

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 authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA authorization, by submitting a letter signed by the Governor or the 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 until such time as EPA disapproves the program application or withdraws the application.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether North Dakota's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If EPA finds that the program does not meet the requirements for authorization of a state program, EPA will disapprove the program application, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in North Dakota.

II. State Program Description Summary

This summary is provided in accordance with 40 CFR 745.324(a)(4). The applicant has provided the following summary of their lead program. The 2001 North Dakota Legislative session adopted changes to North Dakota's Century Code (NDCC) 23-25, "Air Pollution Control Law." These changes authorized North Dakota's Department of Health (NDDH) to adopt and enforce certain requirements of 40 CFR part 745, subpart L, into the North Dakota Administrative Code (NDAC). The NDDH began amending the NDAC in January 2002. The amendments to the NDAC were adopted in accordance with the administrative rule practices requirements contained in NDCC 28-32 titled "Administrative Agencies Practice Act."

On April 19, 2002, a public hearing was held to consider comments on the proposed administrative rule amendments. Comments were accepted

for 30 days before and 30 days after the public hearing. A regulatory analysis including the classes of people probably affected, probable impact including economic impact, probable impact to the Department and alternative methods considered were prepared and made available prior to the start of the public comment period. In addition, the Department prepared a takings assessment (economic analysis) and a stringency determination in conjunction with the regulatory analysis.

On June 18, 2002, the State Health Council adopted the final rule. On August 1, 2002, the North Dakota Legislative Council published the North Dakota Administrative Code (NDAC) 33-15-24 titled "Standards for Lead-Based Paint Activities," to adopt certain provisions of 40 CFR part 745, subpart L, into the North Dakota Administrative Code. The rule became effective September 1, 2002.

On August 15, 2002, a public hearing was held regarding North Dakota's intent to seek EPA authorization of its lead-based paint program. Comments were accepted for 30 days before and 30 days after the public hearing. No comments were received concerning North Dakota's intent to seek EPA authorization of its program. NDAC 33-15-24 references with minor changes the requirements contained in 40 CFR 745.220, "Scope and Applicability," § 745.223, "Definitions," § 745.225, "Accreditation of Training Programs: Target Housing and Child-Occupied Facilities," § 745.226, "Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities," § 745.227, "Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities," and § 745.233, "Lead-Based Paint Activities Requirements." Minor changes were made to these sections. The term "certification of companies" was replaced with "licensing of companies." The term "certification" was reserved for individuals. The terminology change was made for clarification and ease of implementation when discussing requirements with the regulated community. All references to EPA grandfather clauses, which preceded the rulemaking, were deleted. Definitions including chewable surface, dripline, lead-based paint hazard, wipe sample, dust lead hazard, paint lead hazard, soil lead hazard, work practice requirement and renovation were adopted from 40 CFR 745.63, 745.65, and 745.83. Elevated blood lead level concentration was changed from 20 micrograms per deciliter to 10 micrograms per deciliter to follow the

U.S. Center for Disease Control (CDC) guidelines. Notification requirements were added to NDAC 33-15-24-03. The notification requirements contain provisions for notification to the State prior to beginning lead-based paint abatement activities and prior to conducting lead-based paint abatement courses. Also, fees for certification of individuals, licensing of companies and accreditation of lead-based paint courses were established in NDAC 33-15-24-04.

Several other minor changes were made. These changes are discussed in more detail in a document titled, "Summary of Proposed North Dakota's Lead-Based Paint Rules, January 2002." The North Dakota Lead Activities program will be administered by the North Dakota Department of Health, Division of Air Quality. The North Dakota Department of Health began implementing its program on the day the rule became effective, September 1, 2002. Additional information, copies of the documents referenced above and application forms for licensing and certification may be obtained by contacting the North Dakota Department of Health at (701) 328-5188.

In accordance with 40 CFR 745.324(d), "Program Certification," the Governor of North Dakota submitted a self-certification letter to the EPA Administrator on September 26, 2002, certifying that the State program meets the requirements contained in 40 CFR part 745.324(e)(2)(i) and (e)(2)(ii). Included in the application was a letter from the Attorney General of North Dakota, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402. Therefore, as of September 26, 2002, the State of North Dakota is authorized to administer and enforce the lead-based paint program under TSCA section 402, until such time as the Administrator disapproves the application or withdraws the State's Program authorization.

III. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(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.