



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2023-0231; FRL-8524.1-02-OCSP]

RIN 2070-AK91

Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is correcting a final rule that appeared in the *Federal Register* of November 12, 2024, that finalized several revisions to EPA's lead-based paint (LBP) regulations. Subsequent to publication, the Office of the Federal Register (OFR) informed the Agency that there were errors in the amendatory instructions that describe specific revisions for two sections of the regulation. In the *Federal Register* of December 16, 2024, EPA published a technical correction to the final rule that explained the errors and the corresponding technical corrections that the Agency believed would address the errors identified by the OFR. Unfortunately, that technical correction did not fix the amendatory instructions prior to the effective date of the final rule. As a result, when the final rule became effective on January 13, 2025, three subparagraphs of regulatory text were inadvertently deleted – a change to the post-abatement regulatory activities that EPA did not intend to make. This action corrects that error by restoring the inadvertently deleted text in the regulations.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2023-0231, is available online at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at

<https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information: Claire Brisse, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-0001; telephone number: (202) 564-9004; email address: brisse.claire@epa.gov.

For general information on lead: The National Lead Information Center, 422 South Clinton Avenue, Rochester, NY 14620; telephone number: (800) 424-LEAD [5323]; online form: <https://www.epa.gov/lead/forms/lead-hotline-national-lead-information-center>.

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

For hearing- or speech-impaired assistance: Persons may reach the telephone numbers for the contacts through TTY by calling the toll-free Federal Communications Commission's Telecommunications Relay Service at 711.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to you?

You may be affected by this action if you conduct abatement activities in accordance with 40 CFR 745.227 or if you operate a training program required to be accredited under 40 CFR 745.225 that trains individuals about abatement activities. 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.

Affected entities may include:

- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350) (*e.g.*, dust sampling technicians).
- Lead abatement professionals (NAICS code 562910) (*e.g.*, firms and supervisors

engaged in LBP activities).

- Other technical and trade schools (NAICS code 611519) (e.g., training providers).

If you have questions regarding the applicability of this action to a particular entity, consult the regulations or contact the technical information person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. What action is the Agency taking?

EPA is reestablishing inadvertently deleted regulatory text at 40 CFR 745.227(e)(8)(v), which was originally promulgated in 2001 pursuant to TSCA section 402. See 66 FR 1206, January 5, 2001 (FRL-6763-5), also known as the “2001 LBP Hazards Rule.” The inadvertently deleted regulatory text in 40 CFR 745.227(e)(8)(v)(A), (B) and (C) outlines post-abatement dust sampling activities and how they should be conducted in or on residential dwellings or child-occupied facilities. The error occurred when EPA published a final rule in the *Federal Register* of November 12, 2024, entitled “Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels” and also known as the “dust-lead reconsideration rulemaking.” See 89 FR 89416, November 12, 2024 (FRL-8524-02-OCSP).

After publication of the November 2024 final rule, the OFR identified errors in the amendatory instructions for two sections of the regulations. One of those errors, the amendatory instruction identified as “17b”, directed OFR to revise 40 CFR 745.227(e)(8)(v); however, the instructions did not include the “introductory text” and, as a result, the instructions inadvertently directed OFR to delete the subordinate paragraphs to paragraph (e)(8)(v). The instruction should have directed OFR to revise the introductory text of paragraph (e)(8)(v) only, as EPA intended to modify the introductory text paragraph (e)(8)(v) and had not proposed or intended to modify (e)(8)(v)(A), (B) and (C).

In the *Federal Register* of December 16, 2024, EPA published a technical correction to the November 2024 final rule that explained the errors and provided the corresponding technical corrections that the Agency believed would address the errors identified by the OFR.

Unfortunately, that technical correction did not fix the amendatory instructions prior to the effective date of the final rule. As a result, when the final rule became effective on January 13, 2025, the three subparagraphs at 40 CFR 745.227(e)(8)(v)(A), (B) and (C) were inadvertently deleted, a change that EPA neither proposed nor envisioned in the dust-lead reconsideration rulemaking finalized on November 12, 2024.

This action will restore the inadvertently deleted regulatory text to restore the relied upon methods that help ensure and provide clarity, so abatements are done in a manner that is reliable, effective and safe (15 U.S.C. 2682(a)(1)).

III. Why is this correction issued as a final rule?

EPA's authority for issuing this correction is provided by the Administrative Procedure Act (APA), 5 U.S.C. 553. Section 553(b)(B) of the APA provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. For the reasons discussed in this unit, EPA has determined that notice and public comment are unnecessary and contrary to the public interest for this action.

As discussed in the December 2024 technical correction, the November 2024 final rule published with inaccurate amendatory instructions that resulted in the inadvertent deletion of existing regulatory text. The December 2024 technical correction further explained the context of the error to the amendatory instructions and clarified that the OFR made the Agency aware of the error after the final rule published. Additionally, the December 2024 technical correction described in succinct detail what text was inadvertently omitted within the amendatory instructions in the November 2024 final rule, explaining that "the instruction should direct the OFR to revise the introductory text of the paragraph (e)(8)(v)" as "the set-out text for paragraph (e)(8)(v) does not include the subordinate paragraphs" That document further explained that corrections to the amendatory instructions were necessary to allow for the proper revisions to be incorporated into the Code of Federal Regulations (CFR). Nonetheless, the amendatory

instructions in the December 2024 technical correction failed to actually effectuate the desired corrections to the regulation, resulting in the inadvertent deletion of the existing text beyond the introductory text of the paragraph.

This action corrects the error by restoring the inadvertently deleted regulatory text in 40 CFR 745.227(e)(8)(v)(A) through (C), which was neither proposed nor envisioned to be deleted or modified in the dust-lead reconsideration rulemaking finalized on November 12, 2024. This action will ensure the regulatory text is comports with the description from the final rule preamble, which did not include any discussion on these additional deletions, as they were done in error. Since this correction is intended to restore the regulatory text that the Agency did not intend to change with the November 2024 final rule or the subsequent technical correction of December 2024, EPA finds that notice and comment for this rulemaking is unnecessary under the APA's "good cause" exemption.

In addition, any further delay in restoring the inadvertently deleted regulatory text potentially resulting from a notice and comment process would harm the public interest (including that of the regulated community). The inadvertently deleted regulatory text, which was originally established in 2001, sets forth key requirements after an abatement is completed, including the location and number of clearance samples that must be taken, as well as the process for undertaking a visible inspection following an exterior paint abatement. This is an important part of the post-abatement protections that are included in 40 CFR 745.227. As this section of regulatory text was originally established more than 24 years ago, it has also been embedded into various portions of the lead-based paint activities programs both at the federal level and within various authorized programs established by states, territories and federally recognized Tribes, including any training for abatement professionals. This minor technical fix will expeditiously restore the inadvertently deleted regulatory text that is an essential part of ensuring that abatements are being done in a manner that is reliable, effective and safe (15 U.S.C. 2682(a)(1)) and will ultimately restore the clarity and protectiveness of the inadvertently deleted text for both

the public and the regulated community. As a result, EPA is moving forward to finalize this action without notice and comment under the APA's "good cause" exemption to avoid any harm the inadvertent deletion could cause to the public's interest.

Further, this correction does not impose any new or modified regulatory requirements that would warrant public notice and comment, or time for the regulated community to prepare for the rule to come into effect. See *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996) (in determining whether good cause exists to make a rule immediately effective, an agency should "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling"). EPA has balanced the necessity for immediate implementation against the benefits of delaying implementation. Because this action restores important deleted regulatory text that has already been established and aligns with the intent described in the December 2016 technical correction, the public is aware of the content of the rule. In addition, restoring this language expeditiously would allow important activities (*i.e.*, sampling, visible inspection) to continue to take place after abatement is considered complete. These are critical elements of EPA's lead-based paint activities program that help ensure safe work practices are being upheld. As a result, good cause exists for this rule to be made immediately effective in accordance with the APA (5 U.S.C. 553(d)(3)).

VI. Do any of the statutory and executive order review requirements apply to this action?

No. As a technical correction, this action is not subject to the regulatory assessment requirements and does not otherwise change the detailed discussion of the statutory and executive order review requirements contained in Unit IX. of the November 2024 final dust-lead reconsideration rulemaking.

V. Is this action subject to the Congressional Review Act (CRA)?

Yes. This action is subject to the CRA (5 U.S.C. 801 *et. seq.*), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The

CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). EPA has made a good cause finding for this rule as discussed in Unit III., including the basis for that finding.

List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Child-occupied facility, Clearance levels, Hazardous substances, Incorporation by reference, Lead, Lead poisoning, Lead-based paint, Target housing.

Dated: July 6, 2025.

Nancy B. Beck,

Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

For the reasons set forth in the preamble, 40 CFR chapter I is corrected as follows:

**PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN
RESIDENTIAL STRUCTURES**

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. Revise and republish § 745.227(e)(8)(v) to read as follows:

**§ 745.227 Work practice standards for conducting lead-based paint activities: target
housing and child-occupied facilities.**

* * * * *

(e) * * *

(8) * * *

(v) The following post-abatement testing activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State and local requirements.

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[FR Doc. 2025-12726 Filed: 7/8/2025 8:45 am; Publication Date: 7/9/2025]