



Small Entity Compliance Guide for the Accreditation, Training and Certification Program for Lead-Based Paint Activities in Target Housing and Child Occupied Facilities

Introduction

The Environmental Protection Agency has published this document (EPA) as our official compliance guide for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104-121). Before you begin using the guide, you should know that the information in this guide was compiled and published on [insert publication date]. EPA is continually improving and upgrading its compliance programs. You can determine whether EPA has revised or supplemented the information in this guide by going to the EPA Internet Home page for the Lead Program at <http://www.epa.gov/lead/>. You may also contact the National Lead Information Center (NLIC) at 1-800-424-LEAD. The NLIC, which operates under a contract with the EPA, with funding from EPA, the Centers for Disease Control and Prevention (CDCP), and the Department of Housing and Urban Development (HUD), provides the public and professionals with information about lead hazards and their prevention.

Who Should Use this Guide?

This document is intended for use by training programs that are required to be accredited under 40 CFR 745.225, and those professionals (individual or firms) who must be certified to conduct lead-based paint activities in accordance with 40 CFR 745.226. This may include, but is not limited to the following types of entities:

Type of Entity	SIC Code	Examples of Entities
Lead abatement professionals	1799, 8734	Workers, supervisors, inspectors, risk assessors and project designers engaged in lead-based paint activities. Firms engaged in lead-based paint activities.
Training programs	1799, 8331, 8742, 8748	Training programs providing training services in lead-based paint activities.

This table is not intended to be exhaustive, but rather provides a guide of the entities that are likely to be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether you or your business is regulated by this action, you should

carefully examine the provisions in 40 CFR Part 745 Subpart L and subsequent Interpretive Guidance material issued by the Agency. The Agency's Interpretive Guidance for this regulation can be found at <http://www.epa.gov/opptintr/lead/>.

What Regulation Does This Guide Cover?

This guide applies to the final rule for the certification and training of lead-based paint professionals that EPA issued on August 29, 1996, entitled: "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule" (61 FR 45778). The rule has been codified in the Code of Federal Regulations in 40 CFR 745 Subpart L. You may obtain a copy of this final rule, other related materials by calling the NLIC at 1-800-424-LEAD, or by downloading it from the EPA's web site at <http://www.epa.gov/lead/>.

In brief, the final rule established regulations under section 402 of the Toxic Substance Control Act (TSCA) to ensure that individuals conducting lead-based paint activities in target housing and child-occupied facilities are properly trained and certified, that training programs providing instruction in such activities are accredited and that these activities are conducted according to reliable, effective and safe work practice standards. The Agency also established a regulation under section 404 of TSCA that allows States and Indian Tribes to seek authorization to administer and enforce the regulations developed under section 402. The goal of this regulation is to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards, and to protect the public from exposure to lead hazards.

How does this Regulation Relate to Other Federal, Tribal, State and Local Requirements?

This compliance guide explains the federal compliance obligations with respect to the EPA regulations in 40 CFR Part 745 Subpart L. There may be other state or local requirements which may also apply to you. In addition, States and Indian Tribes are allowed to seek authorization to administer and enforce their own regulations instead of EPA's rule. If you are going to work in a State or Tribe that has been authorized by EPA, you must comply with their regulation's not EPA's. For more information about authorized State or Tribal programs, please call the NLIC at 1-800-424-LEAD, or go to the Lead Program web site at <http://www.epa.gov/lead/>.

When must I be in compliance with this regulation?

Compliance dates, which are specified in 40 CFR 745.Subpart L, are as follows:

Entity	Effective Date	Activity Description
Professionals (firms or individuals) wishing to conduct lead-based paint activities (i.e., abatement)	3/1/99	EPA began accepting applications for certification.
	3/1/2000	Individuals and firms must be certified by EPA to conduct any lead-based paint activities.
Training Providers	8/31/98	EPA began accepting to request accreditation.

	3/1/99	Training Providers must be accredited by EPA to provide, offer or claim to provide EPA-accredited training courses for lead-based paint activities
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What do I need to do to comply with this regulation?

1. Location. The requirements you must meet will depend on where you wish to work. Some States and Indian Tribes are running their own programs that EPA has authorized. In other States and Tribes that do not have an authorized program, EPA is running the program. You can find out whether EPA or the State or Tribe is running the program by calling the NLIC at 1-800-424-LEAD, or going to the Lead Program web site at <http://www.epa.gov/lead/>. If you want to work in a State or Tribe EPA where runs whose program, you can also get application forms, instructions, and fee information sheets for certification or accreditation by calling the NLIC or going to the Lead Program web site. If you wish to work in a location with an EPA-authorized State or Tribal program, you must contact that program for additional information.

2. Individual certification. If you want to work as an inspector, a risk assessor, an abatement supervisor, an abatement worker, and/or a project designer, you must first receive certification. The application instructions explain what is required. Each of the five disciplines has different education, experience and training requirements. Once you meet these requirements, you can fill out the application form and send it and the correct fees to the addresses noted on the form. If you wish to be certified as inspectors, risk assessors, or abatement supervisors you must also take a certification exam given by an EPA contractor. After you submit an application and the correct fees, you will receive a letter that tells you how to register for the exam. If you pass the exam, you will receive your certification from EPA. Once you are certified, you must have proof of certification at work and you must always conduct lead-based paint activities according to the work practice standards established by EPA at 40 CFR 745 Subpart L.

3. Firm certification. Firms that advertise, bid to conduct or actually conduct lead-based paint activities must be certified. EPA requires any organization, including Federal, state and local government agencies, that employ individuals who conduct inspections, risk assessments or abatements to be certified as firms, even if they only employ one such individual. The firm certification process is not hard. In the EPA application, the firm agrees (1) to use only certified employees for inspection, risk assessments and abatements; (2) to use the work practice standards that EPA requires; and (3) to keep appropriate records. After a firm sends a completed firm certification application and the correct fees, EPA will send the firm a certification approval letter.

4. Training provider accreditation. If you wish to offer training courses for inspectors, risk assessors, abatement supervisors, abatement workers, and/or project designers, you must be accredited by EPA. The application instructions explain what must be submitted for review. Each of the five disciplines has different minimum curriculum requirements. There are initial and refresher courses for all five disciplines. Training providers may apply to teach as many different courses as they wish. After a training provider sends a completed accreditation

application and the correct fees, EPA will review the application package. When EPA approves a training provider, EPA will send an accreditation approval letter. Accredited training providers must agree to notify EPA when they will be teaching EPA-accredited courses and keep certain records about the courses.

How does EPA ensure compliance with this regulation?

To maximize compliance, EPA implements a balanced program of compliance assistance, compliance incentives, and traditional law enforcement. EPA knows that small businesses which must comply with complicated new statutes or rules often want to do the right thing, but may lack the requisite knowledge, resources, or skills. Compliance assistance information and technical advice help small businesses to understand and meet their environmental obligations. Compliance incentives, such as our Audit Policy and Small Business Policy, encourage persons to voluntarily discover, disclose, and correct violations before they are identified by the government. EPA's strong law enforcement program protects all of us by targeting persons who neither comply nor cooperate to address their problems.

How is my compliance with this regulation determined?

EPA determines compliance by inspecting training facilities, abatement worksites, and places of business. EPA compliance inspectors audit training courses, review records, and conduct on site reviews for work practice standards and worker certification. To determine compliance status, EPA may also send information request letters or subpoenas requesting specific compliance information. If the Agency has reason to believe there is a violation, a compliance inspection may be conducted in response to a tip or complaint, or, inspections may be conducted as part of a neutral scheme inspection.

If I discover a violation how can I work with the Agency to correct it?

EPA has several policies that allow regulated entities acting in good faith, time to self disclose and correct a violation. One such policy is the "Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations," ("Audit Policy"), 60 Federal Register 66706, December 22, 1995. A member of the regulated community who voluntarily conducts an internal compliance audit and voluntarily self-discloses any violations of the 402 Abatement Rule may be eligible for a 100 percent reduction in the penalty under the Audit Policy. To receive a 100% reduction in the Gravity Based Penalty (GBP), the violator must meet the nine criteria established in the Audit Policy. A copy of the Audit Policy, including these criteria, can be found at the EPA web site at <http://es.epa.gov/oeca/auditpol.html>.

Another useful policy is the "Policy on Compliance Incentives for Small Businesses." Under this policy, EPA may refrain from initiating an enforcement action seeking civil penalties, or will mitigate civil penalties, whenever a small business makes a good faith effort to comply with applicable environmental laws. Good faith effort means accepting compliance assistance or promptly disclosing the findings of a voluntarily conducted audit, subject to certain conditions.

The conditions of the small business policy require that the violation:

- (1) is the small business's first violation of the particular requirement,

- (2) does not involve criminal conduct,
- (3) is not causing and has not caused significant health, safety or environmental threat or harm, and
- (4) is remedied within the correction period.

For more information, this policy is available at the EPA Web site at <http://es.epa.gov/oeca/smbusi.html>

What happens if the Agency discovers a violation?

When an EPA compliance inspector identifies areas of noncompliance, EPA may respond in several ways. For first-time minor violations that do not pose a major threat to human health or the environment, EPA may issue a Notice of Noncompliance that delineates the violations but does not assess a penalty. For more egregious violations, EPA may assess an Administrative Civil Penalty pursuant to Section 16 of TSCA, (15 U.S.C. § 2615). These penalties range from \$220 to \$27,500 for each violation. Each day the violation continues constitutes a separate violation. The monetary penalties are calculated according to a formula set forth in the Agency's Enforcement Response Policy (ERP). Currently, the ERP is under development, but enforcement memos which delineate the current policy have been developed.

Criminal violations are defined in TSCA as "knowingly or willfully" violating the TSCA Section 402 Lead-based Paint Activities Rule. Criminal penalties may be issued pursuant to Section 16 (b) of TSCA, (15 U.S.C. § 2615(b)); criminal penalties can be up to \$25,000 per-day, per violation and/or imprisonment for up to one year. When a criminal violation is suspected, an investigative lead is provided to EPA's Criminal Investigation Division for further investigation. If sufficient evidence is found to support an allegation that a crime has been committed, a referral for prosecution is made to the Department of Justice.

In summary, EPA recognizes that we can achieve the greatest possible protection by encouraging small businesses to work with us to discover, disclose, and correct violations. That's why we've issued self-disclosure, small business, and small community policies to eliminate or reduce penalties for small and large entities that cooperate with EPA to address compliance problems.

What is the legal status of this guide?

Under SBREFA, a judge can look at a compliance guide in determining what penalty is appropriate and reasonable, although the content of the guide cannot otherwise be reviewed by the court.

In this Compliance Guide, we have tried to make clear what you must do to comply with the applicable law and regulation. This is the minimum required by SBREFA. You'll notice, however, that we have included suggestions for alternative approaches that may make compliance easier and possibly even reduce costs. We hope you find this presentation of regulatory requirements useful and the additional information helpful in reaching and maintaining compliance.

APPENDIX

A. Glossary of Environmental Terms

All unique terms and phrases are defined in the regulation's Definition section at 40 CFR 745 §223.

B. Where to Obtain More Information

Electronically - You may obtain electronic copies of the rule, this document, applications, a fee schedule and other information from the EPA Internet Home Page for the Lead Program at <http://www.epa.gov/lead/>. You can also order documents and request information about Lead Poisoning and Lead Hazards from the National Lead Information Center (NLIC) at <http://www.epa.gov/lead/nlic.htm>. You may also seek assistance by e-mailing a question to the TSCA Hotline at TSCA-Hotline@epa.gov.

By phone - To request a general information packet, order documents, or for detailed information or questions, you may call the NLIC's clearinghouse and speak with a specialist between the hours of 8:30 a.m. to 6:00 p.m. EST, Monday through Friday, excluding legal holidays. The telephone number for the NLIC is 1-800-424-LEAD. You may also seek assistance by calling the TSCA Hotline at 202-554-1404 and TDD: 202-554-0551.

In Person - The Agency has established an official record for this regulation under docket control number OPPTS-62158A. The public version of the official record, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, D.C. The Center is open from 12 noon to 4:00 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

In writing - If you would like to submit a written request for information or assistance, please address your request to Barbara Cunningham, and mail it to the following address:

Barbara Cunningham, Acting Director
Environmental Assistance Division
Office of Pollution Prevention and Toxics (Mail Code 7401)
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Ave., NW.
Washington, D.C. 20460

C. Questionnaire - How Useful Was This Guide?

EPA is interested in receiving your feedback on the effectiveness and utility of this compliance guide, including suggestions for improving the guide's usefulness and readability. Please take a moment to complete the attached short questionnaires and mail it to the Agency. We also welcome comments via e-mail to the TSCA Hotline at TSCA-Hotline@epa.gov. For identification purposes, please be sure to include the publication number located in the upper right corner on the cover page, as well as the title for this guide.

NOTICE

This guide was prepared pursuant to section 212 of the Small business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. 104-121. The statements in this document are intended solely as guidance to aid you in complying with EPA’s Training and Certification Requirements for Lead-Based Paint Activities (40 CFR 745 Subpart L). In any civil or administrative action against a small business, small government or small non-profit organization for a violation of EPA’s Training and Certification Requirements for Lead-Based Paint Activities (40 CFR 745 Subpart L), the content of this guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. EPA may decide to revise this guide without public notice to reflect changes in EPA’s approach to implementing the Training and Certification Requirements for Lead-Based Paint Activities or to clarify or update text. To determine whether EPA has revised this guide and/or to obtain copies, contact Karen V. Brown EPA Asbestos & Small Business Ombudsman, 1200 Pennsylvania Ave., NW Mail Code: 1808T, Washington, DC 20460 Phone: 202-566-2816, <http://www.epa.gov/smallbusiness/> or the Office of Pollution Prevention and Toxics <http://www.epa.gov/opptintr/>.

Date: _____

Title of Rule or Program: Lead-based Paint Activities Training and Certification Program
EPA Publication #EPA

Name of Commenter (optional): _____

Please take a moment to let us know if you found this guide useful by answering the following questions. Thank you. Your feedback is important to us.

- 1. I could easily understand what requirements I must meet.* _____
- 2. The guide is written in understandable language.* _____
- 3. The guide helped me understand the steps I must take to comply with the rule.* _____
- 4. If you have suggestions to improve the guide, please indicate below:*

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