CHAPTER 33.1-15-24
STANDARDS FOR LEAD-BASED PAINT ACTIVITIES

Section
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33.1-15-24-01. Scope.

The sections of title 40 Code of Federal Regulations part 745, as they exist on March 8, 2021, which are listed under section 33.1-15-24-02 are incorporated into this chapter by reference. Any changes to the standards are listed below the title of the section.

History: Effective January 1, 2019; amended effective July 1, 2022.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-24-02. Standards for activities.

745.220 Scope and applicability is amended as follows:

(a) This subpart contains procedures and requirements for the accreditation of lead-based paint activities training programs, procedures, and requirements for the certification of individuals and the licensing of firms engaged in lead-based paint activities and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and licensed firms.

(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in subpart 745.223, except persons who conduct these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the federal government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all federal, state, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(d) While this subpart establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in this subpart requires that the owner or occupant undertake any particular lead-based paint activity.

745.223 Definitions

The terms United States environmental protection agency administrator and agency are deleted and replaced with department, except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, environmental protection agency means the United States environmental protection agency and administrator means the administrator of the United States environmental protection agency.

"Authorized state" is added and means a state that has been authorized in accordance with title 40 Code of Federal Regulations part 745, subpart Q, to administer and enforce sections 745.225, 745.226, and 745.227.

The acronym "EPA" is added and means the United States environmental protection agency or authorized state when used in the phrases "accredited by EPA" and "certified by EPA" or when referring to EPA accreditation of a training course or referring to EPA certification of an individual.

Certified firm is amended as follows: delete the words certified and certificate and replace with licensed and license.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, six years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facilities may include day care centers, preschools, and kindergarten classrooms.

"Department" means the North Dakota department of environmental quality.

"Elevated blood lead level" means three and five-tenths micrograms of lead per deciliter of whole blood for a single venous test.

"Lead-based paint activities" means in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

"Lead-based paint hazard" is amended as defined in 40 CFR 745.223 and as defined in 40 CFR 745.63 and means hazardous lead-based paint, dust-lead hazard or soil-lead hazard or any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator pursuant to TSCA section 403.

"Licensed firm" is added and means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a license approval pursuant to North Dakota Administrative Code chapter 33.1-15-24.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age six years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.

The following definitions are incorporated into section 745.223:

"Chewable surface" as defined in 40 CFR 745.63.

"Concentration" as defined in 40 CFR 745.63.

"Dripline" as defined in 40 CFR 745.63.

"Dust-lead hazard" as defined in 40 CFR 745.65(b).

"Friction surface" as defined in 40 CFR 745.63.

"Impact surface" as defined in 40 CFR 745.63.

"Paint-lead hazard" as defined in 40 CFR 745.65(a).

"Play area" as defined in 40 CFR 745.63.

"Renovation" as defined in 40 CFR 745.83.

"Soil-lead hazard" as defined in 40 CFR 745.65(c).

"Soil sample" as defined in 40 CFR 745.63.

"Wipe sample" as defined in 40 CFR 745.63.

"Work practice requirements" as defined in 40 CFR 745.65(d).

745.225 Accreditation of training programs: Target housing and child-occupied facilities.

745.225(a)(2) is deleted.

In 745.225(b)(4), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.225(f)(3)(v), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.225(h)(4)(iv), the number fifteen is deleted and replaced with ten.

In 745.225(h)(5), the references to section 14 of TSCA or by part 2 of this title is deleted and replaced with North Dakota Administrative Code section 33.1-15-01-16.

745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

745.226(a)(2) is deleted.

In 745.226(a)(6), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(b)(1)(ii) after EPA add: or an authorized state.

745.226(d) is deleted and replaced with: Certification based on prior training or prior certification with the United States environmental protection agency or an authorized state.

(1) Anyone who has completed an approved lead training course within nine months of the effective date of this rule and has not completed a certification examination will have six months from the effective date of this rule to complete a certification examination and make application to the state.

(2) Anyone who is certified by the United States environmental protection agency or an authorized state prior to the effective date of this rule will have six months from the effective date of this rule to apply for reciprocal lead-based paint certification and license in North Dakota. Reciprocity applicants should submit an application, proof of training and certification, and the appropriate fee in accordance with North Dakota Administrative Code section 33.1-15-24-04. Certification will be for a period of three years from the date of the last training course attended.

In 745.226(e)(3), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(f), delete the words certification and certified and replace with licensing and licensed.

745.226(f)(5) is deleted.

In 745.226(f)(6), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(f)(7), the reference to section 745.238 is deleted and replaced with North Dakota Administrative Code section 33.1-15-24-04.

In 745.226(h), delete the word certifications and replace with licenses.

In 745.226(h)(1)(i), delete the words certification and certified and replace with licensing and licensed.

In 745.226(h)(1)(iii), delete the word certification and replace with licensing.

In 745.226(i), delete the words certification and certified and replace with license and licensed when referring to a firm.

In 745.226(i)(4)(iv), the number fifteen is deleted and replaced with ten.

In 745.226(i)(5), the references to TSCA section 14 or by part 2 of this title is deleted and replaced with North Dakota Administrative Code section 33.1-15-01-16.

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

In 745.227(e)(3), certified firm is deleted and replaced with licensed firm.

745.227(e)(4) is deleted in its entirety and replaced with North Dakota Administrative Code section 33.1-15-24-03.

745.227(i) is amended as follows:

(i) Recordkeeping. All reports or plans required in this section shall be maintained by the licensed firm or individual who prepared the report for no fewer than three years. The licensed firm or individual shall also provide copies of these reports to the building owner who contracted for its services.

745.233 Lead-based paint activities requirements.

History: Effective January 1, 2019; amended effective July 1, 2022.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-24-03. Notification requirements.

1. **Notification.**

   a. Notification of commencement of lead-based paint abatement activities in a residential dwelling or child-occupied facility or as a result of a federal, state, or local order shall be given to the department ten days prior to the commencement of the abatement activities. The notification shall be provided on a form provided by the department.

   b. Notification of all lead-based paint accredited training courses offered in North Dakota shall be provided to the department at least ten days prior to the commencement of the course. Notification of completion of the course shall be provided to the department within ten days after the course has been completed. Both notifications shall be provided on a form provided by the department.

2. **Notification requirements.** Each owner or operator to which this chapter applies shall:

   a. Provide the department with written notice of intent to abate lead-based paint.

   b. Indicate whether the notice is original or a revised notification and update the notice as necessary, including but not limited to:

      (1) Update notification for new start dates.

      (2) Update notification for change in job location.

      (3) Update notification for cancellations.

   c. Postmark or deliver the notice as follows:

      (1) At least ten working days before abatement begins.

      (2) As early as possible before, but not later than, the following working day after abatement begins if the abatement is the result of an order from a federal, state, or local government.

3. **Required information.** Each owner or operator to which this chapter applies shall include the following information in the notification required by subsection 1:

   a. The name, address, and telephone number of the owner of the facility.

   b. The name, address, and telephone number of the abatement company.

   c. A description of the facility or the affected part of the facility being abated, including the size, age, and present use of the facility.

   d. An estimate of the amount of lead-based paint to be abated from the facility in terms of square feet.

   e. The location of the facility being abated, including the street address, city, county, and state if different from that required by subdivision a.

   f. The scheduled starting date and completion date of the abatement work.

   g. A description of the abatement work to be performed, including the abatement techniques and methods to be employed during the activities and a description of the affected facility components.

   h. The name and location of the waste disposal site where the lead-based paint containing waste material will be deposited.

   i. The name, address, and telephone number of the waste transporter.

   j. A signed statement by the lead-based paint contractor that all lead-based paint abatement supervisors and lead-based paint workers assigned to this project are certified by the department, in accordance with section 33.1-15-24-04.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21

33.1-15-24-04. Lead-based paint abatement licensing, certification, and course approval fees.

1. **Purpose.** This section establishes fees charged for the issuance of licenses and certificates by the department for lead-based paint activities. This section also establishes fees charged to recover costs associated with regulatory activities involving lead-based paint.

2. **Scope.** This section applies to a person or company who is an applicant for a lead-based paint certificate, license, or course approval issued by the department.

3. **Exemptions.**

   a. No application fees, license fees, amendment fees, or renewal fees shall be required for:

      (1) Nonprofit educational institutions are exempt from the fees prescribed in this section. This exemption does not apply to institutions which perform any of the following:

         (a) Remunerated services to other persons.

         (b) Activities performed under a government contract.

      (2) Public employees.

      (3) Firms which perform only in house lead-based paint activities.

   b. The department may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this section as it determines are authorized by law and are otherwise in the public interest.

4. **Payment of fees.** Any fees required by this subsection are not refundable.

   a. License, certification, and course approval fees. The appropriate licensing, certification, or course approval fee shall accompany the application when filed with the department.

   b. Renewal fees. The appropriate renewal fee shall accompany the renewal application when filed with the department.

   c. Special project fees. Special project means those projects submitted to the department for review and for which specific fees are not prescribed in this chapter. Special project fees will be based upon the current professional staff hourly rate. Fees for special projects are payable upon notification by the department that review of the project is completed.

   d. Method of payment. Fee payments shall be made by check or money order made payable to the department.

   e. Submittal of application and fee payment. The application for licensure or certification shall be submitted to:

      North Dakota Department of Environmental Quality
      Division of Waste Management
      4201 Normandy Street, 2nd Floor
      Bismarck, ND 58503-1324

5. **Failure by applicant or licensee to pay prescribed fees.** If the department finds that an applicant or a licensee has failed to pay a prescribed fee required in this section, the department will not process any application and may suspend or revoke any certification,

license, or course approval involved or may issue an order with respect to licensed activities as the department determines to be appropriate or necessary in order to carry out the provisions of this chapter and of the North Dakota Century Code.

6. **Schedule of fees for lead-based paint activities.**

   a. Applicants for lead-based paint licenses, certifications, and course approvals shall pay the following fees:

Fee Category	Term	Fee
Contractor license	3 years	$450.00
Individual certifications	3 years	$150.00 (per discipline)

   b. Training course approvals. Any training provider requesting a review of the provider's course for approval by the department shall submit a filing fee of one hundred fifty dollars and pay an application processing fee. The application processing fee will be based on the actual processing costs, including time spent by the department to conduct the course review and course audit, and any travel and lodging expenses the department incurs conducting these activities. Following the course review and audit, and after making a determination on the accreditation status of the course, a statement will be sent to the applicant listing the remaining application processing costs. The course provider must conduct a course in North Dakota for audit purposes within fifteen months of the submittal of the initial filing fee or the initial filing fee and any application processing fees paid will be forfeited.

History: Effective January 1, 2019; amended effective July 1, 2022.
General Authority: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04; S.L. 2017, ch. 199, § 21