renovation activities:	§ 745.84			
Require distribution of Renovate Right or an approved alternate, meeting TSCA 406(a) content requirements, and in a format readable by State or Tribes diverse audience of housing and child-occupied owners and occupants:	§ 745.81(b) § 745.326(b)(3)			

II.B.2. Program Elements (§ 745.326(a)(2))

To demonstrate that the State or Tribal renovation training, certification, accreditation, and work practice standards program is at least as protective as the Federal program, the State or Tribal application must include a description of the program that demonstrates that the program contains all of the following elements:

- Procedures and Requirements for Accreditation of Renovator and Dust Sampling Technician Training Programs.
- Procedures and Requirements for Certification of Individuals and/or Firms.
- Requirements that all Renovations be Conducted by Appropriately Certified Individuals and/or Firms using properly trained individuals.
- Work Practice Standards for the Conduct of Renovations.
- Appropriate Infrastructure or Government Capacity.
- Tribal Information (Tribes Only).

b. Accreditation

The State or Tribe must have either procedures and requirements for the accreditation of training programs or procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under 40 C.F.R. Part 745 subpart E. Applicant must indicate which procedures and requirements will be used in the accreditation of trainers.

II.B.2.b. Program elements - Procedures and requirements for the accreditation of renovation training programs (§ 745.326(c))

Please indicate State or Tribal procedures and requirements that will be used for the accreditation of Renovation training programs or the acceptance of Renovation training offered by a training provider accredited by EPA or by a State or Tribe authorized by EPA under Section 745, Subpart E (%):

_____ The State or Tribe has established requirements for the accreditation of Renovation training programs (proceed to Procedures and Requirements for Accreditation,@ Item 2.a.)

_____ The State or Tribe has established procedures or regulations for the acceptance of Renovation training offered by an accredited training provider in a State or Tribe authorized by EPA (proceed to Procedures and Requirements for Certification,@ Item 2.b.).

Please describe procedures or requirements:

II.B.2. Program elements (§ 745.326(c))

b. Accreditation (cont.)

The State or Tribe must have requirements for the accreditation of renovation training providers. State or Tribal citations for renovation training provider requirements must be included in this section.

II.B.2.b. Program Elements - Procedures and requirements for the accreditation of training programs (§ 745.326(c))

<i>Procedures and Requirements for the accreditation of renovation and dust sampling technician training programs:</i>	<i>40 CFR Part 745 Subpart E & L reference (Federal Program)</i>	<i>Applicant's Citation Reference:</i>	<i>Indicate if varies from Federal Program (**)</i>	<i>Reason given for variation</i>
Training curriculum and application requirements:	§ 745.225(b)(c) & (e) § 745.225(d)(6) & (7)			
Training hour requirements:	§ 745.225(c)(6) § 745.225(e)(2)			
Hands-on training requirements:	§ 745.225(d) § 745.225(c)(6)			
Trainee competency and proficiency requirements:	§ 745.225(c)(7)			
Requirements for training program quality control:	§ 745.225(c)			
Procedures for the re-accreditation of training programs:	§ 745.225(f)			
Procedures for the oversight of training programs:	§ 745.225 (c) & (f) § 745.225(i)			
Procedures for suspension revocation, or modification of training program accreditations:	§ 745.225(g) § 745.225(h)			

II.B.2. Program Elements (§ 745.326(d))

c. Certification

The State or Tribe must have procedures and requirements for the certification of renovators and/or firms. If a State or Tribal program can demonstrate that it is as protective as the Federal program without requirements for a Dust Sampling Technician, *e.g.*, a State or Tribe has requirements for Certified Inspectors or Certified Risk Assessors to do clearance sampling, the State or Tribe program may be authorized without requirements for a Dust Sampling Technician discipline. Citations to the State or Tribal certification requirements must be included in this section. Also include a citation of regulation requiring that renovation activities are conducted by appropriately certified individuals and/or firms using properly trained individuals.

II.B.2.c. Program Elements - Procedures and requirements for the certification of individuals and firms engaged in renovation activities (§ 745.326(d))

<i>The State or Tribe must have requirements for the certification of individuals and firms that ensure:</i>	<i>40 CFR Part 745 Subpart E reference (Federal Program)</i>	<i>Applicant Citation Reference:</i>	<i>Indicate if varies from Federal Program (**)</i>	<i>Reason given for variation</i>
Renovators and dust sampling technicians are trained by an accredited training program:	§ 745.90(a)			
Require certification requirement process for Firms	§ 745.89(a)&(c)			
Establish procedures for re-certification:	§ 745.90(a)(4) § 745.89(b)			
Require the conduct of renovation activities in accordance with work practice standards established by the State or Tribe:	§ 745.85(a) § 745.90(b)			
Establish procedures for the suspension, revocation, or modification of certifications:	§ 745.91			
Responsibilities of renovators, dust sampling technicians & firms	§ 745.90(b) & (c) § 745.89(d)			
Requirements that all renovation activities be conducted by appropriately certified individuals and/or firms using properly trained individuals:	§ 745.85(a)			

II.B.2. Program Elements (§ 745.326(e))

The State or Tribe must have requirements or standards that ensure that renovation activities are conducted reliably, effectively, and safely. Required work practice standards for Renovations are:

- Renovations must be conducted by certified individuals and/or firms using properly trained individuals
- Renovations are conducted using lead-safe work practices that are at least as protective as the requirements in § 745.85
- Certified contractors must retain appropriate records

d. Work Practice Standards

Citations to the State or Tribal work practice standards for renovation activities.

I.B.2.c. Program Elements - Work practice standards for the conduct of renovations
 (§ 745.326(e))

<i>The State or Tribe's work practice standards for conducting renovations must contain the following requirements:</i>	<i>40 CFR Part 745 Subpart E reference (Federal Program)</i>	<i>Applicant Citation Reference:</i>	<i>Indicate if varies from Federal Program (**)</i>	<i>Reason given For variation</i>
Renovations are conducted only by individuals and/or Firms certified by the appropriate State or Tribal authority to conduct or supervise renovations:	§ 745.80(b) § 745.85(a)			
Renovations are conducted using lead-safe work practices that do not increase the hazards of lead-based paint to the occupants of the dwelling or child-occupied facility and are at least as protective as the requirements in § 745.80(b):	§ 745.85(a) § 745.82			
Renovations include post-renovation cleaning protocols, including cleaning verification protocols, or optional dust clearance testing where required by contract in conformance with clearance levels established or adopted by the State or Tribe as long as they are as protective as the standards established under TSCA § 403:	§ 745.85(b) (c) & (d) § 745.227(e)(8)			
The certified firm retains appropriate records:	§ 745.86			

II.B.2. Program Elements (§ 745.326(a)(3))

e. Infrastructure

The State or Tribe must develop appropriate infrastructure or government capacity to effectively carry out a State or Tribal Renovation Program. The development of this capacity should be presented here. Infrastructure or capacity include personnel and their expertise; program processes, including the processes of accrediting and certifying renovation professionals; capability to conduct inspections and enforcement to ensure regulatory compliance with State or Tribal Renovation Program requirements; and possession of materials and equipment necessary to operate and implement a Renovation Program.

Examples of government capacity and infrastructure may be found in State and Tribal work plans from the TSCA 404(g) Lead-Based Paint Program grant (cooperative agreement assistance) program. As developing adequate infrastructure and government capacity to carry out a lead-based paint activities program was a purpose of the grant program, many of the activities funded through the cooperative assistance would illustrate State or Tribal infrastructure and government capacity.

II.B.2.e. Program elements - Development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program (§ 745.326(a)(3))

Present here development of infrastructure and government capacity:

II.B.2. Program Elements (§ 745.324(b)(4))

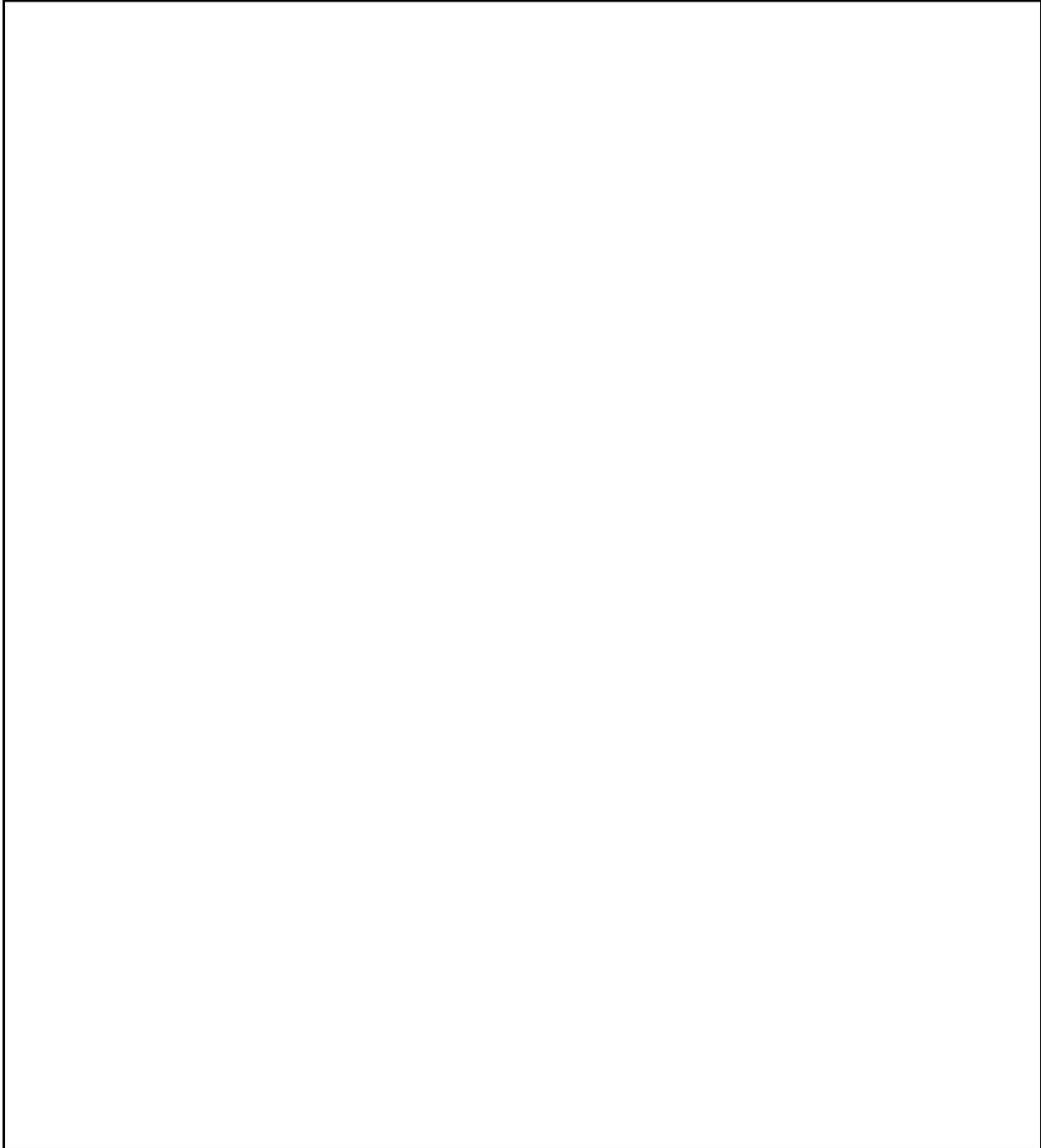
Tribal programs shall also include the following: The program description shall identify the geographical extent of the territory over which the Tribe exercises jurisdiction, as well as demonstrate that the Tribe is recognized by the Secretary of the Interior, has an existing government exercising substantial governmental duties and powers, has adequate civil regulatory jurisdiction over the subject matter and entities regulated and is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

f. Tribal Programs

The program description for a Tribe shall include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Tribe exercises jurisdiction.

**II.B.2.f. Program Elements - Tribal-specific Information:
Geographical Extent** (§ 745.324(b)(4))

The Tribe shall include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Tribe exercises jurisdiction:



II.B.2. Program Elements (§ 745.324(b)(4))

The program description for a Tribe shall also include a demonstration that the Tribe meets the following criteria. The Tribe (i) is recognized by the Secretary of the Interior; (ii) has an existing government exercising substantial governmental duties and powers; (iii) has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification) over the subject matter and entities regulated; and (iv) is reasonably expected to be capable of administering the Renovation Program for which it is seeking authorization. If the Agency has previously determined that the Tribe has met the first two of these elements (and requested in (ii)(A) and (ii)(B) on page 40) for another EPA program, the Tribe need provide only that information unique to the renovation program required by the third and fourth elements (and captured in questions (ii)(C) and (ii)(D)) on page 42.

f. Tribal Programs (cont.)

The program description for a Tribe shall also include a demonstration that the Tribe:

- (ii)(A) Is recognized by the Secretary of the Interior
- (ii)(B) Has an existing government exercising substantial governmental duties and powers.

If it has previously been determined that the Tribe has met the requirements in (ii), reference to this determination shall be included here.

II.B.2.f. Program Elements - Tribal-specific Information
(§ 745.324(b)(4))

(ii)(A). The Tribe shall demonstrate that the Tribe is recognized by the Secretary of the Interior:

--

(ii)(B). The Tribe shall demonstrate that the Tribe has an existing government exercising substantial governmental duties and powers:

--

II.B.2. Program Elements (§ 745.324(b)(4))

f. Tribal Programs (cont.)

The program description for a Tribe shall also include a demonstration that the Tribe:

(ii)(C) Has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification in § 745.324(c)(2)) over the subject matter and entities regulated.

(ii)(D) Is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

II.B.2.f. Program Elements - Tribal-specific Information (§ 745.324(b)(4))

(ii)(C) The Tribe shall demonstrate that the Tribe has adequate civil regulatory jurisdiction over the subject matter and entities regulated:

(ii)(D) The Tribe shall demonstrate that it is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

II.B.3. Program Component Analysis (§ 745.324(b)(2)(ii))

A State or Tribe must conduct an analysis of the State or Tribal program that compares the program to the Federal program in subpart E of 40 CFR Part 745. This analysis shall demonstrate how the program is, in the State or Tribe's assessment, at least as protective as the elements in the Federal program. EPA will use this analysis to evaluate the protectiveness of the State or Tribal Renovation Program in making its determination of approval or disapproval of authorization.

In conducting the analysis of the Renovation Program, the applicant should include an overview of the State or Tribal program, and address how the asterisked (**) elements of Section 2 - Program Elements (elements which vary from the Federal Renovation Program) result in a State or Tribal program which is as protective as the Federal Program. The analysis of the program elements must demonstrate the program is as protective, on an element by element basis, as the Federal program.

II.B.3. Program Component Analysis (§ 745.324(b)(2)(ii))

II.B.4. Compliance and Enforcement Program (§ 745.327)

To demonstrate that the State or Tribal program provides adequate enforcement, the State or Tribal application must include a description of the State or Tribal renovation compliance and enforcement program that contains all of the elements specified at 40 CFR § 745.327. This description shall include copies of all statutes, regulations, policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the elements specified at § 745.327.

A State or Tribe seeking authorization of a Renovation Program can apply for and receive either interim or final approval of the compliance and enforcement program portion of its Renovation Program.

Note: Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.

II.B.4. Compliance and Enforcement Program (§ 745.327(a))

Please indicate the type of approval for which the applicant is applying:

_____ Applying for Interim Approval
(proceed to page 46)

_____ Applying for Final Approval
(proceed to page 62)

II.B.4. Compliance and Enforcement Program (§ 745.327(b)(2) and (3))

Interim approval of the compliance and enforcement program portion of the State or Tribal Renovation Program may be granted by EPA only once, and subject to a specific expiration date.

a. Interim Approval

To be considered adequate for interim approval of the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must:

- Demonstrate that it has the authority to enter, through consent, warrant, or other authority, premises, or facilities where lead-based paint activities violations may occur for purposes of conducting inspections.
- Provide for a diverse and flexible array of enforcement remedies. At a minimum, the remedies that must be reflected in an enforcement response policy must include warning letters, notices of noncompliance, notices of violation, or the equivalent; administrative or civil actions, including penalty authority; authority to apply criminal sanctions or other criminal authority.

II.B.4.a. Interim Approval - Standards, regulations, and authority (§ 745.327(b)(2) and (3))

<i>Authority to enter</i>	<i>Applicant Citation Reference:</i>	<i>Analysis</i>	<i>Comment</i>
State or Tribal officials must be able to enter premises or facilities where those engaged in training for renovation activities and those engaged in conducting renovations conduct business, as well as premises or facilities where renovation violations may occur.			
State or Tribal officials must have authority to take samples and review records as part of the renovation inspection process.			
<i>Flexible remedies</i>			
Warning Letters, Notices of Noncompliance, Notices of Violation, or the equivalent.			
Administrative or civil actions, including penalty authority (e.g., accreditation or certification suspension, revocation, or modification).			
Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.			

Attachment: The State or Tribe should attach all policies and/or procedures that as such represent the State or Tribe’s enforcement response policy. Such policies should establish a prioritization scheme for determining severity of violations and procedures for determining the response actions to such violations.

II.B.4. Compliance and Enforcement Program (§ 745.327(b)(4))

a. Interim Approval (cont.)

To be considered adequate for interim approval of the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must, in its application, also:

- Include a statement of resources which identifies what resources the State or Tribe intends to devote to the administration of its renovation compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.

The statement of resources may use information presented in the Infrastructure description of the State or Tribal program (see Section II.B.2.d., Program Elements - Infrastructure). However, this statement must specifically focus on the resources dedicated to compliance and enforcement for renovation.

**II.B.4.a. Compliance and Enforcement Program – Interim Approval:
Statement of Resources** (§ 745.327(b)(4))

Please include statement of resources here:

II.B.4. Compliance and Enforcement Program ('745.327(a)(1))

a. Interim Approval (cont.)

To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must, in its application:

- Demonstrate it has the legal authority and ability to immediately implement the preceding elements pertaining to the ability to enter, a flexible array of enforcement remedies, and adequate resources. This demonstration shall include a statement that the State or Tribe, during the interim approval period, shall carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Tribe addresses any significant risks posed by noncompliance with renovation requirements.
-

**II.B.4.a. Compliance and Enforcement Program – Interim Approval:
Legal Authority and Ability (§ 745.327(a)(1))**

Statement that during the interim approval period, the State or Tribe will carry out a level of compliance monitoring and enforcement necessary to ensure that any significant risks posed by noncompliance with renovation requirements are addressed:

II.B.4. Compliance and Enforcement Program

(§ 745.327(a)(1)(B))

An implementation plan for the Final Compliance and Enforcement Program elements must be included in the State or Tribal application for interim program approval. Elements include:

- Training of enforcement and inspection personnel
- Compliance Assistance
- Sampling Techniques
- Tracking Tips and Complaints
- Targeting Inspections
- Follow-up to Inspection Reports
- Compliance Monitoring and Enforcement

a. Interim Approval (cont.)

To be considered adequate for interim approval of the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must, in its application also:

- Present a plan, with time frames identified, for implementing in the field each element identified above. All elements must be fully implemented no later than 3 years from the date of EPA's interim approval of the compliance and enforcement program portion of a State or Tribal Renovation Program.

Present here information on the State or Tribal plan for implementing:

- *Training of Enforcement and Inspection Personnel; and*
 - *Compliance Assistance Activities.*
-

**II.B.4.a. Compliance and Enforcement Program – Interim Approval:
Compliance and Enforcement Final Program Implementation** (§ 745.327(a)(1)(B))

Activity	Plan	Time Frames
Training of enforcement and inspection personnel		
Compliance Assistance		

II.B.4. Compliance and Enforcement Program (§ 745.327(a)(1)(B))

a. Interim Approval (cont.)

Present here information on the State, Territorial or Tribal plan for implementing:

- *Sampling Techniques*; and
 - *Tracking Tips and Complaints*.
-

**II.B.4.a. Compliance and Enforcement Program - Interim Approval:
 Compliance and Enforcement Final Program Implementation (§ 745.327(a)(1)(B))**

Activity	Plan	Time Frames
Sampling Techniques		
Tracking Tips and Complaints		

II.B.4. Compliance and Enforcement Program (§ 745.327(a)(1)(B))

a. Interim Approval (cont.)

Present here information on the State or Tribal plan for implementing:

- *Targeting Inspections*; and
 - *Follow-up to Inspection Reports*.
-

**II.B.4.a. Compliance and Enforcement Program - Interim Approval:
Compliance and Enforcement Final Program Implementation** (§ 745.327(a)(1)(B))

Activity	Plan	Time Frames
Targeting Inspections		
Follow-up to Inspection Reports		

II.B.4. Compliance and Enforcement Program (§ 745.327(a)(1)(B))

a. Interim Approval (cont.)

Present here information on the State or Tribal plan for implementing:

- *Compliance Monitoring and Enforcement*
-

**II.B.4.a. Compliance and Enforcement Program - Interim Approval:
Compliance and Enforcement Final Program Implementation** (§ 745.327(a)(1)(B))

Activity	Plan	Time Frames
Compliance Monitoring and Enforcement		

II.B.4. Compliance and Enforcement Program (§ 745.327(a)(1)(C))

a. Interim Approval (cont.)

The State or Tribal applicant shall also agree to submit to EPA the Summary on Progress and Performance of renovation compliance and enforcement activities (as described at Appendix A of this application).

**II.B.4.a. Compliance and Enforcement Program - Interim Approval:
Agreement to Submit to EPA the Summary on Progress and
Performance** (§ 745.327(a)(1)(C))

*Please include statement that applicant agrees to submit Summary on
Progress and Performance:*

II.B.4. Compliance and Enforcement Program (§ 745.327(a)(2))

Final approval of the compliance and enforcement program portion of a State or Tribal renovation can be granted by EPA either through the application process described at 40 CFR § 745.324(a), or, for States or Tribes which previously received interim approval as described in 40 CFR § 745.327(a)(1), through a separate application addressing only the compliance and enforcement program portion of a State or Tribal Renovation Program.

b. Final Approval

To be considered adequate for final approval of the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must in its application:

- Demonstrate the authority to enter, through consent, warrant, or other authority, premises, or facilities where lead-based paint activities violations may occur for purposes of conducting inspections.
- Provide for a diverse and flexible array of enforcement remedies. At a minimum, the remedies that must be reflected in an enforcement response policy must include warning letters, notices of noncompliance, notices of violation, or the equivalent; administrative or civil actions, including penalty authority; authority to apply criminal sanctions or other criminal authority.

II.B.4.b Final Approval – Standards, Regulations, and Authority

(§ 745.327(b)(2) and (3))

<i>Authority to enter</i>	<i>Applicant Citation Reference:</i>	<i>Analysis</i>	<i>Comment</i>
State or Tribal officials must be able to enter premises or facilities where those engaged in training for renovations and those engaged in conducting renovations conduct business, as well as premises or facilities where renovation violations may occur.			
State or Tribal officials must have authority to take samples and review records as part of the renovations inspection process.			
<i>Flexible remedies</i>			
Warning Letters, Notices of Noncompliance, Notices of Violation, or the equivalent.			
Administrative or civil actions, including penalty authority (e.g., accreditation or certification suspension, revocation, or modification).			
Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.			

Attachment: The State or Tribe should attach all policies and/or procedures that as such represent the State or Tribe’s enforcement response policy. Such policies should establish a prioritization scheme for determining severity of violations and procedures for determining the response actions to such violations.

I.B.4. Compliance and Enforcement Program (§ 745.327(a)(2))

b. Final Approval (cont.)

To be considered adequate for final approval of the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must, in its application, also:

- Include a statement of resources which identifies what resources the State or Tribe intends to devote to the administration of its renovation compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.

The statement of resources may use information presented in the Infrastructure description of the State or Tribal program (see Section II.B.2.b., Program Elements - Infrastructure). However, this statement should specifically focus on the resources dedicated to renovation compliance and enforcement.

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Statement of Resources** (§ 745.327(a)(2))

Please include statement of resources here:

II.B.4. Compliance and Enforcement Program (§ 745.327(c))

A State or Tribal Compliance and Enforcement Program for Renovations must also include the following performance elements to be adequate for final program approval. Elements include:

- Training of renovation enforcement and inspection personnel
- Compliance Assistance for renovations
- Sampling Techniques for renovations
- Tracking Renovation Tips and Complaints
- Targeting Renovation Inspections
- Follow-up to Renovation Inspection Reports
- Compliance Monitoring and Enforcement of Renovations

b. Final Approval (cont.)

A State or Tribal renovation compliance and enforcement program must implement a process for training enforcement and inspection personnel and ensure that enforcement personnel and inspectors are well-trained. Enforcement personnel must understand case development procedures and the maintenance of proper case files. Inspectors must successfully demonstrate knowledge of renovation work practice requirements and the requirements of the particular discipline (e.g., Renovator, Dust Sampling Technician or Workers receiving on the job training from Renovators) for which they have compliance monitoring and enforcement responsibilities. Inspectors must also be trained in violation discovery, methods of obtaining consent, evidence gathering, preservation of evidence and chain-of-custody, and sampling procedures. A State or Tribal renovation compliance and enforcement program must also implement a process for the continuing education of enforcement and inspection personnel.

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Training of Enforcement and Inspection Personnel**
(§ 745.327(c)(1))

Please discuss process for training of enforcement and inspection personnel:

II.B.4. Compliance and Enforcement Program (§ 745.327(c)(2))

b. Final Approval (cont.)

A State or Tribal renovation compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of and compliance with State or Tribal requirements governing the conduct of renovations. The type and nature of this assistance can be defined by the State or Tribe to achieve this goal.

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Compliance Assistance** (§ 745.327(c)(2))

Please describe how the State or Tribe will conduct compliance assistance activities to facilitate awareness and understanding of and compliance with State or Tribal requirements governing the conduct of renovations:

II.B.4. Compliance and Enforcement Program (§ 745.327(c)(3))

b. Final Approval (cont.)

A State or Tribal renovation compliance and enforcement program must have the technological capability to ensure compliance with the Renovation Program requirements. A State or Tribal application for approval of a Renovation Program must show that the State or Tribe is technologically capable of conducting a renovation compliance and enforcement program. The State or Tribal program must have access to the facilities and equipment necessary to perform sampling and laboratory analysis as needed. This laboratory facility must be a recognized laboratory as defined at § 745.223, or the State or Tribal program must implement a quality assurance program that ensures appropriate quality of laboratory personnel and protects the integrity of analytical data.

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Sampling Techniques** (§ 745.327(c)(3))

Please describe how the State or Tribe has the technological capability to ensure compliance with the Renovation Program requirements:

II.B.4. Compliance and Enforcement Program (§ 745.327(c)(4))

b. Final Approval (cont.)

A State or Tribal renovation compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation. The State or Tribe should include information such as tracking mechanisms, prioritization schemes, and time frames within which the State or Tribe anticipates responding to tips and complaints.

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Tracking Tips and Complaints** (§ 745.327(c)(4))

Please describe how the State or Tribe has the ability to process, prioritize, and respond to tips and complaints:

II.B.4. Compliance and Enforcement Program (§ 745.327(c)(5))

b. Final Approval (cont.)

A State or Tribal renovation compliance and enforcement program must demonstrate the ability to target inspections to ensure compliance with the Renovation Program requirements. A neutral administrative inspection scheme is one mechanism a State or Tribe might use to target inspections.

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Targeting Inspections** (§ 745.327(c)(5))

Please describe how the State or Tribe will target inspections to ensure compliance with the lead-based paint program requirements:

II.B.4. Compliance and Enforcement Program (§ 745.327(c)(6))

b. Final Approval (cont.)

A State or Tribal renovation compliance and enforcement program must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities associated with the Renovation Program. The State or Tribal program must be in a position to ensure correction of violations and, as appropriate, effectively develop and issue enforcement remedies/responses to follow up on the identification of violations. The State or Tribe should illustrate here procedures used to follow up on inspections, including case development, consent agreement and consent orders, follow up inspections, case closeout, and time frames within which the State or Tribe aims to achieve report follow up, and resolution of non-compliance.

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Follow Up to Inspection Reports** (§ 745.327(c)(6))

Please describe how the State or Tribe has the ability to process and follow-up on inspection reports and other information generated through enforcement-related activities:

II.B.4. Compliance and Enforcement Program (§ 745.327(c)(7))

b. Final Approval (cont.)

A State or Tribal renovation compliance and enforcement program must demonstrate, in its application for approval, that it is in a position to implement a compliance monitoring and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive renovation compliance inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations. The State or Tribe must demonstrate it has the legal authority and ability to immediately implement the required elements of this section (II.B.4.b.).

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Compliance Monitoring and Enforcement (§ 745.327(c)(7))**

Please describe whether the State or Tribe has, in its opinion, the required elements of this section in place:

II.B.4. Compliance and Enforcement Program (§ 745.327(a)(2))

b. Final Approval (cont.)

To be considered adequate for final approval of the compliance and enforcement program portion of a State or Tribal Renovation Program, a State or Tribe must, in its application, also:

- Include a statement of resources which identifies what resources the State or Tribe intends to devote to the administration of its renovation compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.

The statement of resources may use information presented in the Infrastructure description of the State or Tribal program (see Section II.B.2.d., Program Elements - Infrastructure). However, this statement should specifically focus on the resources dedicated to compliance and enforcement.

**II.B.4.b. Compliance and Enforcement Program – Interim Approval:
Statement of Resources** (§ 745.327(a)(2))

Please include statement of resources here:

II.B.4. Compliance and Enforcement Program (§ 745.327(a)(2))

b. Final Approval (cont.)

The State or Tribal applicant must also agree to submit to EPA the Summary on Progress and Performance of renovation compliance and enforcement activities (as described at Attachment A of this appendix).

**II.B.4.b. Compliance and Enforcement Program – Final Approval:
Agreement to submit to EPA the Summary on Progress and
Performance** (§ 745.327(a)(2))

*Please include statement that applicant agrees to submit Summary on
Progress and Performance:*

Attachments

Attachment A. **Summary on Progress and Performance** (§ 745.327(d))

The Summary on Progress and Performance described below is part of the required elements for the compliance and enforcement program portion of a State or Tribal Renovation Program. A State or Tribal renovation compliance and enforcement program must submit to the appropriate EPA Regional Administrator a report which summarizes the results of implementing the State or Tribal renovation compliance and enforcement program, including a summary of the scope of the regulated community within the State or Tribe, as required by § 745.324(h). The summary would include the number of individuals and firms certified for renovations and the number of training programs accredited, as well as the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Tribe to these activities. The report shall be submitted according to the requirements at § 745.324(h).

Attachment B. **Memorandum of Agreement** (§ 745.327(e))

A Tribe that obtains Renovation Program approval must establish a Memorandum of Agreement with the Regional Administrator. The Memorandum of Agreement shall be executed by the Tribe's counterpart to the State Director (e.g., the Director of Tribal Environmental Office, Program or Agency). The Memorandum of Agreement must include provisions for the timely and appropriate referral to the Regional Administrator for those criminal enforcement matters where that Tribe does not have the authority (e.g., those addressing criminal violations by non-Indians or violations meriting penalties over \$5,000). The Agreement must also identify any enforcement agreements that may exist between the Tribe and any State.