

ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-GA; FRL-6032-7]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Georgia's Authorization Application**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 27, 1998, the State of Georgia submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Georgia's application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. Georgia has provided a certification that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Georgia.

DATES: Comments on the authorization application must be received on or before December 18, 1998. Public hearing requests must be received on or before November 17, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number "PB-402404-GA" (in duplicate) to: Environmental Protection Agency, Region IV, Air, Pesticides and Toxics Management Division, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104. Comments, data, and requests for a public hearing may also be submitted electronically to: bates.keith@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Keith Bates, Project Officer, Air, Pesticides and Toxics Management Division, Environmental Protection Agency, Region IV, Atlanta Federal

Center, 61 Forsyth St., SW., Atlanta, GA 30303-3104, Telephone: (404) 562-8992, e-mail address: bates.keith@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General

stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Georgia's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following is a summary of Georgia's training, certification, accreditation and enforcement program.

In 1994, the Georgia General Assembly passed the Lead Poisoning Prevention Act of 1994, O.C.G.A. 31-41-4, *et seq.*, as amended. This statute designated the Department of Natural Resources as the State agency responsible for implementation, administration, and enforcement of the Georgia Lead-Based Paint Certification Program. The Commissioner designated these duties to the Environmental Protection Division. The Act was amended by the Georgia General Assembly in 1998. On June 24, 1998, the Board of Natural Resources adopted the Lead-Based Paint Abatement, Certification and Accreditation Rules which became final on July 16, 1998.

The Lead-Based Paint Abatement, Certification and Accreditation Rules are applicable to all individuals and firms who are engaged in lead-based paint activities, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner while these activities are being performed, or a child residing in the residential dwelling has been identified as having an elevated blood level.

The rules contain procedures and requirements for the accreditation of lead-paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and standards for performing such activities. The rules also contain requirements that all lead-based paint

activities in target housing and child-occupied facilities shall be performed by certified individuals and firms.

The State is authorized to assess penalties and revoke or suspend any license, certification, approval, or accreditation issued in accordance with the State program. Enforcement activities include audits of training providers, inspection of lead-based paint activities, and investigation of tips and complaints.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number "PB-402404-GA." Copies of this notice, the State of Georgia's authorization application, and all comments received on the application are available for inspection in the Region IV office, from 8 a.m. to 4:45 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA Region IV Library, Environmental Protection Agency, Atlanta Federal Center, 9th Floor, 61 Forsyth St., SW., Atlanta, GA.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at:

bates.keith@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will

also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "PB-402404-GA." Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals

containing significant unfunded mandates."

Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 16, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

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