

**CHAPTER 35**  
**LEAD-BASED PAINT MANAGEMENT RULES**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**35-101. Purpose**

The rules in this Chapter implement the Cherokee Nation Lead-Based Paint Program Act, L-98, 63 CNCA. Article 12, 1201, section 601 et seq.

**35-102. Basis and Authority**

(a) The rules in this Chapter were adopted pursuant to the Cherokee Nation Environmental Protection Act, 63 CNCA, 50 et seq. This Chapter shall become effective upon final rule adoption.

(b) The Cherokee Nation accepts and adopts in their entirety, unless otherwise specified in this Chapter, the requirements established by the Oklahoma Department of Environmental Quality, the Oklahoma Environmental Quality Code, and the Oklahoma Lead-Based Paint Management Act.

**35-103. Scope and Applicability**

(a) All firms and/or individuals who are engaged in lead-based paint services in target housing and child occupied facilities within the jurisdiction of the Cherokee Nation must comply with the rules and procedures contained in the Oklahoma Environmental Quality Code and the Oklahoma Lead-Based Paint Management Act and receive and maintain certification and accreditation through the Oklahoma Department of Environmental Quality. Once certification or accreditation by the State of Oklahoma is obtained, the firm or individual must then apply for approval/authorization from the Cherokee Nation.

(b) Exceptions would be persons who perform these services 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 services are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

**35-104. Terms**

Terms used in this Chapter shall have the meanings given them in Subchapter 2 of this Chapter unless the context clearly indicates otherwise. Any technical term not defined in this Chapter, or defined in Title 40 CFR Part 745, Lead-Based Paint Activities Regulations, published in the Federal Register, Volume 61, Number 169 on August 29, 1996, as amended, or the Oklahoma Environmental Quality Code or the Oklahoma Lead-Based Paint Management Act shall be defined by its generally accepted scientific meaning or its standard dictionary meaning.

**35-105. Consideration of Other Laws**

Compliance with the requirements of the Cherokee Nation Lead-Based Paint Management Rules, Title 40 CFR Part 745, Lead-Based Paint Activities Regulations, published in the Federal Register, Volume 61, Number 169 on August 29, 1996, as amended, the Oklahoma Environmental Quality Code, the Oklahoma Lead-Based Paint Management Act and the Cherokee Nation Environmental Quality Code shall not preclude compliance with any other applicable federal, state, or Cherokee Nation rule, regulation or law.

**35-106. Severability**

The provisions of this Chapter are severable, and if any part or provision hereof shall be held void, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this Chapter.

**35-107. Reference**

(a) Where reference is made to Oklahoma State rules, regulations, and laws, or Code of Federal Regulations, all citations and definitions contained therein are incorporated, unless otherwise indicated.

(b) In the event that there are inconsistencies or duplications in the requirements of the Oklahoma State rules, regulations and laws or Code of Federal Regulations, and the regulations in this Chapter, the State and Federal provisions shall prevail, except where the regulations in this Chapter are more stringent.

(c) When reference is made to Title 40 of the Code of Federal Regulation (40 CFR), it shall mean (unless otherwise specified) the Lead-based Paint Activities Regulations, 40 CFR Part 745, originally published in the Federal Register, Volume 61, Number 169 on August 29, 1996, and amended in the Federal Register, Volume 66, Number 4 on January 5, 2001.

~~(1)~~**1. Inclusion of CFR citations and definitions:** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference, unless specifically excluded.

~~(2)~~**2. Inconsistencies or duplications:** In the event that there are inconsistencies or duplications in the requirements of those provisions incorporated by reference in OAC 252:110-5-1 and the regulations in this Chapter, the provisions incorporated by reference shall prevail, except where the regulations in this Chapter are more stringent.

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**SUBCHAPTER 2. DEFINITIONS**

**35-201. Definitions**

(a) Definitions contained in the Oklahoma Administrative Code 252:110-5-1(1) are specifically incorporated herein by reference, unless otherwise indicated:

(b) Definitions contained in the Oklahoma Lead-Based Paint Management Act are specifically incorporated herein by reference, unless otherwise indicated:

(c) The following words and terms, when used in this Chapter, shall have the following meaning, unless otherwise indicated:

“**Act**” means Cherokee Nation Lead-Based Paint Program Act, LA-98, 63 CNCA Section 601 et seq.

“**Authorization**” means a certification, accreditation, or approval granted by the Department.

“**Business day**” means Monday through Friday with the exception of State holidays.

“**Department**” means the Cherokee Nation Environmental Protection Program Office.

“**Exam**” means a third party test, administered by the ODEQ when required for LBP certification.

“**Hazard Evaluator**” means a LBP Risk Assessor.

“**HUD procedures**” means the Housing and Urban Development’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995 and October 1997).

“**Instructor**” means any person who receives compensation from an accredited LBP training program for teaching all or a portion of a LBP training course.

“**LBP**” means lead-based paint.

“**LBP Contractor**” means an individual or firm certified by the state of Oklahoma as an inspector, risk assessor, abatement worker, project designer, supervisor, or firm.

“**Lead Office**” means the Cherokee Nation Environmental Protection Program Office. For purposes of this Chapter, the term “Lead Office” is synonymous with “Department”.

“**OAC**” means the Oklahoma Administrative Code

“**Quality Assurance Plan**” means a written description of quality assurance activities that will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.

“**Training provider**” means any organization of entity accredited under OAC 252:110, Lead-based Paint Management.

2-2 “**XRF instrument**” means an instrument using radiation from a source to stimulate radiation emission which can be analyzed to determine the presence of certain substances, including lead.

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### 35-202 Terminology related to 40 CFR

For purposes of interfacing with 40 CFR, the following terms apply:

(1) “**Administrator**” is synonymous with Executive Director

(2) “**EPA**” is synonymous with the Cherokee Nation Environmental Protection

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### SUBCHAPTER 3 INCORPORATION BY REFERENCE

#### 35-301 Incorporation by reference

The following Sections of 40 CFR Part 745, as they exist on July 1, 2004, and OAC 252:110-5-1 are, unless otherwise specified, incorporated by reference (as published in the Federal Register, Volume 61, Number 169 on August 29, 1996 and amended in the Federal Register, Volume 66, Number 4 on January 5, 2001):

(a) **Section 745.223.** Definitions, except the definition of “Interim certification.”

(b) **Section 745.225.** Accreditation of training programs: target housing and child-occupied facilities, except:

~~(B)1~~ Section 745.225(a) (2) which refers to application dates.

~~(C)2~~ Section 745.225(a) (3) which refers to accreditation deadlines.

~~(D)3~~ Section 745.225(b) (3) which refers to accredited training courses.

4) Section 745.225(c)(14)(iii) which refers to course notification means of submittal.

~~4)5~~ Section 745.225(e) (5) which refers to training programs offering only refresher courses.

~~5)6~~ Section 745.225(f) (1) which refers to timelines for renewal accreditation of training programs.

~~6)7~~ Section 745.225(f) (2) which refers to renewal accreditation deadlines.

(c) **Section 745.226.** Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities, except:

~~(A)1~~ Section 745.226(a) (2) which refers to application dates.

~~(B)2~~ Section 745.226(a) (5) which refers to enforcement dates.

~~(C)3~~ Section 745.226(b) (4) which refers to interim certification.

~~(D)4~~ Section 745.226(c) (3) which refers to interim certification.

~~(E)5~~ Section 745.226(d) which refers to certification based on prior training.

~~(F)6~~ Section 745.226(e) which refers to re-certification.

~~(G)7~~ Section 745.226 (f) which refers to certification of firms.

(4) **Section 745.227** Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities, except:

(A) Section 745.227(a) (1) which refers to performance dates.

(B) Section 745.227(e)(4)(vii) which refers to abatement notification means of submittal.

~~(A)~~

(5) **Section 745.233** Lead-based paint activities requirements.

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- (6) **Section 745.61** Scope and applicability
- (7) **Section 745.63** Definitions
- (8) **Section 745.65** Lead-based paint Hazards

#### **SUBCHAPTER 4. GENERAL REQUIREMENTS OF AUTHORIZATIONS**

##### **35-401. Scope**

(1) **No LBP service required.** Nothing in the Act or this Chapter requires any property owner to inspect, evaluate, test for LBP, or reduce or abate LBP or LBP hazards at his property.

(2) **Accreditation.** All training providers must first obtain accreditation by the State of Oklahoma through the Oklahoma Department of Environmental Quality. Once accreditation by the State of Oklahoma is obtained the training provider must then apply for authorization from the Lead Office of the Cherokee Nation, prior to offering or conducting training within the jurisdiction of the Cherokee Nation.

(3) **Certification.** All individuals and/or firms must first obtain certification by the State of Oklahoma through the Oklahoma Department of Environmental Quality. Once certification by the State of Oklahoma is obtained the firm and/or individual must then apply for authorization from the Lead Office of the Cherokee Nation, prior to performing lead-based paint activities within the jurisdiction of the Cherokee Nation. Sole proprietorship must be authorized as both a firm and then as an individual as per OAC 252:110-5-1(3) and 252:110-11-5.

(4) **Standards.** LBP contractors who have received authorization by the Lead Office of the Cherokee Nation shall be required to follow the standards for the performance of LBP services outlined in the Oklahoma Administrative Code when performing LBP services within the Cherokee Nation.

##### **35-402. Applicable Dates**

(a) Applicants must meet the dates established by OAC 252:110-7-2, to offer services in the Cherokee Nation.

(b) This Chapter shall become effective upon final rule adoption.

##### **35-403. Compliance**

(1) **Duty to comply.** Authorized training programs and certified firms and/or individuals shall comply with the requirements of 63 CNCA Section 601, OAC

252:110, all corresponding rules including this Chapter, and any conditions of the Cherokee Nation Lead Office issued LBP authorizations and final orders.

(2) **Failure to comply.** Failure to comply with any such law, rule, authorization or order may result in administrative enforcement and penalties, denial of applications, suspension or revocation of authorization, prosecution and/or any other available remedy in accordance with 63 CNCA, Article 12, 1201 et seq. and Title 63, CNCA, 50 et seq.

(3) **Compliance and enforcement inspections.** For purposes of determining and facilitating compliance with the requirement of 63 CNCA Section 601 and this Chapter, any authorized representative of the Lead Office of the Cherokee Nation, after identifying himself, shall have the right to inspect, monitor and evaluate LBP services (certification) and training (accreditation), review records required to be kept by this Chapter, report identified deficiencies to the holder, and require corrective action.

#### **35-404. Application for Authorization**

Once accreditation or certification is obtained from the State of Oklahoma, the firm or individual must then apply for authorization from the Lead Office of the Cherokee Nation (See enclosed application). The Lead Office will check with ODEQ for certification listings after the March 31<sup>st</sup> renewal date and after the August 31<sup>st</sup> renewal deadline for accreditation.

(1) **Fees.** There is no fee assessed for the application for authorization submitted to the Lead Office of the Cherokee Nation. Funds for the operation of the Lead Program will come from Federal funding or from the Cherokee Nation's general fund and I.H.S. compacted environmental program funds

(2) **Forms.** Forms for the application, reports and notices required by this Chapter are available from the Lead Office of the Cherokee Nation, upon request.

(3) **Applicant signature and verification.** An application (see enclosed example) shall be signed by the applicant and contain verification stating that the application was prepared and submitted under his direction or supervision and the information it contains is, to the best of his knowledge and belief, true, accurate and complete. In addition, the applicant will be required to include a copy of their approved certification from the State of Oklahoma. Since ODEQ is verifying other supporting documentation the Lead Office will accept a copy of DEQ's approval to support this information.

(4) **Withdrawal.** An applicant may withdraw an application submitted for approval by the Cherokee Nation at any time with written notice to the Lead Office of the Cherokee Nation.

#### **35-405. Application for Authorization Renewal**

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Once renewal of accreditation or certification is obtained from the State of Oklahoma the firm or individual must then apply for authorization renewal from the Lead Office of the Cherokee Nation on a yearly basis.

(1) **Application.** An application for renewal of a Cherokee Nation authorization shall include documentation (copy of approved certification from the state of Oklahoma) that the applicant has received an approved renewal from the state of Oklahoma (see enclosed example). Proof of renewal application from the DEQ will fulfill all Lead Office requirements for supporting documentation.

(2) **Criteria for renewal.** The basis for renewal shall include a timely and complete application for renewal, cooperative participation in compliance inspections, compliance as specified in Subchapter 4, 3-3 of this Chapter, approved renewal from the State of Oklahoma, and any other specific renewal criteria set forth in this Chapter.

(3) **Effect of renewal application on existing authorization.** A complete and timely (January 15 to March 31 of the renewal year) renewal application along with a copy of the approved certification from the state of Oklahoma filed with the Lead Office of the Cherokee Nation shall extend the existing authorization until the Lead Office either issues or denies the renewal.

(4) **Notice not required.** An authorized holder is responsible for renewal or reactivation of his own authorization regardless of notification. After the late renewal period of April 30<sup>th</sup> of each year, a master list of completed authorizations will be obtained from DEQ. To be authorized by the Lead Office an individual or firm must be on this list.

#### **35-406. Application Review**

(1) **Review procedure.** The CN Lead Office will review an application along with evidence of approval by the state of Oklahoma, and shall give written notice to the applicant of deficiencies and shall specify a date the necessary information is due (see enclosed DEQ letter).

(2) **Automatic termination.** If, within six months of DEQ notice the applicant fails to provide the information, the entire application shall become void for use in the Cherokee Nation unless a time extension has been granted by the DEQ and Lead Office for good cause.

#### **35-407. Issuance, Denial, Revocation or Suspension**

(a) **Basis for issuance.** Authorizations shall only be issued to applicants who have submitted a complete application, and a copy of an approved certification by the state of Oklahoma, and have satisfactorily demonstrated substantial compliance as outlined in this Chapter, and with other applicable requirements.

(b) **Basis for denial.** No authorization shall be issued to any applicant who:

(1) Fails to satisfy any applicable requirement of OAC 252:110 or this Chapter;

(2) Is not in substantial compliance with the terms and conditions of his expiring authorization or any final order issued to him unless special conditions have been imposed on the new authorization to assure compliance. (The Lead Office will contact DEQ after the April 30<sup>th</sup> renewal deadline to ensure the applicant has met DEQ qualifications.).

(3) Purposely omitted material facts from any authorization application, as amended or supplemented;

(4) Had an authorization revoked in whole or suspended and not reinstated within one year preceding the date of the application;

(5) Had an application to the DEQ and/or Cherokee Nation denied within the one (1) year preceding current application; or

(6) Has not paid monies owed to the DEQ and/or Cherokee Nation;

(7) Has not forwarded copies of DEQ authorization to the Lead Office for review and posting.

(c) **Basis for revocation or suspension.** Authorizations may be revoked or suspended for good cause. For additional provisions relating to revocation or suspension, see Subchapter 3 of these rules.

**35-408. Conditions of Authorization**

(a) **Specific conditions.** The Lead Office may establish conditions in any authorization to ensure compliance with this Chapter and OAC 252:110.

(b) **Conditions applicable to all authorizations.** In addition to the requirements of this Chapter, the following conditions shall apply to all authorizations.

(1) **Effect of authorization.** An authorization does not convey any property rights of any sort of any exclusive privilege, nor does it constitute authorization of any invasion of other private rights, or any infringement of federal, state, or local law or rules. Issuance of any LBP authorization by the Lead Office shall not imply Lead Office approval of any LBP activity or services performed by the holder.

(2) **Practices and procedures.** All LBP operation practices and procedures used by the holder shall comply at all times with this Chapter, CNCA 63, Article 12, 1201 and the Oklahoma Administrative Code.

- (3) **Duty to mitigate.** The holder shall take all reasonable steps to minimize or correct any adverse impact on the environment, health and safety resulting from work performed pursuant to the authorization.
- (4) **Consent to conditions.** Beginning LBP services under an authorization means the holder consents to all of its conditions.
- (5) **Transferability.** An authorization cannot be transferred to another person, training program or firm.
- (6) **Severability.** The provisions of an authorization are severable, and if any part or use of a part is held invalid by a court of law, the remaining parts and uses shall remain valid.
- (c) **Amendment and modification.** The Lead Office may amend or modify or require the amendment or modification of a LBP authorization for cause, or the holder may request amendment or modification at any time.
- (1) **Notice and reporting requirements.** A holder shall give the Lead Office written notice within 30 days after a change in the holder's mailing address or telephone or fax numbers and of any other change when required by this Chapter.
- (2) **Errors and omissions.** When a holder becomes aware that a material fact was submitted erroneously or omitted from an authorization application or in any report submitted by reason of authorization to the Lead Office (or to a client), the holder shall promptly submit correct facts or information to the Lead Office.
- (d) **Duty to provide information.** A holder shall furnish to the Lead Office, within a time specified, any information from required records which the Lead Office may request to determine:
- (1) whether cause exists for amending, suspending, or revoking his authorization;
  - (2) his compliance with the authorization; or
  - (3) whether the authorization should be renewed

### **35-409. Accreditation Requirements**

#### **35-409.1. Accreditation required**

- (a) **Objective.** Recognize and facilitate uniform, consistent and quality-controlled training programs offered and taught to persons seeking discipline-specific training which meets the DEQ's certification requirements related to training in LBP services.
- (b) **Eligibility.** DEQ accreditation is available only to educational institutions and government agencies offering on-going and continuous LBP training programs. Accreditation is not available to training programs that are only offering one or more LBP training courses on a one-time-only basis or for a period of less than 12 months. Training programs shall not receive accreditation for a refresher course if they do not also receive accreditation for the discipline specific initial training course.

**4-9.4(c) Claims of accreditation status.** Only a program accredited by DEQ and authorized by the Cherokee Nation Lead Office may advertise itself as an accredited LBP training program in the Cherokee Nation.

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### **35-409.2 Programs accredited by other states or agencies**

(a) **Recognition and approval required.** Prior to offering or conducting a LBP training course in the Cherokee Nation, a program accredited by another state or agency must apply for and receive recognition and approval by the DEQ as a DEQ accredited LBP program and must also receive authorization by the Cherokee Nation Lead Office (see enclosed application).

(b) **Application.** An application for approval and recognition to the Lead Office shall be made in the same form and manner as an application for accreditation to the DEQ.

(c) **On-site evaluation.** Shall be performed by DEQ for Oklahoma and Lead Office approval and recognition. The Cherokee Nation Lead Office will approve the training provider as long as they are recognized by the DEQ.

### **35-409.3 Records and notices**

(a) **Notice of significant changed conditions.** An authorized program shall give written notice to the Lead Office of any prospective or current course or program changes which may adversely affect any DEQ administered exam.

(b) **Notice of course offerings.** At least (5) days prior to teaching a course in the Cherokee Nation, a training program shall notify the Lead Office in writing of the course name, date, and location(s).

(c) **Notice of course cancellations.** Within twenty-four (24) hours of course cancellation to be held in the Cherokee Nation, a training program shall notify the Lead Office in writing of the cancellation of a scheduled course and provide notice to the students enrolled therein.

**4-9.5(d) Notice of accreditation status.** A DEQ accredited program who has been authorized by the Cherokee Nation Lead Office to offer and perform training in the Cherokee Nation must give written notice to the Lead Office of the suspension or revocation of any part of its accreditation. In addition, the Lead Office may require a training program to give written notice to its present or prospective students of the suspension or revocation of any part of its authorization. The Lead Office will ensure that training programs are in good standing with DEQ by requesting a copy of the DEQ letter of accreditation (see enclosed letter).

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(e) **Personnel changes.** An authorized program shall submit to the Lead Office the information required in Subchapter 4 of this Chapter, as applicable, for each training manager or instructor proposed to be added to the program after it is authorized and request approval of the new personnel. If the Lead Office does not deny the request within two (2) weeks of receipt, the request shall be deemed approved. A program shall also give the Lead Office written notice of the name

of any instructor no longer teaching in the program and the title of the affected course(s), within two (2) weeks of the change.

#### **35-409.4 Applications**

Applications for accreditation to the Lead Office must meet all requirements of OAC 252:110 and present accreditation letter from DEQ to Lead Office (see enclosed letter).

#### **35-409.5 Provisional accreditation**

The Lead Office will allow training providers with provisional approval from DEQ to provide training services within the Cherokee Nation. The provisional approval will last no longer than the 18 months allowed by the DEQ in OAC 252:110-9-5.

#### **35-409.6 Basis for issuance, denial, revocation or suspension**

(a) **General.** In addition to provisions of Subchapter 3-7, authorization may not be issued to any applicant who has an owner, stockholder, officer or training manager who was or is currently affiliated with another training program whose accreditation was suspended or revoked by an accrediting entity within the 12 months prior to application or who has been subject to any enforcement proceedings.

(b) **Specific.** An authorized program shall not:

(1) Fail to follow DEQ-approved curricular course content except for the implementation of required updates:

(2) Falsify the results of student performance:

(3) Misrepresent the contents of a training course to the Cherokee Nation and/or the student population;

(4) Fail to submit required information or notifications in a timely manner, comply with a compliance schedule, or take other action required by this Chapter:

(5) Fail to maintain required records:

(6) Falsify accreditation records, instructor qualifications, or other accreditation information; or

(7) Permit any person other than an approved instructor to act as a principal instructor or have the responsibility thereof.

#### **35-409.7 Renewal**

(a) **Criteria for renewal.** In addition to the requirements of Subchapter 3-5, authorization renewal shall be based on documented implementation of

compliance updates and other program modifications, and satisfactory course and instructor evaluations.

(b) **Failure to renew.** Any authorization for which a renewal application has not been filed with the Lead Office by 5 p.m. on or before August 31 shall expire at 5 p.m., August 31.

#### **35-409.8 Fees**

There shall be no fees assessed for authorization from the Lead Office of the Cherokee Nation.

### **SUBCHAPTER 5. ADDITIONAL LBP CERTIFICATION REQUIREMENTS**

#### **35-501. Certification Requirements**

(1) **Certifications required.** Authorization by the Cherokee Nation is required for all Inspectors, Risk Assessors, Abatement Workers and Supervisors, and independent contractors (individuals and firms) who perform or offer to perform, LBP services in target housing and child-occupied facilities in the Cherokee Nation. Sole proprietorships must be authorized as both a firm and an individual as per OAC 252:110-5-1 (3) and 252: 110-11-5.

(2) ~~(2)~~ **Failure to become certified.** No person or firm shall advertise or otherwise present himself as a certified LBP contractor or perform, or offer to perform LBP services in target housing and child occupied facilities in the Cherokee Nation prior to becoming authorized as such by the Lead Office of the Cherokee Nation.

(3) **Certification for approved instructor.** Department will not issue initial or renewal LBP certifications to applicants who submit LBP training certificates from those training courses that they have conducted as an instructor or participated in as a guest speaker.

#### **35-502. Affidavit**

An applicant seeking authorization as an LBP Contractor by the Cherokee Nation shall by affidavit verify that:

- (a) Any employee or subcontractor performing LBP services in the Cherokee Nation will have been authorized by the Lead Office prior to such performance;
- (b) The applicant and employees or subcontractors thereof will perform LBP services and maintain records thereof in accordance with all applicable local, state, tribal and federal standards, and

(c) The applicant will or will not obtain and maintain the required level of insurance and bonding required by the terms of a LBP agreement or contract for a specific project.

**35-503. Training Requirements for Initial Authorization in the Cherokee Nation**

Applicant must meet all requirements outlined in the OAC and must obtain initial certification from DEQ prior to applying for authorization from the Cherokee Nation.

**35-504. Certification Examination**

The Cherokee Nation will not be offering a certification exam. All applicants must meet all requirements outlined in the OAC and must obtain initial certification from DEQ, prior to applying for authorization from the Cherokee Nation.

**35-505. Certification of Firms**

(a) **Required.** All firms which perform or offer to perform any LBP services in the Cherokee Nation shall be certified by the DEQ and authorized by the Lead Office.

(b) **Affidavit.** A firm seeking authorization shall submit to the Lead Office a copy of DEQ certification along with a letter attesting:

(1) that the firm shall only employ appropriately certified employees to conduct LBP services; and

(2) that the firm and its employees shall follow the work practice standards for conducting LBP services as established in the Chapter.

(c) **Timelines for approval or denial.** From the date of receiving the firm's authorization application, the Lead Office shall have 90 days to approve or disapprove the firm's request. Within that time, the Lead Office shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) **Records maintenance.** The firm shall maintain all records pursuant to the requirements established in this Chapter and the OAC.

**35-506 Renewal of Authorization**

An applicant requiring authorization renewal from the Lead Office shall first obtain renewal from the DEQ and provide the Lead Office of the Cherokee Nation with proof of the DEQ approved renewal (see enclosed application). Once

the applicant submits a copy of his DEQ renewal the Cherokee Nation will issue Lead Office certification (see enclosed certification). The Lead Office will contact DEQ after the April 30<sup>th</sup> deadline to obtain a list of firms and or individuals that have applied for renewal. Those firms and or individuals that do not meet this deadline will have their Lead Office LBP certification terminated.

### **35-507 Certification Documentation and Display**

Once an applicant has demonstrated to the Lead Office that they are certified by the DEQ, the Lead Office will issue a signed certificate to be displayed at the office of the applicants who wish to perform lead-based paint activities in target housing and child occupied buildings within the Cherokee Nation.

### **35-508 Applicability and Exemption**

The Lead Office of the Cherokee Nation will not assess fees from applicants, but applicants must meet the fee requirements of OAC 252:110-11-9 through OAC 252:110"11-16.

## **SUBCHAPTER 6. ADDITIONAL WORK PRACTICE STANDARDS**

### **35-601. Scope and Applicability**

OAC 252: 110-5-1 (4) and (5) and this Subchapter establish the minimum standards for the performance of LBP services in target housing and child-occupied facilities in the Cherokee Nation for persons certified by the DEQ and authorized by the Lead Office.

### **35-602. Conflict of Interest Prohibited**

To confer reliability of clearance testing results, no individual inspector or risk assessor shall perform project clearance testing for any individual or any other person with whom he has any economic relationship or other relationship that might create a conflict of interest.

### ~~6-3. Notice of Lead-Based Paint Projects~~

~~(1) **Initial notice.** An authorized contractor shall give at least 5 days written notice to the Lead Office before starting an abatement project at child occupied facilities and /or target housing within the Cherokee Nation. Upon written request, a shorter time may be granted by the Lead Office for emergency situations. For soil abatements, 15 days written notice shall be required. The notice shall at a minimum provide:~~

~~I. The name, address and telephone number of the contractor;~~

~~II. The name, address and telephone number of the supervisor in charge;~~

~~III. The name, location and address of the facility and the name and telephone number of the facility owner or manager;~~

~~IV. A brief description of services to be performed;~~

~~V. The estimated dates of commencement and completion; and~~

~~VI. A copy of the pre-abatement plan/project design.~~

~~(2) **Subsequent notice.** An authorized contractor shall give written notice to the DEQ and the Lead Office of any significant changes enlarging the scope of the project or affecting the projected completion date.~~

**35-604. Activities Report**

A quarterly report of all LBP services performed in target housing and child-occupied facilities by authorized persons in the Cherokee Nation must be submitted to the Lead Office. These reports will follow DEQ format (see enclosed) and are due by the 10<sup>th</sup> day of January, April, July and October.

**35-605. Testing Methodologies**

(1) **Quality control.** Testing for the presence of LBP shall be conducted by documented methodologies using quality control procedures. Procedures for sample collection, transfer, and testing shall be performed according to applicable HUD and EPA procedures and guidelines.

(2) **Laboratory analysis.** Only laboratories recognized by the U.S. Environmental Protection Agency pursuant to Section 405 (b) of TSCA may conduct laboratory analysis on paint, soil and dust as required by this Chapter and the OAC. A chain of custody document must accompany each sample.

(3) **X-ray fluorescence spectroscopy (XRF).** XRF instruments may be used for on-site lead detection. If inconclusive or questionable results are obtained from XRF testing, testing of paint chip samples by a qualified laboratory shall be conducted. This paragraph shall not be construed as to relieve the user of any duty to comply with other applicable requirements, including but not limited to the licensing requirements of OAC 252:410-19 [X-ray Fluorescence Instruments Used for Lead-based Paint Detection](#)

**35-606. Waste Management, Handling and Disposal**

All hazardous LBP waste resulting from LBP services shall be managed, handled and disposed in accordance with the requirements of the Title 40 of the Code of Federal Regulations and Cherokee Nation law, and rules promulgated thereunder.

## SUBCHAPTER 7. ENFORCEMENT

### 35-701. Enforcement Procedures

Enforcement procedures for all violation levels on Tribal lands will be conducted in accordance with the following procedures:

- a) Upon receipt of complaint or knowledge of malfeasance with any of the regulations contained herein, the Lead Office of the Cherokee Nation will notify the involved individual(s)/firm(s) and perform and document the necessary investigative activities to determine the merit and severity of the accusations/violations (respectively). In cases of alleged malfeasance of these regulations by the Lead Office of the Cherokee Nation, the aforementioned investigative activities and documentation will be conducted by the Director of Environmental Programs of the Cherokee Nation.
- b) Upon determination substantiated violations of this code were committed, the offending entity(s) will receive a fact-finding hearing conducted by the Executive Director of the Community Development Division of the Cherokee Nation. This documented hearing will afford the accused entity(s) and the Lead Office of the Cherokee Nation (or in cases involving this office, the Director of Environmental Programs of the Cherokee Nation) to answer allegations, explain conduct, and offer restitution proposals.
- c) The Executive Director of the Community Development Division of the Cherokee Nation shall, at the conclusion of the aforementioned hearing, have the responsibility of substantiated malfeasance determination. Upon such determination of violations of this code, the Executive Director has the option of:
  - 1) Requiring the offending entity(s) to make restitution activities including, but not limited to, refund of all monetary fees paid to the offending entity or re-performance of the questioned activity in accordance with the policies and procedures of this code.
  - 2) Suspending the offending entity(s) Cherokee Nation Lead Based Paint certifications for a time period assigned by the Executive Director based upon his/her discretion and the severity of the violation.

All enforcement procedure documentation will be forwarded to the appropriate entity(s) of Region VI of the U.S. Environmental Protection Agency.

- d) The Principal Chief of the Cherokee Nation retains the authority to modify this section upon his discretion to assure the health and safety of the Cherokee Population.
- e) 1) Determining significance. The significance of violations shall be determined according to the following general criteria:

Level I - Deviation from permit, order, statutory or regulatory requirements such that either (i) there is actual significant harm or a substantial potential risk of significant harm to human health or the environment, or (ii) the ability of the

regulatory program to protect human health and the environment from actual significant harm or substantial potential risk is fundamentally impaired.

Level II - Deviation from permit, order, statutory or regulatory requirements which does not meet the criteria for Level I but which is significant enough to warrant a systematic and progressive enforcement response by the Lead Office to assure correction within a reasonable time period. Level II violations may be escalated to Level I violations due to protracted failure to comply, or if their cumulative effect meets the general criteria described in Level I above. Additionally, Level II violations may be addressed within a Level I enforcement action if combined with Level I violations.

Level III - Deviation from permit, order, statutory or regulatory requirements which is of such a minor character that a systematic and progressive enforcement response by the Lead Office is deemed unnecessary. However, Level III violations may be escalated to Level II in the event of documented long-term recalcitrance, or if their cumulative effect meets the general criteria described in Level II, above. Additionally, Level III violations may be addressed within a Level, I or Level II enforcement action if combined with Level I or Level II violations.