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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2014-0304; FRL-9925-71]

RIN 2070-AK04

Lead-based Paint Programs; Extension of Renovator Certifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Agency is extending the certifications of certain renovators under the Lead Renovation, Repair, and Painting (RRP) rule. In January 2015, the Agency published a proposed rule that would, among other things, change the requirements for the refresher training course that renovators must take to become recertified. EPA is extending certifications of thousands of renovators that will otherwise expire before that rule can be finalized. EPA is taking this action so that, if and when the changes in the proposed rule are finalized, these renovators can take advantage of the changes.

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

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2014-0304, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open

from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:*

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For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are an individual who must be certified to conduct renovation activities in accordance with 40 CFR 745.90. This rule applies only in states, territories, and tribal areas that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States, territories, and Tribes, contact the National Lead Information Center at 1-800-424-LEAD (5323).

The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers

determine whether this document applies to them. Potentially affected entities may include:

- Building construction (NAICS code 236), e.g., single-family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

On January 14, 2015, EPA published a proposed rule (Ref. 1) that would, among other things, amend the RRP rule's refresher training requirements (Ref 2). Specifically, EPA proposed to eliminate the hands-on requirement in the refresher training that

renovators must take to maintain their certification as required by the RRP rule. This change would make it easier for renovators to take the refresher training, especially renovators who live far from a training facility. Renovators would save time and travel costs by taking the course from a single location, possibly their own home. If taking the training is made easier, EPA believes that more renovators would take the refresher training and become recertified. Having more renovators take the refresher training would lead to a higher number of certified renovators, resulting in a workforce better able to perform renovations in a lead-safe manner.

If the Agency issues a final rule eliminating the hands-on requirement, it would not happen until near the end of 2015. Unfortunately, many renovator certifications will expire before the final rule can be published. In light of this, EPA is extending certifications of a portion of certified renovators until after the expected publication of the final rule to ensure that the benefit of such elimination, if promulgated, is not denied to renovators who were among the first to take the initial training course. Under today's action, renovators who received certification on or before March 31, 2010, now have until March 31, 2016, to get recertified. Renovators who received certification between April 1, 2010 and March 31, 2011, will have one year added to their 5-year certification. Subsequent certifications for renovators receiving the extension will be five years. These extensions only apply to renovators that fall under EPA's renovation program and not to renovators under authorized state programs.

EPA is creating two sets of extensions for two reasons. First, the Agency does not want to extend the certifications more than is necessary to accommodate the potential finalization of the proposed amendments. Renovator certifications from March 2010 and

before need to be extended beyond one year so they will expire after any potential changes are finalized. Second, EPA is extending an additional group of renovator certifications for one year because the Agency does not want all of the extended certifications to expire on the same day. This will prevent hundreds of thousands of renovators from seeking recertification at the same time, which could overwhelm training providers.

EPA specifically requested comment on such an extension of certifications for certain renovators and the Agency received several comments regarding an extension. Of those comments, the majority were in favor of the extension. In supporting the extension of renovator certifications, one commenter stated that it would alleviate burden on contractors that have difficulty finding a training course within a reasonable distance of them. Another commenter stated that the extension will help ensure that as many certified renovators as possible can take advantage of the burden savings associated with removing the hands-on requirement. Other commenters similarly believe that the certifications should be extended to allow renovators to take advantage of any potential changes that may be finalized. EPA agrees with these commenters and has, accordingly, extended certifications for a portion of renovators.

Several commenters who supported the extension stated that EPA should announce the extension immediately, before renovators start taking the refresher training that includes the hands-on learning. One of the commenters urged the Agency to bifurcate the certification extension from the other parts of the proposed rule in order to expedite the extension. EPA agrees that it is important to extend the certifications as soon as possible. In order to expedite the extension, the Agency has finalized it separately from

the other possible changes from the proposed rule allowing it to be finalized sooner than if it were part of the larger rule that could not be finalized until later in the year.

One commenter who opposed the extension believes that it will confuse renovators in authorized states because renovators will assume the EPA extension applies to their state's program. To prevent any potential confusion, EPA would like to clarify that this final rule applies only in states where EPA implements the program and not in authorized states.

Some commenters stated that the 5-year renovator certification is too long and therefore should not be extended. The Agency disagrees about extending the certifications. EPA believes that a one-time extension is justified to allow more renovators to realize the benefits of any potential changes. By extending the certifications, EPA believes that more renovators will seek recertification leading to a higher number of certified renovators resulting in a workforce better able to perform renovations in a lead-safe manner. EPA previously explained in the preamble to the RRP rule why the Agency promulgated 5-year renovator certifications (Ref. 2)

As proposed, EPA finds under the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), that good cause exists to dispense with the 30-day delay in the effective date of this final rule, for the reasons explained in the proposed rule and in this Unit. The Agency believes it is in the public interest to relieve the certification deadline for the renovators identified in this Unit, so that they may benefit from any upcoming amendments to the refresher training requirements. EPA also believes that such action would relieve a restriction in accordance with 5 U.S.C. 553(d)(1). EPA therefore issues this final rule making this change effective upon publication in the **Federal Register**.

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

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

III. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Federal Register (80 FR 1873, January 14, 2015) (FRL-9920-85).

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

IV. Statutory and Executive Order Reviews

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

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and

13563, entitled “Improving Regulation and Regulatory Review” (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq*, because it does not create any new reporting or recordkeeping obligations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070-0155.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq*. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule extends the certifications for subset of renovators. Those are the only small entities directly subject to this action, and the action has a positive economic effect on them. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The

action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action does not have tribal implications as specified in Executive Order 13175. This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Because this rulemaking does not involve technical standards, Section 12(d) of NTTAA, 15 U.S.C. 272 note, does not apply to this action.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

V. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 745

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

Dated: April 8, 2015.

Gina McCarthy,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 745--[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

2. In § 745.90, revise paragraph (a)(4) to read as follows:

§745.90 Renovator certification and dust sampling technician certification.

(a) * * *

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under §745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year certification.

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