

manufacturers' specifications, are damaged or rejected for use.

Another commenter stated that the definition of C&D landfill as proposed could be interpreted to mean that conditionally exempt small quantity generator waste could be accepted in a 40 CFR part 257 Subpart A facility. The commenter suggested a wording change to eliminate this possible misinterpretation.

EPA does not intend that a C&D landfill be allowed to receive conditionally exempt small quantity generator wastes if the C&D landfill meets the requirements of 40 CFR part 257 Subpart A, but does not meet the requirements of part 257, subpart B. Therefore, the Agency has changed the definition of C&D waste landfill to eliminate any potential confusion. The definition has been changed to clarify that conditionally exempt small quantity generator wastes can only be disposed of in a C&D landfill that meets the requirements of 40 CFR part 257, Subpart B.

Effect on State Programs

The state association commenter indicated that it is important that EPA be explicit that states are not required to amend their programs to incorporate today's rule; however the commenter also suggested language to assure States that their prior approved programs will not be reopened regardless of whether they adopt today's rule or not. EPA agrees with the comment and has revised the language in Section V. of today's preamble to make this clear.

Lead-Contaminated Soils

Lastly, a commenter stated that EPA had missed a golden opportunity to allow lead-contaminated soils to be managed similarly and requested that EPA move expeditiously to craft a rule to allow lead-contaminated soils to be disposed of in C&D and municipal solid waste landfills. The commenter claimed that the disposal of lead-contaminated soils in C&D landfills and municipal solid waste landfills is environmentally safer than is the disposal of lead-based paint debris. The commenter also argued that the cost of managing those soils that fail the TCLP under the RCRA hazardous waste requirements discourages soil lead abatement from residences. As discussed previously, today's rulemaking is limited to providing the C&D landfill disposal option for residential lead-based paint waste addressed in the July 31, 2000 Memorandum. Lead-contaminated soils were not included in the July 31, 2000 Memorandum, thus EPA is not

addressing disposal of lead-contaminated soils at this time.

Summary of Final Rule Changes

This final rule will expressly allow residential lead-based paint waste to be disposed of in construction and demolition waste landfills by clearly stating that a construction and demolition landfill accepting residential lead-based paint waste, and no other household waste, is not a municipal solid waste landfill unit. Today's action does not prevent a municipal solid waste landfill from continuing to receive residential lead-based paint waste. Two minor changes were made to the final regulatory language based on comments received on the proposal. Today's final rule was modified to remove "LBP activities" to one that includes "activities that disturb LBP." The definition of construction and demolition waste landfill was changed to eliminate any confusion so that small quantity generator waste can only be disposed of in a facility that meets the requirements of 40 CFR part 257, subpart B.

IV. Other Applicable Federal, State, Tribal, and Local Requirements

Today's final rule would not alter the authority of State, local and Tribal governments to regulate LBP waste more stringently than does EPA. Generators of residential LBP waste should contact the appropriate State environmental agencies to determine if there are additional or more stringent disposal requirements for residential LBP waste. Also, generators are subject to applicable HUD and/or TSCA regulations when addressing residential LBP hazards.

V. How Will States and Tribes Implement This Final Rule?

Because today's final rule is less stringent than existing federal criteria, States are not required to amend their permit programs which have been determined to be adequate under 40 CFR part 239. States have the option of amending statutory or regulatory definitions pursuant to today's final rule. If a state chooses to amend its permit program pursuant to today's action, the State would be required to notify the Regional Administrator of the modification as provided by 40 CFR 239.12. Whether a State chooses to incorporate today's rule into its solid waste program has Statutory and Executive Order Reviews no effect on its existing status with respect to EPA approval, *i.e.*, State revisions will not open previously approved solid waste programs for Federal review.

Today's amendments are directly applicable to landfills in States without an approved permit program under part 239 and in Indian Country. We encourage Tribes to adopt today's rule into their programs to promote lead-based paint abatement activities in homes and other residences in Indian Country.

VI. How Does This Final Rule Comply With Applicable Statutes and Executive Orders?

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the other provisions of the Executive Order. The Order defines a significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

EPA has performed a full economic analysis, "Economic Analysis of EPA's Final Rule Amending 40 CFR parts 257 and 258," which is available in the docket for today's rule. The Economic Analysis concludes that this rule will impose no additional costs to parties, but may result in cost savings and incremental public health benefits. The rule authorizes the disposal of residential LBP waste in C&D landfills, where previously, as "household waste" under the July 31, 2000 policy memorandum, disposal was authorized only in MSWLFs. Therefore, EPA believes that, in those parts of the country where costs associated with transport to and disposal in C&D landfills is less expensive than costs associated with MSWLF disposal, some