

ATTACHMENT 4

40 CFR 745, Subpart Q
State and Indian Tribal Programs

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fees to reflect changed economic conditions.

(2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the FEDERAL REGISTER.

(g) *Failure to remit a fee.* (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.

[64 FR 31098, June 9, 1999]

§ 745.239 **Effective dates.**

This subpart L shall apply in any State or Indian Country that does not have an authorized program under subpart Q, effective August 31, 1998. In such States or Indian Country:

(a) Training programs shall not provide, offer or claim to provide training or refresher training for certification without accreditation from EPA pursuant to § 745.225 on or after March 1, 1999.

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to § 745.226 on or after March 1, 2000.

(c) All lead-based paint activities shall be performed pursuant to the work practice standards contained in § 745.227 on or after March 1, 2000.

[61 FR 45813, Aug. 29, 1996, as amended at 64 FR 42852, Aug. 6, 1999]

Subparts M–P [Reserved]

Subpart Q—State and Indian Tribal Programs

SOURCE: 61 FR 45825, Aug. 29, 1996, unless otherwise noted.

40 CFR Ch. I (7–1–03 Edition)

§ 745.320 **Scope and purpose.**

(a) This subpart establishes the requirements that State or Tribal programs must meet for authorization by the Administrator to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 and/or section 406 and establishes the procedures EPA will follow in approving, revising, and withdrawing approval of State or Tribal programs.

(b) For State or Tribal lead-based paint training and certification programs, a State or Indian Tribe may seek authorization to administer and enforce §§ 745.225, 745.226, and 745.227. The provisions of §§ 745.220, 745.223, 745.233, 745.235, 745.237, and 745.239 shall be applicable for the purposes of such program authorization.

(c) For State or Tribal pre-renovation notification programs, a State or Indian Tribe may seek authorization to administer and enforce regulations developed pursuant to TSCA section 406.

(d) A State or Indian Tribe applying for program authorization may seek either interim approval or final approval of the compliance and enforcement portion of the State or Tribal lead-based paint program pursuant to the procedures at § 745.327(a).

(e) State or Tribal submissions for program authorization shall comply with the procedures set out in this subpart.

(f) Any State or Tribal program approved by the Administrator under this subpart shall at all times comply with the requirements of this subpart.

(g) In many cases States will lack authority to regulate activities in Indian Country. This lack of authority does not impair a State's ability to obtain full program authorization in accordance with this subpart. EPA will administer the program in Indian Country if neither the State nor Indian Tribe has been granted program authorization by EPA.

§ 745.323 **Definitions.**

The definitions in subpart A apply to this subpart. In addition, the definitions in § 745.223 and the following definitions apply:

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

§ 745.324 Authorization of State or Tribal programs.

(a) *Application content and procedures.*

(1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce any provisions of subpart L of this part under section 402(a) of TSCA or the provisions of regulations developed under section 406 of TSCA shall submit an application to the Administrator in accordance with the procedures of this paragraph (a).

(2) Before developing an application for authorization, a State or Indian Tribe shall disseminate a public notice of intent to seek such authorization and provide an opportunity for a public hearing.

(3) A State or Tribal application shall include:

(i) A transmittal letter from the State Governor or Tribal Chairperson (or equivalent official) requesting program approval.

(ii) A summary of the State or Tribal program. This summary will be used to provide notice to residents of the State or Tribe.

(iii) A description of the State or Tribal program in accordance with paragraph (b) of this section.

(iv) An Attorney General's or Tribal Counsel's (or equivalent) statement in accordance with paragraph (c) of this section.

(v) Copies of all applicable State or Tribal statutes, regulations, standards,

and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint program.

(4) After submitting an application, the Agency will publish a FEDERAL REGISTER notice that contains an announcement of the receipt of the State or Tribal application, the summary of the program as provided by the State or Tribe, and a request for public comments to be mailed to the appropriate EPA Regional Office. This comment period shall last for no less than 45 days. EPA will consider these comments during its review of the State or Tribal application.

(5) Within 60 days of submission of a State or Tribal application, EPA will, if requested, conduct a public hearing in each State or Indian Country seeking program authorization and will consider all comments submitted at that hearing during the review of the State or Tribal application.

(b) *Program description.* A State or Indian Tribe seeking to administer and enforce a program under this subpart must submit a description of the program. The description of the State or Tribal program must include:

(1)(i) The name of the State or Tribal agency that is or will be responsible for administering and enforcing the program, the name of the official in that agency designated as the point of contact with EPA, and addresses and phone numbers where this official can be contacted.

(ii) Where more than one agency is or will be responsible for administering and enforcing the program, the State or Indian Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA.

(iii) 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 and 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 Indian Tribe.

(2) To demonstrate that the State or Tribal program is at least as protective as the Federal program, fulfilling the criteria in paragraph (e)(2)(i) of this section, the State or Tribal application must include:

(i) A description of the program that demonstrates that the program contains all of the elements specified in § 745.325, § 745.326, or both; and

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart L of this part, regulations developed pursuant to TSCA section 406, or both. This analysis shall demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart L of this part, regulations developed pursuant to TSCA section 406, or both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

(3) To demonstrate that the State or Tribal program provides adequate enforcement, fulfilling the criteria in paragraph (e)(2)(ii) of this section, the State or Tribal application must include a description of the State or Tribal lead-based paint compliance and enforcement program that demonstrates that the program contains all of the elements specified at § 745.327. This description shall include copies of all policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the elements specified at § 745.327.

(4)(i) The program description for an Indian Tribe shall also include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Indian Tribe exercises jurisdiction.

(ii) The program description for an Indian Tribe shall also include a demonstration that the Indian Tribe:

(A) Is recognized by the Secretary of the Interior.

(B) has an existing government exercising substantial governmental duties and powers.

(C) has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification in paragraph (c)(2) of this section) over the subject matter and entities regulated.

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

(iii) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (b)(4)(ii)(A) and (B) of this section for another EPA program, the Indian Tribe need provide only that information unique to the lead-based paint program required by paragraphs (b)(4)(ii)(C) and (D) of this section.

(c) *Attorney General's statement.* (1) A State or Indian Tribe must submit a written statement signed by the Attorney General or Tribal Counsel (or equivalent) certifying that the laws and regulations of the State or Indian Tribe provide adequate legal authority to administer and enforce the State or Tribal program. This statement shall include citations to the specific statutes and regulations providing that legal authority.

(2) 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 Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe's program. The certification shall include an assertion that the attorney has the authority to represent the Indian Tribe with respect to the Indian Tribe's authorization application.

(3) If a State application seeks approval of its program to operate in Indian Country, the required legal certification shall include an analysis of the applicant's authority to implement its provisions in Indian Country. The applicant shall include a map delineating the area over which it seeks to operate the program.

(d) *Program certification.* (1) At the time of submitting an application, a State may also certify to the Administrator that the State program meets the requirements contained in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

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(2) If this certification is contained in a State's application, the program shall be deemed to be authorized by EPA until such time as the Administrator disapproves the program application or withdraws the program 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.

(3) If the application does not contain such certification, the State program will be authorized only after the Administrator authorizes the program in accordance with paragraph (e) of this section.

(4) This certification shall take the form of a letter from the Governor or the Attorney General to the Administrator. The certification shall reference the program analysis in paragraph (b)(3) of this section as the basis for concluding that the State program is at least as protective as the Federal program, and provides adequate enforcement.

(e) *EPA approval.* (1) EPA will fully review and consider all portions of a State or Tribal application.

(2) Within 180 days of receipt of a complete State or Tribal application, the Administrator shall either authorize the program or disapprove the application. The Administrator shall authorize the program, after notice and the opportunity for public comment and a public hearing, only if the Administrator finds that:

(i)(A) In the case of an application to authorize the State or Indian Tribe to administer and enforce the provisions of subpart L of this part, the State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart L of this part; and/or

(B) In the case of an application to authorize the State or Indian Tribe to administer and enforce the regulations developed pursuant to TSCA section 406, the State or Tribal program is at least as protective of human health and the environment as the Federal regulations developed pursuant to TSCA section 406.

(ii) The State or Tribal program provides adequate enforcement.

(3) EPA shall notify in writing the State or Indian Tribe of the Administrator's decision to authorize the State or Tribal program or disapprove the State's or Indian Tribe's application.

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart L and regulations developed pursuant to TSCA section 406, EPA may, as appropriate, authorize one program and disapprove the other.

(f) *EPA administration and enforcement.* (1) If a State or Indian Tribe does not have an authorized program to administer and enforce subpart L of this part in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of subpart L of this part as the Federal program for that State or Indian Country.

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce regulations developed pursuant to TSCA section 406 in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of regulations developed pursuant to TSCA section 406 as the Federal program for that State or Indian Country.

(3) Upon authorization of a State or Tribal program, pursuant to paragraph (d) or (e) of this section, it shall be an unlawful act under sections 15 and 409 of TSCA for any person to fail or refuse to comply with any requirements of such program.

(g) *Oversight.* EPA shall periodically evaluate the adequacy of a State's or Indian Tribe's implementation and enforcement of its authorized programs.

(h) *Reports.* Beginning 12 months after the date of program authorization, the primary agency for each State or Indian Tribe that has an authorized program shall submit a written report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. This report shall be submitted at least once every 12 months for the first 3 years after program authorization. If these reports demonstrate successful program implementation, the Agency will automatically extend the reporting interval to every 2 years. If the subsequent reports demonstrate problems

with implementation, EPA will require a return to annual reporting until the reports demonstrate successful program implementation, at which time the Agency will extend the reporting interval to every 2 years.

The report shall include the following information:

(1) Any significant changes in the content or administration of the State or Tribal program implemented since the previous reporting period; and

(2) All information regarding the lead-based paint enforcement and compliance activities listed at § 745.327(d) "Summary on Progress and Performance."

(i) *Withdrawal of authorization.* (1) If EPA concludes that a State or Indian Tribe is not administering and enforcing an authorized program in compliance with the standards, regulations, and other requirements of sections 401 through 412 of TSCA and this subpart, the Administrator shall notify the primary agency for the State or Indian Tribe in writing and indicate EPA's intent to withdraw authorization of the program.

(2) The Notice of Intent to Withdraw shall:

(i) Identify the program aspects that EPA believes are inadequate and provide a factual basis for such findings.

(ii) Include copies of relevant documents.

(iii) Provide an opportunity for the State or Indian Tribe to respond either in writing or at a meeting with appropriate EPA officials.

(3) EPA may request that an informal conference be held between representatives of the State or Indian Tribe and EPA officials.

(4) Prior to issuance of a withdrawal, a State or Indian Tribe may request that EPA hold a public hearing. At this hearing, EPA, the State or Indian Tribe, and the public may present facts bearing on whether the State's or Indian Tribe's authorization should be withdrawn.

(5) If EPA finds that deficiencies warranting withdrawal did not exist or were corrected by the State or Indian Tribe, EPA may rescind its Notice of Intent to Withdraw authorization.

(6) Where EPA finds that deficiencies in the State or Tribal program exist

that warrant withdrawal, an agreement to correct the deficiencies shall be jointly prepared by the State or Indian Tribe and EPA. The agreement shall describe the deficiencies found in the program, specify the steps the State or Indian Tribe has taken or will take to remedy the deficiencies, and establish a schedule, no longer than 180 days, for each remedial action to be initiated.

(7) If the State or Indian Tribe does not respond within 60 days of issuance of the Notice of Intent to Withdraw or an agreement is not reached within 180 days after EPA determines that a State or Indian Tribe is not in compliance with the Federal program, the Agency shall issue an order withdrawing the State's or Indian Tribe's authorization.

(8) By the date of such order, the Administrator shall establish and enforce the provisions of subpart L of this part or regulations developed pursuant to TSCA section 406, or both, as the Federal program for that State or Indian Country.

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain at least the following program elements for lead-based paint activities:

(1) Procedures and requirements for the accreditation of lead-based paint activities training programs.

(2) Procedures and requirements for the certification of individuals engaged in lead-based paint activities.

(3) Work practice standards for the conduct of lead-based paint activities.

(4) Requirements that all lead-based paint activities be conducted by appropriately certified contractors.

(5) Development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) *Accreditation of training programs.* The State or Indian Tribe must have either:

(1) Procedures and requirements for the accreditation of training programs that establish:

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(i) Requirements for the accreditation of training programs, including but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures for the suspension, revocation, or modification of training program accreditations; or

(2) Procedures or regulations, for the purposes of certification, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.

(c) *Certification of individuals.* The State or Indian Tribe must have requirements for the certification of individuals that:

(1) Ensure that certified individuals:

(i) Are trained by an accredited training program; and

(ii) Possess appropriate education or experience qualifications for certification.

(2) Establish procedures for re-certification.

(3) Require the conduct of lead-based paint activities in accordance with work practice standards established by the State or Indian Tribe.

(4) Establish procedures for the suspension, revocation, or modification of certifications.

(5) Establish requirements and procedures for the administration of a third-party certification exam.

(d) *Work practice standards for the conduct of lead-based paint activities.* The State or Indian Tribe must have requirements or standards that ensure that lead-based paint activities are conducted reliably, effectively, and safely. At a minimum the State's or Indian Tribe's work practice standards for conducting inspections, risk assessments, and abatements must contain the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) The work practice standards for the inspection for the presence of lead-based paint must require that:

(i) Inspections are conducted only by individuals certified by the appropriate State or Tribal authority to conduct inspections.

(ii) Inspections are conducted in a way that identifies the presence of lead-based paint on painted surfaces within the interior or on the exterior of a residential dwelling or child-occupied facility.

(iii) Inspections are conducted in a way that uses documented methodologies that incorporate adequate quality control procedures.

(iv) A report is developed that clearly documents the results of the inspection.

(v) Records are retained by the certified inspector or the firm.

(2) The work practice standards for risk assessment must require that:

(i) Risk assessments are conducted only by individuals certified by the appropriate State or Tribal authority to conduct risk assessments.

(ii) Risk assessments are conducted in a way that identifies and reports the presence of lead-based paint hazards.

(iii) Risk assessments consist of, at least:

(A) An assessment, including a visual inspection, of the physical characteristics of the residential dwelling or child-occupied facility;

(B) Environmental sampling for lead in paint, dust, and soil;

(C) Environmental sampling requirements for lead in paint, dust, and soil that allow for comparison to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section; and

(D) A determination of the presence of lead-based paint hazards made by comparing the results of visual inspection and environmental sampling to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section.

(iv) The program elements required in paragraph (d)(2)(iii)(C) and (d)(2)(iii)(D) of this section shall be

adopted in accordance with the schedule for the demonstration required in paragraph (e) of this section.

(v) The risk assessor develops a report that clearly presents the results of the assessment and recommendations for the control or elimination of all identified hazards.

(vi) The certified risk assessor or the firm retains the appropriate records.

(3) The work practice standards for abatement must require that:

(i) Abatements are conducted only by individuals certified by the appropriate State or Tribal authority to conduct or supervise abatements.

(ii) Abatements permanently eliminate lead-based paint hazards and are conducted in a way that does not increase the hazards of lead-based paint to the occupants of the dwelling or child-occupied facility.

(iii) Abatements include post-abatement lead in dust clearance sampling and conformance with clearance levels established or adopted by the State or Indian Tribe.

(iv) The abatement contractor develops a report that describes areas of the residential dwelling or child-occupied facility abated and the techniques employed.

(v) The certified abatement contractor or the firm retains appropriate records.

(e) The State or Indian Tribe must demonstrate that it has standards for identifying lead-based paint hazards and clearance standards for dust, that are at least as protective as the standards in § 745.227 as amended on February 5, 2001. A State or Indian Tribe with such a section 402 program approved before February 5, 2003 shall make this demonstration no later than the first report submitted pursuant to § 745.324(h) on or after February 5, 2003. A State or Indian Tribe with such a program submitted but not approved before February 5, 2003 may make this demonstration by amending its application or in its first report submitted pursuant to § 745.324(h). A State or Indian Tribe submitting its program on or after February 5, 2003 shall make this demonstration in its application.

[61 FR 45825, Aug. 29, 1996, as amended at 66 FR 1240, Jan. 5, 2001]

§ 745.326 Pre-renovation notification: State and Tribal program requirements.

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements for renovation disclosure:

(1) Procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing before renovations for compensation; and

(2) An approved lead hazard information pamphlet meeting the requirements of section 406 of TSCA, as determined by EPA. EPA will provide States or Tribes with guidance on what is necessary for a State or Tribal pamphlet approval application.

(b) *Program to distribute lead information.* To be considered at least as protective as the Federal requirements for pre-renovation distribution of information, the State or Indian Tribe must have procedures and requirements that establish:

(1) Clear standards for identifying home improvement activities that trigger the pamphlet distribution requirements; and

(2) Procedures for distributing the lead hazard information to owners and occupants of the housing prior to renovation activities.

(c) *Distribution of acceptable lead hazard information.* To be considered at least as protective as the Federal requirements for the distribution of a lead hazard information pamphlet, the State or Indian Tribe must either:

(1) Distribute the lead hazard information pamphlet developed by EPA under section 406(a) of TSCA, titled *Protect Your Family from Lead in Your Home*; or

(2) Distribute an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for use in that State or Tribe. Such information must meet the content requirements prescribed by section 406(a) of TSCA, and be in a format that is readable to the diverse audience of housing owners and occupants in that State or Tribe.

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

(a) *Approval of compliance and enforcement programs.* A State or Indian Tribe seeking authorization of a lead-based paint program can apply for and receive either interim or final approval of the compliance and enforcement program portion of its lead-based paint program. Indian Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.

(1) *Interim approval.* Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program may be granted by EPA only once, and subject to a specific expiration date.

(i) To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application described at § 745.324(a):

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraph (b) of this section. This demonstration shall include a statement that the State or Indian Tribe, during the interim approval period, shall carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Indian Tribe addresses any significant risks posed by noncompliance with lead-based paint activity requirements.

(B) Present a plan with time frames identified for implementing in the field each element in paragraph (c) of this section. All elements of paragraph (c) of this section 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 lead-based paint program. A statement of resources must be included in the State or Tribal plan which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and en-

forcement activities as described at paragraph (d) of this section.

(ii) Any interim approval granted by EPA for the compliance and enforcement program portion of a State or Tribal lead-based paint program will expire no later than 3 years from the date of EPA's interim approval. One hundred and eighty days prior to this expiration date, a State or Indian Tribe shall apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval shall be given to any State or Indian Tribe which has in place all of the elements of paragraphs (b), (c), and (d) of this section. If a State or Indian Tribe does not receive final approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program by the date 3 years after the date of EPA's interim approval, the Administrator shall, by such date, initiate the process to withdraw the State or Indian Tribe's authorization pursuant to § 745.324(i).

(2) *Final approval.* Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either through the application process described at § 745.324(a), or, for States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(i) For the compliance and enforcement program to be considered adequate for final approval through the application described at § 745.324(a), a State or Indian Tribe must, in its application:

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement of resources which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of

lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) For States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, in order for the State or Tribal compliance and enforcement program to be considered adequate for final approval through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application:

(A) Demonstrate that it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(D) To the extent not previously submitted through the application described at § 745.324(a), submit copies of all applicable State or Tribal statutes, regulations, standards, and other material that provide the State or Indian Tribe with authority to administer and enforce the lead-based paint 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 in paragraphs (b) and (c) of this section.

(b) *Standards, regulations, and authority.* The standards, regulations, and authority described in paragraphs (b)(1) through (b)(4) of this section are part of the required elements for the compliance and enforcement portion of a State or Tribal lead-based paint program.

(1) *Lead-based paint activities and requirements.* State or Tribal lead-based paint compliance and enforcement programs will be considered adequate if the State or Indian Tribe demonstrates, in its application at § 745.324(a), that it has established a

lead-based paint program containing the following requirements:

(i) Accreditation of training programs as described at § 745.325(b).

(ii) Certification of individuals engaged in lead-based paint activities as described at § 745.325(c).

(iii) Standards for the conduct of lead-based paint activities as described at § 745.325(d); and, as appropriate,

(iv) Requirements that regulate the conduct of pre-renovation notification activities as described at § 745.326.

(2) *Authority to enter.* State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint activities violations may occur for purposes of conducting inspections.

(i) State or Tribal officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities conduct business.

(ii) For the purposes of enforcing a pre-renovation notification program, State or Tribal officials must be able to enter a renovator's place of business.

(iii) State or Tribal officials must have authority to take samples and review records as part of the lead-based paint activities inspection process.

(3) *Flexible remedies.* A State or Tribal lead-based paint compliance and enforcement program must 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 the following:

(i) Warning letters, Notices of Non-compliance, Notices of Violation, or the equivalent;

(ii) Administrative or civil actions, including penalty authority (e.g., accreditation or certification suspension, revocation, or modification); and

(iii) Authority to apply criminal sanctions or other criminal authority using existing State or Tribal laws, as applicable.

(4) *Adequate resources.* An application must include a statement that identifies the resources that will be devoted by the State or Indian Tribe to the administration of the State or Tribal lead-based paint compliance and enforcement program. This statement

must address fiscal and personnel resources that will be devoted to the program.

(c) *Performance elements.* The performance elements described in paragraphs (c)(1) through (c)(7) of this section are part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(1) *Training.* A State or Tribal lead-based paint 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 the requirements of the particular discipline (e.g., abatement supervisor, and/or abatement worker, and/or lead-based paint inspector, and/or risk assessor, and/or project designer) 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 lead-based paint compliance and enforcement program must also implement a process for the continuing education of enforcement and inspection personnel.

(2) *Compliance assistance.* A State or Tribal lead-based paint 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 lead-based paint activities. The type and nature of this assistance can be defined by the State or Indian Tribe to achieve this goal.

(3) *Sampling techniques.* A State or Tribal lead-based paint compliance and enforcement program must have the technological capability to ensure compliance with the lead-based paint program requirements. A State or Tribal application for approval of a lead-based paint program must show that the State or Indian Tribe is technologically capable of conducting a

lead-based paint 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.

(4) *Tracking tips and complaints.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation.

(5) *Targeting inspections.* A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements. Such targeting must include a method for obtaining and using notifications of commencement of abatement activities.

(6) *Follow up to inspection reports.* A State or Tribal lead-based paint 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 a lead-based paint 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.

(7) *Compliance monitoring and enforcement.* A State or Tribal lead-based paint 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 lead-based paint compliance inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.

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(d) *Summary on Progress and Performance.* 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 lead-based paint program. A State or Tribal lead-based paint compliance and enforcement program must submit to the appropriate EPA Regional Administrator a report which summarizes the results of implementing the State or Tribal lead-based paint compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe (which would include the number of individuals and firms certified in lead-based paint 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 Indian Tribe to these activities. The report shall be submitted according to the requirements at § 745.324(h).

(e) *Memorandum of Agreement.* An Indian Tribe that obtains program approval must establish a Memorandum of Agreement with the Regional Administrator. The Memorandum of Agreement shall be executed by the Indian 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 Indian 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 Indian Tribe and any State.

§ 745.339 **Effective dates.**

States and Indian Tribes may seek authorization to administer and enforce subpart L pursuant to this subpart effective October 28, 1996.

PART 747—METALWORKING FLUIDS

Subpart A [Reserved]

40 CFR Ch. I (7-1-03 Edition)

Subpart B—Specific Use Requirements for Certain Chemical Substances

Sec.

747.115 Mixed mono and diamides of an organic acid.

747.195 Triethanolamine salt of a substituted organic acid.

747.200 Triethanolamine salt of tricarboxylic acid.

AUTHORITY: 15 U.S.C. 2604 and 2605.

Subpart A [Reserved]

Subpart B—Specific Use Requirements for Certain Chemical Substances

§ 747.115 Mixed mono and diamides of an organic acid.

This section identifies activities with respect to a chemical substance which are prohibited and requires that warnings and instructions accompany the substance when distributed in commerce.

(a) *Chemical substance subject to this section.* The following chemical substance, referred to by its premanufacture notice number and generic chemical name, is subject to this section: P-84-529, mixed mono and diamides of an organic acid.

(b) *Definitions.* Definitions in section 3 of the Act, 15 U.S.C. 2602, apply to this section unless otherwise specified in this paragraph. In addition, the following definitions apply:

(1) The terms *Act*, *article*, *chemical substance*, *commerce*, *importer*, *impurity*, *Inventory*, *manufacturer*, *person*, *process*, *processor*, and *small quantities solely for research and development* have the same meaning as in § 720.3 of this chapter.

(2) *Metalworking fluid* means a liquid of any viscosity or color containing intentionally added water used in metal machining operations for the purpose of cooling, lubricating, or rust inhibition.

(3) *Nitrosating agent* means any substance that has the potential to transfer a nitrosyl group (-NO) to a primary, secondary, or tertiary amine to form the corresponding nitrosamine.

(4) *Process or distribute in commerce solely for export* means to process or distribute in commerce solely for export