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## II. Background

### A. What Action is the Agency Taking?

The State of Mississippi has been operating its Lead-Based Paint Program under interim approval since June 28, 1999, with interim approval expiring on June 28, 2002. On December 17, 2001, the State of Mississippi submitted an application for EPA final approval of its Lead-Based Paint Program. Notice of Mississippi’s December 17, 2001, application, a solicitation for public comment regarding the application, and background information supporting the application were published in the **Federal Register** on July 19, 2002 (67 FR 47541) (FRL-7187-5). No public comments were received regarding any aspect of Mississippi’s application.

At the time of the December 2001 application, two deficiencies in the State’s audit privilege and penalty mitigation statutes at Mississippi Code Annotated sections 49-2-71 and 49-17-43(g) impaired the State’s ability to provide adequate enforcement in criminal proceedings and investigations and in assessment of appropriate penalties, thus preventing the Agency from fully approving the program. During the 2003 legislative session, however, the State amended the audit privilege and penalty mitigation statutes, which corrected the deficiencies identified by EPA. On

January 21, 2003, the State of Mississippi supplemented its December 17, 2001, application with a discussion addressing how the amendments to Mississippi’s audit privilege and penalty mitigation statutes, Mississippi Code Annotated sections 17-17-29, 49-2-71, 49-17-43, and 49-17-427, resulted in the State Lead-Based Paint Program providing adequate enforcement. The supplement also contained a statement certifying the Lead-Based Paint Program is at least as protective as the Federal program and provides adequate enforcement.

Based upon the State’s certification, and EPA’s review and assessment of Mississippi’s complete application, Mississippi has successfully demonstrated that the State’s Lead-Based Paint Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Therefore, by this notice, EPA is announcing approval of the application and authorization of the State of Mississippi’s Lead-Based Program, effective January 21, 2003.

### B. What is the Agency’s Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 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. 2681-2692), titled *Lead Exposure Reduction*.

Section 402 of TSCA (15 U.S.C. 2682) 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 of TSCA (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

In the **Federal Register** of 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 (15 U.S.C. 2684(h)), 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. 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 (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

## III. Federal Overfiling

Section 404(b) of TSCA, 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. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

## V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United