

of the State or Tribal program implemented since the previous reporting period.

(2) A Summary on Progress and Performance which summarizes the results of implementing the State or Tribal lead-based paint debris management and disposal compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe, the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities.

§ 745.356 Withdrawal of State or Tribal Program authorization.

(a) *Withdrawal of authorization.* (1) If EPA concludes that a State or Tribe is not administering or enforcing an authorized program in compliance with the standards, regulations, and other requirements of Title IV of TSCA and this part, EPA will notify the primary agency for the State or Tribe in writing and indicate EPA's intent to withdraw authorization of the program.

(2) The Notice of Intent to Withdraw Authorization will comply with the specifications at § 745.324(i)(2).

(3) Any actions taken by EPA related to withdrawal of State or Tribal program authorization will follow the procedures specified at § 745.324(i)(3) through (i)(7).

(4) If EPA issues an order withdrawing the authorization of a State or Tribal program, EPA will establish and enforce the provisions at §§ 745.307 through 745.319 as the Federal program for that State or Indian Country. The Federal program will be established and enforced as of the effective date of the order withdrawing authorization of the State or Tribal program.

(b) [Reserved]

§ 745.358 Overfiling.

(a) *Failure to impose adequate penalty.* If EPA finds that a violator of a State or Indian Tribal lead-based paint debris management and disposal program approved under this subpart has not been adequately penalized, EPA will notify the State or Indian Tribe of this finding. If EPA finds that the penalty against the violator has not been adjusted appropriately within 30 days after such notice, EPA may issue an appropriate administrative penalty order against the violator.

(b) *Failure to penalize.* If upon receipt of any complaint or information alleging or indicating a significant violation, a State or Tribal Program has not commenced appropriate enforcement action, EPA may act upon the complaint

or information by instituting an appropriate action order against the violator.

§ 745.359 Effective dates.

States and Indian Tribes may seek authorization to administer and enforce a lead-based paint debris management and disposal program under this subpart effective on [insert date 60 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. 98-33326 Filed 12-17-98; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[FRL-5783-7]

RIN 2070-AC72

Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule which would suspend temporarily the applicability of the Resource Conservation and Recovery Act (RCRA) Toxicity Characteristic (TC) Rule (40 CFR 261.24) to debris generated during lead-based paint (LBP) abatements conducted at target housing; deleading projects conducted at public or commercial buildings; and renovation or remodeling and demolition activities at target housing, public buildings, or commercial buildings. Instead of being subject to the TC Rule, LBP debris resulting from the above-mentioned activities would be subject to the management and disposal standards being proposed today under Title IV of the Toxic Substances Control Act (TSCA). EPA is proposing this temporary suspension of the TC rule in accordance with RCRA sections 1006(b)(1) and 2002 to avoid duplication and inconsistent regulation of LBP debris and to allow the Agency sufficient time to assess whether any RCRA requirements, in addition to TSCA Title IV requirements, are necessary to assure proper management and disposal of such debris.

DATES: Comments on this proposed rule must be submitted on or before February 16, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, Mail Code 5305W, Docket No. F-98-LPDP-FFFFF,

U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Comments should include the docket number F-98-LPDP-FFFFF.

Hand deliveries of comments should be made to the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F-98-LPDP-FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For additional information on electronic submissions refer to Unit VII. of the preamble.

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rule, contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800) 424-9346 (toll free); TDD (800) 553-7672 (hearing impaired); in Washington, DC metropolitan area the number is (703) 412-9810; TDD (703) 486-3323 (hearing impaired).

For technical information on this proposed rule, contact Ms. Rajani D. Joglekar in the Office of Solid Waste at (703) 308-8806; and for technical information on the proposed TSCA Title IV disposal and management standards, contact Tova Spector in the Office of Pollution Prevention and Toxics at (202) 260-3467. To obtain copies of the reports or other materials referred to in this proposal, contact the RCRA Docket at the telephone number or address listed above.

SUPPLEMENTARY INFORMATION: Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of Regulated Entities
Abatement Industry	Firms contracted to abate lead-based paint in target housing and public and commercial buildings where children under the age of 6 may be exposed to lead hazards.

Category	Examples of Regulated Entities
Renovation and Remodeling Industry	Firms involved in renovation and remodeling of residences and other buildings where lead-based paint debris may be generated.
Demolition Industry	Firms involved in demolition activities where demolition waste may contain lead-based paint debris.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether you are affected by this regulatory action, you should carefully examine the applicability criteria in Unit V. of this preamble. If you have any questions regarding the applicability of this section to a particular entity, consult the person listed for technical information under FOR FURTHER INFORMATION CONTACT.

I. Background

A. The Hazards of Lead-Based Paint

Lead poisoning is the most common environmental health problem affecting young children in the United States. The Centers for Disease Control has estimated that up to 900,000 children, or about 4.4% of children under the age of 6, may have unacceptably high levels of lead in their blood (Ref. 1). High levels of lead impair mental and cognitive development and physical growth, and can cause neurobehavioral disorders. Among the other risks to human health presented by LBP hazards is neonatal mortality due to the exposure of pregnant women to lead and adverse neurological effects in infants and children. 59 FR 45900-01 (September 2, 1994). There is also some indication that lead exposure contributes to high blood pressure in adults. Lead has no known use in the body and is difficult to remove from blood and bones in cases where medical intervention is necessary.

The primary route of exposure to lead in young children is the ingestion of dust, paint chips, and soil contaminated by lead from deteriorated paint surfaces of walls, doors, and windows. Although lead was banned from residential paint in 1978 (when the amount of lead in paint was above 0.06% lead by weight),

more than half the housing stock (an estimated 64 million pre-1980 homes) still contains some lead-based paint (LBP) (Ref. 2). The Lead-Based Paint Hazard Reduction and Financing Task Force estimates that between 5 and 15 million housing units contain LBP hazards (Ref. 3).

In response to health threats posed by LBP, Congress enacted the Residential Lead-Based Paint (LBP) Hazard Reduction Act of 1992 (hereafter referred to as Title X or the Act) as Title X of the Housing and Community Development Act of 1992. The Act amended TSCA by adding a new Title IV, which, among other things, provides EPA with the authority to promulgate standards to govern: (1) the training and certification of individuals engaged in LBP activities; (2) the accreditation of training programs; and (3) the process by which LBP activities, including abatements, are conducted by certified individuals (15 USC section 2682(a)(1)).

As a result of the enactment of The LBP Act of 1992, there is an increasing effort to reduce the hazards posed by LBP in residential housing and other buildings. Although there are a number of methods to reduce LBP exposure, abatements (which under TSCA Title IV involve any set of measures designed to permanently eliminate LBP hazards) are typically conducted in situations where LBP exposure has resulted in elevated blood lead levels in children. EPA expects that abatements in target housing (defined in TSCA as any housing constructed prior to 1978, except any 0-bedroom housing or dwelling for elderly or persons with disabilities (unless any child age 6 years or under resides or is expected to reside in such housing for the elderly or person with disabilities)), may increase. Abatement efforts result in the production of waste which, as explained in more detail below, would potentially be subject to overlapping regulatory controls under RCRA Subtitle C and TSCA Title IV.

The Agency has spent considerable resources working with health specialists, environmental groups, the lead abatement industry, and state and local governments to develop regulatory options to expedite the conduct of lead abatement activities so that risks to children from lead poisoning will be permanently and expeditiously eliminated. EPA believes that there is an overwhelming consensus to act as quickly as possible to reduce risks resulting from lead exposure to young children.

The Lead-Based Paint Hazard Reduction and Financing Task Force, representing the spectrum of interests

affected by lead-based paint issues, released final recommendations on evaluating and reducing lead-based paint hazards in private housing on July 11, 1995, in a report entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing* (Ref. 4). In addition, in a letter to EPA Administrator Carol Browner dated April 13, 1994, the Task Force specifically recommended that the Agency, "shift regulation of discarded architectural components from the hazardous waste regulatory program to a tailored management program under TSCA Section 402/404" (Ref. 3). The Agency has given substantial weight to these recommendations in the development of today's proposals as they are supported by a broad range of groups and interests affected by lead-based paint activities and regulations. EPA has developed a regulatory approach it believes will both speed the conduct of lead abatement and deleading activities (by lowering costs) and, at the same time, ensure that LBP debris is managed and disposed of in an environmentally safe manner.

B. Impetus for Today's Rulemaking

One of EPA's primary purposes in developing this regulatory approach for this proposed RCRA TC Rule temporary suspension, and the companion proposed TSCA management and disposal standards (issued elsewhere in today's Federal Register), is to address obstacles to the conduct of LBP abatements in target housing and child-occupied facilities, such as schools and day-care centers. The Agency's analysis of the risk of alternative disposal facilities also examined the risk of disposing LBP debris resulting from other activities. Because the Agency has concluded that the disposal of LBP debris (no matter what the origin) in certain solid waste disposal facilities, such as construction and demolition landfills, is safe, reliable, effective, and protective of human health and the environment, EPA has decided to extend the coverage of today's RCRA and TSCA proposed rules to LBP debris generated during lead-based paint abatement, deleading, demolition, renovation, and remodeling projects in all target housing, public and commercial buildings. EPA believes it is important to provide a clear and consistent regulatory environment for those who conduct these activities which generate almost identical LBP debris.

II. RCRA Subtitle C and the Toxicity Characteristic Rule

Subtitle C of RCRA, 42 U.S.C. 6921-39b, establishes a comprehensive program for the regulation of hazardous waste. In enacting RCRA, however, Congress did not set forth a list of hazardous wastes nor provide a specific test for determining whether a waste is hazardous. Instead, in RCRA section 1004(5), Congress defined "hazardous waste" broadly as a "solid waste" which "may . . . pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed." Under RCRA section 3001(a), EPA is responsible for defining which solid wastes are hazardous by either identifying the characteristics of hazardous waste or by listing particular hazardous wastes.

In response to the Congressional directive in RCRA section 3001(a), EPA adopted a two part definition for identified and listed "hazardous wastes" (45 FR 33084, May 19, 1980). First, EPA published lists of specific hazardous wastes, in which EPA described the wastes and assigned a "waste code" to each of them (40 CFR part 261, subpart D). These wastes are known as "listed" hazardous wastes and are subject to regulations under Subtitle C (See 40 CFR part 262, 264-268, and 270). Second, the Agency identified four characteristics of hazardous waste that are subject to measurement: ignitability, corrosivity, reactivity, and toxicity (See 45 FR 33121-22, May 19, 1980). Any solid waste exhibiting one or more of these characteristics is a "characteristic hazardous waste" subject to regulation under RCRA Subtitle C (See 40 CFR parts 262, 264 to 268, and 270).

To measure objectively the "toxicity" criterion for determining whether a waste exhibits the characteristic of toxicity under RCRA Subtitle C, EPA has established the Toxicity Characteristic Leaching Procedure (TCLP) test as part of the Toxicity Characteristic (TC) rule (55 FR 11798, March 29, 1990). The TC rule added 25 organic chemicals to the original list of toxic constituents of concern (primarily metals, including lead) and established regulatory levels for these organic chemicals.

Under the TC rule, a waste may be a hazardous waste if any chemicals listed in the rule, such as lead, are present in leachate from the waste (generated from use of the TCLP) at or above the specified regulatory levels (40 CFR 261.24). The overall effect of the TC rule was to subject additional solid wastes to

regulatory control under the hazardous waste provisions of Subtitle C of RCRA.

Under the TC rule, generators of solid waste must either use their knowledge or perform the TCLP test using a representative sample of the waste as generated to determine if the waste exhibits the toxicity characteristic for lead. The regulatory level for lead in the waste extract (i.e., leachate) is 5 milligrams per liter (mg/L). If under the TCLP test, the leachate extracted from waste contains lead at 5 mg/L or higher, then the waste is a "characteristic" hazardous waste, and the generator must comply with the applicable RCRA Subtitle C requirements in 40 CFR parts 262 through 266, 268, and 270.

Currently, like any other lead-containing waste, the TC rule applies to waste (including debris) from construction, demolition, and renovation activities, and waste (including debris) from LBP abatement activities. The generator of lead-containing waste must make a RCRA hazardous waste determination to identify whether it is characteristically hazardous and, thus, whether management as a hazardous waste is required.

III. The TSCA Title IV Proposed Rule

As explained in detail in the companion proposal published elsewhere in today's **Federal Register**, Title IV of TSCA provides EPA with the authority to promulgate regulations which address the management and disposal of LBP debris. In accordance with that authority, EPA is proposing a rule under TSCA sections 402 and 404 which would establish management and disposal standards for "LBP architectural component debris" from abatement, deleading, renovation, and remodeling, and "demolition debris" from target housing, and public and commercial buildings (collectively referred to as "LBP debris"). Under the TSCA Title IV rule, EPA is specifying that such LBP debris must be disposed of in: (1) Construction and demolition landfills as defined at proposed § 745.303; (2) a landfill subject to the requirements in 40 CFR part 257, subpart B, applicable to non-municipal, non-hazardous waste disposal units receiving conditionally exempt small quantity generator waste (as defined in 40 CFR 261.5); (3) a hazardous waste disposal facility that is permitted under 40 CFR part 270; (4) a hazardous waste disposal facility authorized to manage hazardous waste by a State that has a hazardous waste management program approved under 40 CFR part 271; or (5) a hazardous waste treatment, storage, and disposal facility that has qualified

for interim status to manage hazardous waste under RCRA section 3005(e). For a number of reasons discussed in the preamble of the TSCA proposed rule (see Unit V. "Analytical Basis for Landfill Disposal Options" for details), EPA believes that these disposal options for LBP debris are safe, reliable, and effective as required under TSCA section 402(a)(1). (The preamble to the TSCA Title IV proposal also requests comment on the appropriateness of disposing LBP debris in Municipal Solid Waste Landfills operated in compliance with 40 CFR part 258 requirements.)

EPA has included, in the TSCA Title IV proposed rule, the following prohibitions: (1) No application of LBP debris as mulch, ground cover, or fill material (e.g., after shredding or grinding) without first removing the LBP such that the remaining material contains no visible signs/traces of paint; (2) no transfer for reuse of LBP debris with a specified level of deteriorating paint (e.g., as a building or structural component or artifact) unless the LBP is encapsulated or removed such that the remaining material does not pose a LBP hazard; (3) no transport of LBP debris in open, uncovered vehicles; (4) no storage of LBP debris prior to disposal for any period exceeding 180 days, and after 72 hours following waste generation such storage must include use of an access limitation, such as a receptacle, covered dumpster, barrier, or fence; (5) notification and recordkeeping requirements; and (6) no reclamation or burning of LBP debris for lead or for energy except at facilities meeting specified Clean Air Act standards. EPA believes that these prohibitions and management standards are appropriate because they are protective of human health and the environment, and they ensure that management and disposal of LBP debris are conducted in a safe, reliable, and effective manner. For further information about the management and disposal standards EPA is proposing, see the companion TSCA proposed rule in today's **Federal Register**.

IV. Basis for the Temporary Suspension of the TC Rule

A. Purpose of the Proposed Temporary Suspension

The purpose of today's proposed temporary suspension of the TC rule for LBP debris is to ensure that abatements, deleading, remodeling and renovation, and demolition activities where LBP is present are conducted expeditiously and that management and disposal of LBP debris from these activities are

governed by appropriate standards. Since enactment of the Lead-Based Paint Poisoning Prevention Act, as amended by the McKinney Homeless Assistance Act, 42 U.S.C. 4822, and TSCA Title IV, as part of the LBP Act of 1992, there has been a significant increase in abatement activities in public housing and target housing. These activities result in the production of large amounts of solid waste containing LBP.

Based on a 1992 study of LBP waste, EPA concluded that because of the high lead content in some paint used in residences built before 1978, certain LBP waste components (including painted architectural debris) may sometimes be a RCRA hazardous characteristic waste, and that additional confirmatory analysis would be necessary (Ref. 5). To comply with RCRA Subtitle C regulations, contractors conducting abatements at Housing and Urban Development (HUD) housing units reportedly have been TCLP testing LBP waste and, if the waste "fails" the TCLP, have managed it according to the RCRA hazardous waste management requirements.

HUD, State public housing authorities (e.g., Maryland and Massachusetts), and advocacy groups (e.g., Alliance to End Childhood Lead Poisoning and the National Center for Lead Safe Housing), have argued against the applicability of the TC rule (and all of the RCRA Subtitle C hazardous waste requirements which flow from a "failure" of the TCLP test) to LBP waste. They argue that the applicability of RCRA Subtitle C requirements results in significant interference with abatement activities in target housing, and that such interference is contrary to the intent of Congress in enacting Title X of the Housing and Community Development Act of 1992 (which amended TSCA by adding a new Title IV).

The stakeholders mentioned above have provided a variety of reasons explaining why applicability of the TC rule and RCRA Subtitle C interferes with LBP abatement efforts. Among the reasons are: (1) Technical difficulties in sampling of certain types of LBP debris, e.g., doors, windows, and other structural components; (2) uncertainty about conducting the TCLP test on LBP waste and about reproducibility of test results; and (3) the high cost of compliance with RCRA hazardous waste standards in cases where the LBP debris fails the TCLP test. The result is that certain LBP abatement and deleading projects do not occur or are delayed due to the lack of sufficient funds. EPA

addresses each of these issues in Unit IV.B. of this preamble.

B. Available Information on the Scope of the Problem and Impacts of RCRA Subtitle C

1. *Difficulties in conducting the TCLP test.* EPA has received comments indicating difficulties in obtaining a representative sample of heterogeneous waste material such as LBP debris (made up of painted doors and windows, plaster boards, and other painted architectural components) from abatement, renovation and remodeling, or demolition activities and conducting the TCLP test. The sampling methods described in EPA's laboratory testing method manual, SW-846, largely focus on homogeneous waste materials, and are not well suited for sampling LBP debris such as door frames, windows, shelves, and banisters. EPA has received several inquiries concerning how to obtain a representative sample of LBP architectural component debris. Because of the difficulty in sampling heterogeneous waste and the lack of a standardized sampling methodology, stakeholders argue that TCLP results for such waste are inconsistent and not reproducible.

EPA acknowledges the difficulties that may arise in attempting to prepare a sample to conduct the TCLP test on LBP architectural component waste. To address some of these difficulties, EPA completed a residential LBP architectural component debris study. The intent was threefold: (1) To develop heterogeneous waste sampling and TCLP sample preparation protocols; (2) to obtain additional TC analysis data to substantiate earlier EPA study results; and (3) to subject waste samples to both the TCLP (which simulates leaching when waste is disposed of in a municipal landfill) and the Synthetic Precipitation Leaching Procedure (which simulates leaching when waste is disposed of in landfills other than a municipal landfill, such as construction and demolition--"C&D" landfills) (Ref. 6).

A 1992 EPA study identified three major categories of waste produced during abatements: filtered wash water, solid architectural debris, and plastic sheets and tape used to cover floors and other surfaces (Ref. 5). The study concluded that filtered wash water is generally nonhazardous. The results for solid architectural debris demonstrated that debris tended to fail the TCLP when the lead in the paint, as measured by Atomic Absorption Spectrometry (AAS) exceeds 4 mg/cm². (Note: TCLP failure in the study was not well-correlated with results of on-site testing of lead

levels in paint using an XRF device.) Generators often experience difficulties when sampling and conducting the TCLP test on solid architectural debris waste. The study's failure rate for plastic sheeting tended to depend on the abatement method. For example, removal and replacement tended to generate nonhazardous plastic sheeting, but use of a heat gun tended to result in the sheeting failing the TCLP. Such material can properly be decontaminated (e.g., vacuuming of dust and/or washing) prior to disposal. The study also noted that other categories of waste, such as sludges and LBP chips, often exceed the RCRA TC rule regulatory limit.

As discussed in Unit IV.D. of the companion proposal titled "Management and Disposal of Lead-Based Paint Debris" published elsewhere in today's **Federal Register**, the TCLP results for LBP debris are not reproducible primarily due to difficulties in obtaining a representative sample. Also, even if a representative sample is taken, difficulties exist when preparing and obtaining a sample for the TCLP analysis. These difficulties may be creating disincentives to LBP abatement and other lead hazard reduction activities that generate LBP debris.

EPA intends to study these sampling and analytical difficulties further and assess whether questions concerning the consistency and validity of TCLP results on LBP architectural components can be resolved during the pendency of the temporary suspension.

2. *Economic impacts of Subtitle C regulation on LBP abatements.* It is clear that RCRA Subtitle C regulation of LBP debris resulting from abatements, deleading, renovation, remodeling, and demolition can potentially increase the costs of conducting such activities. The primary sources of these increased costs are the RCRA Subtitle C treatment and disposal requirements that apply if LBP debris fails the TCLP. (In addition, waste sampling and analysis costs are approximately \$100 per sample for TCLP analysis.) For waste which is determined to be hazardous, the cost of treatment and disposal (including transportation) can be quite high (EPA estimates approximately \$316 per ton), assuming full compliance (Ref. 7). Individuals undertaking abatements and deleadings do not necessarily know when beginning a project if the waste will require management as a hazardous waste, but they must account for this possibility in their cost estimates. These RCRA Subtitle C testing, treatment, and disposal costs may contribute to the decision not to conduct an abatement project (Ref. 7).

Among abatement waste categories, LBP architectural components are the main source of large-volume waste. Other abatement wastes (such as LBP chips and dust, treatment residues and waste water, and worker equipment and clothing) are generally generated in smaller quantities. Moreover, these other types of abatement wastes are relatively easy to sample and analyze (with reproducible results), and, even if hazardous, generators can manage the wastes without excessive costs (because of smaller volumes).

As noted above, RCRA Subtitle C treatment and disposal costs are approximately \$316 per ton (of this total, approximately \$86 per ton is for transportation) as compared with an estimated cost of \$37.20 per ton based on new United States Forest Service C&D tipping fees survey, to dispose of LBP debris in a construction and demolition landfill (a solid, nonhazardous waste landfill defined in today's TSCA proposal that generally accepts construction wastes), including compliance with the management controls in today's proposal. Thus, for the disposal of 100 tons of debris from a LBP abatement, Subtitle C requirements would cost \$31,600 as opposed to the \$3,720 it would require to dispose of the waste in a construction and demolition facility in compliance with today's proposed standards (Ref. 7).

EPA believes that the higher costs associated with RCRA Subtitle C may hinder LBP abatements and deleadings from being conducted. The Agency has received submissions from members of the public, including a number of State governments, indicating that the cost of complying with RCRA Subtitle C hazardous waste regulations interferes with or in many cases halts the conduct of LBP abatements (Ref. 7).

3. *Conclusions and areas for further consideration.* Given the demonstrated risks that LBP poses and the clear Congressional intent for risks from LBP hazards to be reduced, the Agency believes that it is appropriate to assess the adverse impacts that RCRA Subtitle C regulations may have on LBP abatement, deleading, renovation, remodeling, and demolition activities and decide what (if any) RCRA Subtitle C regulation is necessary once the TSCA Title IV regulations take effect. Because indications are that the applicability of the TC rule and all other Subtitle C requirements may interfere with lead hazard reduction activities and may not be necessary to protect human health and the environment from LBP debris disposal, EPA is proposing this temporary suspension.

Moreover, under current RCRA requirements, all LBP debris (if not derived from a household) is not treated equally. Some LBP debris, specifically, debris which fails the TCLP for lead, is subject to the strict and costly requirements of RCRA Subtitle C. At the same time, LBP debris (if not derived from a household) which passes the TCLP or, using generator's knowledge has been determined to be nonhazardous, remains non-hazardous solid waste and generally may be disposed of in any solid waste disposal facility which meets the requirements in the open dumping criteria which EPA promulgated in 1979 (40 CFR part 257, subpart A).

However, any LBP debris which passes the TCLP test (i.e., which is identified as nonhazardous) is not currently subject to any management standards under RCRA Subtitle D similar to that being proposed under TSCA today. These new TSCA management standards (e.g., access control during debris storage, covering of trucks used in shipping debris for recycling or disposal) take into account the risks that LBP debris may pose to humans, particularly children, even if the debris passes the TCLP test.

During the development of this proposal, it has become clear to the Agency that the unequal management and disposal standards for LBP debris under RCRA are inappropriate. In cases where LBP debris is determined to be hazardous, the Agency now believes that RCRA Subtitle C management and disposal requirements for LBP debris are unnecessarily strict and costly. On the other hand, LBP debris that is found to be nonhazardous is not subject to the RCRA Subtitle C management requirements (i.e., land disposal restrictions requiring treatment and disposal as a RCRA hazardous waste). Thus, in cases where LBP debris passes the TCLP or is determined through knowledge to be nonhazardous, management and disposal occurs according to solid waste management regulations and disposal occurs at solid waste landfills accepting such waste for disposal.

The TSCA standards being proposed today represent a common sense approach to management and disposal of LBP debris which addresses the problems associated with RCRA regulation of LBP debris. This proposal to suspend the TC rule, combined with the TSCA proposal issued today, would afford equal and appropriate management and disposal standards for all LBP debris.

Although EPA believes there is sufficient information to propose this

temporary suspension of the TC rule for LBP debris, the Agency plans to proceed to analyze in greater detail the concerns that members of the public, including States, have raised concerning the degree to which RCRA Subtitle C requirements may impede or frustrate LBP abatements in target housing, public and commercial buildings. While the temporary TC suspension is in effect, EPA will study further related issues such as: (1) are LBP abatements and deleading projects occurring on a more frequent and expeditious basis because LBP debris is temporarily not subject to RCRA hazardous waste requirements; and (2) whether any RCRA Subtitle C requirements are needed to supplement the TSCA Title IV standards.

As indicated in the Agency's proposed Hazardous Waste Identification Rule (HWIR), EPA is considering reevaluation of the TC regulatory level for lead (see 60 FR 66406, December 21, 1995). Since promulgation of the TC rule, EPA has become aware of a number of factors which have prompted the Agency to consider initiating a re-evaluation of the 5 mg/L TC level for lead. First, the human health risk evaluation for lead has changed since EPA promulgated the TC rule, resulting in the action level (on which the TC is based) for lead being reduced from 50 parts per billion (ppb) to 15 ppb. Second, EPA has developed a constituent-specific Dilution Attenuation Factor ("DAF") of 5,000 for lead leaching under different disposal scenarios (suggesting that lead generally moves slowly in the subsurface environment except in specific hydrogeologic situations) which differs from the generic DAF of 100 used in the TC rule (See Unit V. of the TSCA proposed rule preamble published elsewhere in today's **Federal Register** for a discussion of the lead DAF). Third, EPA has developed a multi-pathway, multi-media exposure risk assessment model that allows consideration of exposure pathways in addition to ground water contamination (which was the pathway considered in the TC rule). (Available data suggest that some of the other pathways may be more riskier than the ground water exposure pathway.)

EPA recognizes that the TC level for lead is a matter of considerable interest to the public and has initiated efforts to review management of lead-bearing waste and other related studies (e.g., lead leaching). In the meantime, given the other factors discussed above, EPA has decided to propose a temporary suspension of the TC rule for LBP debris

and new standards under TSCA for the management and disposal of LBP debris.

C. Alternative Approaches

Instead of a temporary suspension of the TC rule, EPA is considering and seeking comment on a permanent approach under RCRA for addressing LBP debris that is subject to the proposed TSCA Title IV requirements. Like the proposed temporary TC suspension, a permanent rule would eliminate the dual regulation of LBP debris under two separate environmental statutes and remove obstacles hindering lead abatement and deleading activities.

Such a rule could be framed as a permanent suspension of the TC for LBP debris that is subject to the proposed TSCA Title IV requirements. Under such an approach, EPA would determine that the proposed TSCA Title IV standards for managing and disposing of LBP debris are safe, reliable, and effective in protecting human health and the environment. As discussed in Unit V.B. of this preamble, the statutory basis for such an approach would be RCRA sections 1006(b)(2) and 2002(a), which require the Agency to integrate the provisions of RCRA with other environmental statutes. In addition, a permanent rule could be issued as a "conditional exemption" from RCRA subtitle C for LBP debris regulated under the TSCA Title IV management and disposal standards. See *Military Toxics Project v. EPA*, D.C. Cir. No. 97-1343 (June 30, 1998) (EPA has the authority under RCRA subtitle C to conditionally exempt a hazardous waste from subtitle C regulation where an alternative regulatory scheme provides adequate protection). EPA requests comment on the merits of such a permanent RCRA LBP rule.

V. Explanation of Today's Proposed Rule

A. Introduction

Today's proposal would suspend temporarily the applicability of the TC rule to LBP debris (i.e., LBP architectural component debris resulting from LBP abatements, deleadings, renovation and remodeling, and LBP debris from demolitions) generated at target housing, public and commercial buildings, for which management and disposal standards are being proposed today under TSCA Title IV. If promulgated, the proposed rule would mean that generators of LBP debris resulting from these activities would not have to conduct the TCLP test on LBP debris or use their knowledge to determine whether LBP

debris is a hazardous waste. Nor would generators of LBP debris be required to comply with any treatment, storage, or disposal requirements under RCRA Subtitle C. Instead, generators of LBP debris would be required to comply with the management and disposal standards to be promulgated under TSCA Title IV (unless and until the Agency decides that some additional RCRA regulation should also apply to LBP debris).

EPA is proposing this temporary suspension of the TC rule as an exclusion from the definition of "hazardous waste" in 40 CFR 261.4(b). The temporary suspension would amend the definition of hazardous waste to exclude LBP debris resulting from: (1) Lead-based paint abatements conducted at target housing; (2) deleading projects conducted at public buildings or commercial buildings; and (3) renovation or remodeling activities conducted at target housing, public buildings, or commercial buildings. The temporary suspension would also amend the definition of hazardous waste to exclude LBP debris resulting from demolitions of target housing, public, or commercial buildings. If, however, such LBP debris, is hazardous for reasons other than failing the TCLP for lead, (e.g., the debris contains a listed hazardous waste or any other TC or other hazardous waste characteristic constituent), the exclusion from the definition of hazardous waste would not apply.

The Agency is proposing this suspension in 40 CFR 261.4, rather than as part of the TC rule in 40 CFR 261.24, because it has been a consistent practice for EPA to list all of the exclusions from both the solid waste and hazardous waste regulatory schemes in 40 CFR 261.4, and the regulated community is more likely to be familiar with this approach. This exclusion from the definition of hazardous waste, and thus from any TC rule requirements, would be temporary pending EPA's conduct of studies and analyses of the issues as described in Unit IV.B.3. of this preamble.

B. Statutory Basis for the Temporary Suspension

EPA is proposing this temporary suspension of the TC rule for LBP architectural components under the authority of RCRA sections 1006(b)(2) and 2002(a). RCRA section 1006(b)(1) states that EPA:

shall integrate all provisions of [RCRA] for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of . . . such other Acts of Congress

as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in [RCRA] and in the other acts referred to in this subsection. 42 USC section 6905(b)(1).

As discussed in the proposed TSCA rule, EPA has authority under TSCA Title IV to promulgate regulations governing LBP activities, including the establishment of standards governing the management and disposal of waste resulting from abatements, deleading, renovation and remodeling, and demolition activities (15 U.S.C. 2681(1) and 2682(a)(1) and (b)). Pursuant to this authority, EPA is simultaneously proposing elsewhere in today's **Federal Register** specific regulations which govern the management and disposal of LBP debris resulting from these activities. EPA believes that the TSCA rules being proposed today for LBP debris are consistent with the central objective and policy of RCRA: Protecting human health and the environment.

The legislative history shows clearly that by enacting TSCA Title IV, Congress wanted to "remove all major obstacles to progress, making important changes in approach and laying the foundation for more cost-effective and widespread activities for reducing lead-based paint hazards" (S. Rep. No. 102-332, 102nd Cong., 2nd Sess. 111 (1992)). As the Senate Committee on Banking, Housing and Urban Affairs stated, ". . . by establishing realistic, cost-effective procedures for achieving hazard reduction, [The LBP Act of 1992] will speed the clean-up of lead paint hazards in housing and greatly decrease the incidence of childhood lead poisoning." (Id. at 112.)

Thus, in enacting TSCA Title IV, Congress wanted to ensure that obstacles to lead abatements and deleading activities, including high costs, would be minimized and that LBP hazards would be reduced. In authorizing EPA under TSCA Title IV to promulgate management and disposal standards for LBP waste, however, Congress did not address the conflict that would arise concerning the overlapping jurisdiction of the RCRA TC rule and the TSCA disposal standards. Nor did Congress clearly address the obstacles to the conduct of lead abatements and deleading activities that can result if LBP debris is determined to be hazardous and subject to the resultant costs of RCRA Subtitle C. To resolve the duplication inherent in the statutory schemes and the potential adverse impacts if both RCRA and TSCA regulatory schemes were to apply

to LBP debris, EPA believes it is appropriate to resolve this conflict of overlapping jurisdiction by proposing to suspend temporarily the applicability of the TC rule to such LBP debris as authorized under RCRA section 1006(b)(1). See *Edison Electric Institute v. EPA*, 2 F.3d 438, 452 (D.C. Cir. 1993) (because Congress did not clearly address the interaction between RCRA Subtitles C and I, EPA's temporary deferral of the TC rule for underground storage tank waste under RCRA section 1006(b)(1) was permissible). The temporary suspension of the TC rule proposed today would also work to integrate the regulatory provisions promulgated under the Clean Air Act pertaining to municipal waste combustors and smelters with RCRA and TSCA Title IV regulatory requirements.

EPA believes that the TSCA rule being proposed today for LBP debris will protect the core value of RCRA of protecting human health and the environment. See 42 U.S.C. 6902. While EPA further studies various issues described in this proposal, e.g., the difficulty of conducting the TCLP test on LBP debris and whether the TC regulatory level for lead should be modified, the Agency believes that the management, notification, transportation, and disposal standards being proposed today under TSCA Title IV are consistent with the goals and policies of RCRA. Suspending the applicability of the TC rule to LBP debris on a temporary basis, while requiring that disposal of such LBP debris comply with regulations promulgated under TSCA Title IV and the Clean Air Act, would give EPA the necessary time to study the Title IV regulatory scheme and to assess whether any additional RCRA regulation is necessary.

The Agency also believes that it has the authority to promulgate the TC temporary suspension for LBP debris as a conditional exemption under RCRA section 3001(a). See *Military Toxics Project v. EPA*, D.C. Cir. No. 97-1343 (June 30, 1998) (EPA has the authority under RCRA subtitle C to conditionally exempt a hazardous waste from Subtitle C regulation where an alternative regulatory scheme provides protection.) See 62 FR 6622, 6636-38; February 12, 1997.

It is important to note that the proposed temporary TC suspension would not alter a person's potential CERCLA liability. The rule would only suspend the TC rule for LBP debris managed under the proposed TSCA Title IV requirements. Even if a lead regulatory level was changed or lead

was entirely removed from regulations as a RCRA hazardous waste, lead would remain a CERCLA hazardous substance because it is listed under the Clean Air Act and the Clean Water Act. Therefore, persons who arrange for the disposal of, or are otherwise connected with, LBP debris would remain potentially subject to liability under CERCLA section 107(a) even after promulgation of the rule. Nevertheless, the rule is intended to facilitate lead abatement and deleading activities by eliminating the barriers posed by RCRA's hazardous waste rules when the LBP is properly managed in accordance with the TSCA Title IV rules.

C. Scope of the Temporary Suspension

1. *Types of waste covered.* The temporary suspension of the TC rule would apply to LBP architectural component debris and LBP demolition debris which is subject to the disposal and management standards promulgated under TSCA section 402(a). EPA is proposing to define "LBP architectural component debris" in the RCRA regulation, in the same manner proposed in today's TSCA proposed rule (see § 745.301 of the TSCA proposed rule regulatory text). The definition of LBP architectural component debris provides a generic definition of architectural components, i.e., "elements or fixtures, or portions thereof, of commercial buildings, public buildings, or target housing that are coated wholly or in part with or adhered to by lead-based paint." The definition also includes a non-exclusive list of specific examples of structural elements or fixtures that would fall within the definition.

Under this definition of "lead-based paint architectural component debris," EPA has specified that other types of LBP wastes that may result from activities at any of the identified structures are not covered by the scope of the proposed temporary suspension of the TC rule. The other LBP wastes excluded from coverage under this proposed TC suspension include paint chips and dust, sludges and filtercake, wash water, and contaminated and decontaminated protective clothing and equipment.

For a number of reasons, EPA is not proposing to include these other LBP wastes (except when they are part of LBP demolition debris) within the scope of the temporary suspension of the TC rule. First, these types of LBP waste are generally produced in much smaller quantities and their bulk is considerably less than that of LBP debris. Thus, the costs involved in treating and disposing of these wastes as hazardous are far less

than the costs would be for the large volume of LBP debris which frequently result from abatement, deleading, demolition, and renovation and remodeling activities.

Second, certain of these LBP wastes, e.g., paint chips and dust, sludge and filter cakes, are homogenous in physical characteristics, are easy to sample using the existing EPA sampling methods, are easily recognizable, can be easily segregated from LBP architectural component debris resulting from abatements or renovation or remodeling, and contain high levels of lead in a concentrated form. Unlike LBP architectural component debris, they are more likely to fail the 5 mg/L TCLP regulatory level for lead routinely, and the TCLP test results can reliably be reproduced. In some cases, the lead content is so high that the waste could possibly be sent to lead smelters for the metal recovery. Thus, these other lead-based paint wastes will remain subject to RCRA hazardous waste determination requirements, including the provisions of the TC rule.

EPA is proposing to define "LBP demolition debris" to include any solid material which results from the demolition of target housing, public buildings, or commercial buildings which are coated wholly or in part with or adhered to by lead-based paint at the time of demolition. Thus, LBP demolition debris includes dust, paint chips, and other solid wastes from demolition activities which are not covered under today's proposal if they are generated during other LBP activities such as "abatement," "deleading," "renovation" etc. EPA expects that such LBP waste would normally represent only a small percentage of the large volume of the total solid waste generated during demolitions. Moreover, separation of dust and paint chips from other demolition waste is virtually impossible. (Nevertheless, to the extent practicable, EPA encourages separation of LBP debris and LBP non-debris waste (paint chips and dust), and proper management.) Since some LBP non-debris waste is impractical to separate, EPA is proposing that all solid waste, including any LBP dust, paint chips, or other particulate matter, generated during demolitions are covered by today's proposal to suspend the TC.

LBP demolition debris under the Agency's proposal, however, would not include any solid waste resulting from a demolition which fails the toxicity characteristics regulatory level for any hazardous constituent other than lead as contained in the TC rule (40 CFR 261.24). Thus, if a generator of LBP

demolition debris has not separated hazardous waste (other than LBP) from the building prior to the demolition, he or she remains subject to the RCRA hazardous waste determination requirement for TC hazardous constituents and must determine whether any of the regulatory levels for the TC hazardous constituents (other than lead) are met or exceeded.

2. *Activities and structures covered.* Under this proposal and the TSCA proposal being published today, "lead-based paint" would be defined in the same manner it is defined in the TSCA rule applicable to worker certification and training requirements (see 61 FR 45815, August 29, 1996). Under the TSCA definition, the term would mean paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight measured using the appropriate lead detection instruments. (This is a TSCA LBP hazard determination requirement.) The discussion below describes activities and structures from which LBP debris is generated.

EPA is proposing to apply the temporary suspension of the TC rule to exclude LBP architectural component debris resulting from: Lead-based paint abatements conducted at target housing; deleading projects conducted at public buildings or commercial buildings; and renovation or remodeling activities conducted at target housing, public buildings, or commercial buildings. The temporary suspension would also apply to LBP debris resulting from demolitions of target housing, public buildings, or commercial buildings. What follows is a discussion of each of these categories of activities.

i. *Abatements at target housing.* EPA is trying to ensure that abatements at target housing occur (when needed) in an expeditious and cost-effective manner through publication of the proposed rules today. In both proposals, EPA is defining the term "abatement" as the term is defined in the worker certification and training rule that the Agency promulgated under TSCA section 402 and 404 (see 61 FR 45813, August 29, 1996). Both the statutory definition in TSCA section 401(1) and this regulatory definition tie the term "abatement" closely to a permanent elimination of LBP hazards.

EPA proposes to define "target housing" in the same way Congress defined the term in TSCA section 401(17), i.e., all housing constructed prior to 1978 (with certain exceptions as specified in the definition). LBP was used frequently prior to 1978 in the construction and re-painting of housing in the United States. As such, under

TSCA Title IV and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), target housing was specifically intended to be the subject of LBP abatement activity (15 U.S.C. 2682(a)(1) and 42 U.S.C. 4851 - 4852).

ii. *Deleading at public buildings and commercial buildings, renovation and remodeling, and demolition.* EPA originally planned to limit the scope of the TSCA proposed rule and the proposed TC suspension to LBP architectural components debris resulting from abatements at target housing and child-occupied facilities. However, a number of stakeholders, including State governments, argued that the scope of the proposed rules should be broadened to include architectural component debris from deleading activities at public and commercial buildings and from renovation and remodeling activities. For example, EPA received a letter from the California Department of Health Services suggesting that EPA expand the scope of this temporary TC suspension proposal to include LBP waste from public buildings such as libraries and buildings owned by State and local municipalities. Stakeholders argue that LBP architectural component debris is essentially the same waste no matter what its origin; thus, its disposal should be controlled in the same manner. Moreover, States also raised questions about their ability to enforce two different sets of rules (the TSCA Title IV rule and the RCRA Subtitle C regulations) for the same type of waste that will "look alike" despite having different points of generation, e.g., target housing versus public buildings, or resulting from different activities, e.g., LBP abatement versus renovation projects that include removal of architectural components or demolition of target housing, public buildings, or commercial buildings.

EPA agrees with these concerns and is including within the scope of the proposed rules being published today LBP architectural component debris resulting from deleading activities at public buildings and commercial buildings. EPA is also proposing to make the rules applicable to LBP architectural component debris from renovation and remodeling activities and LBP debris from demolitions of target housing, public buildings, and commercial buildings. EPA agrees with the stakeholders' comments and believes that broadening the scope of the proposed rules provides a common sense regulatory framework that would not have resulted if the same waste from different structures or activities remained subject to two different

regulatory regimes. In addition, including LBP debris resulting from deleading, renovation, remodeling, and demolition of public and commercial buildings within the scope of the proposed TSCA rule and the proposed TC suspension would allow the establishment of management and transportation standards for LBP debris to protect human health which otherwise would not exist under RCRA Subtitle D if the debris does not fail the TCLP.

EPA has proposed the definitions for the following terms at 40 CFR 745.301, in the companion TSCA proposal published today. "Deleading" as the term is defined under TSCA section 402(b)(2)--"activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities" in public buildings or commercial buildings (15 U.S.C. 2682(b)(2)). EPA is proposing to define "public building" to mean "any building constructed prior to 1978, [except target housing], which is generally open to the public or occupied or visited by the public, including but not limited to schools, day care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers, and government buildings." The proposed definition of "public building" would also include any "child-occupied facility" as defined in the LBP worker certification and training rule. In addition, EPA proposes to define "commercial building" to mean any building used primarily for commercial or industrial activity including: manufacturing, service, repair, or storage.

The Agency is proposing to define "renovation" to mean the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term renovation includes but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement. The term "remodeling" is defined to encompass any construction-related work on an existing property intended to either maintain or improve the property that results in the disturbance of painted surfaces.

EPA is proposing to define the term "demolition" to include the act of wrecking, razing, or destroying any

building or significant element thereof using a method that generates undifferentiated solid waste.

3. *Lead-contaminated soil.* Lead-contaminated soil is not included in the scope of the TSCA lead-based paint debris proposal nor in the proposed temporary suspension of the TC with respect to LBP debris (see the companion TSCA LBP debris proposal for further discussion). EPA requests comment on whether there is a sound technical basis for reducing the Subtitle C requirements that might apply to some soil removed from residences, the importance of addressing this issue, and possible options for doing so. EPA will consider whether there is a need and a basis for addressing that issue in a separate rulemaking in the future.

D. Other Exclusions from RCRA Subtitle C

1. *Household waste exclusion.* One issue that has arisen during the course of preparing this proposed rule is whether the existing household waste exclusion would apply to LBP waste that results from a resident's actions to renovate, remodel, or abate a LBP-contaminated home. This household waste provision in the RCRA Subtitle C regulations excludes certain types of household hazardous waste from the requirements of RCRA Subtitle C (40 CFR 261.4(b)(1)). EPA promulgated this household waste exclusion as part of the Agency's initial phase of implementing RCRA section 3001, which required the Agency to establish criteria for identifying hazardous waste characteristics and listing specific hazardous wastes (42 U.S.C. 6921; 45 FR 33084, 33098-99, 33120, May 19, 1980).

In that 1980 regulation, EPA excluded "household waste" from being identified as hazardous waste. This exclusion implements Congressional intent as expressed in the legislative history of RCRA as enacted in 1976. See S. Rep. No. 94-988, 94th Cong., 2nd Sess., at 16 (hazardous waste program is "not to be used either to control the disposal of substances used in households or to extend control over general municipal wastes based on the presence of such substances."). In promulgating the exclusion in 1980, EPA defined "household waste" to include "any waste material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels)" (see 45 FR 33120, May 19, 1980). In 1984, the Agency expanded the scope of the household waste definition to include wastes from bunkhouses, ranger stations, crew quarters, campgrounds,

picnic grounds, and day-use recreation areas (49 FR 44978, November 13, 1984).

Although the definition of household waste does not indicate whether a waste is household waste as a result of the place of generation (e.g., a residence), or as a result of who generated it (e.g., a resident of a household), EPA has limited the exclusion's application to those wastes which meet the following two criteria: (1) The waste must be generated by individuals on the premises of a household and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978). If a waste satisfies both criteria, then it would fall within the household waste exclusion and not be subject to RCRA Subtitle C regulation. Id.

EPA has previously taken the position that the household waste exclusion should not be extended to debris resulting from building construction, renovation, or demolition in houses, or other residences, because EPA did not consider the debris from such operations to be of a type similar to that routinely generated by a consumer in a home (49 FR 44978). (Although this interpretation did not address waste resulting from remodeling or abatement conducted at residences, these activities can be similar in many ways to those addressed in the 1984 **Federal Register** notice, i.e., renovation, construction, and demolition). EPA has re-evaluated this position in the context of this proposed temporary suspension of the TC rule for contractor-generated LBP debris and the TSCA rulemaking also being proposed today.

For the reasons discussed below, EPA has reconsidered the matter and now interprets the household waste exclusion in 40 CFR 261.4(b)(1) to apply to all LBP waste (i.e., LBP debris, LBP chips and dust, etc.) generated as a result of actions by residents of households to renovate, remodel, or abate their homes on their own. EPA invites comment on this interpretation.

i. *Residential renovation and remodeling.* EPA has previously taken the position that lead-contaminated paint chips resulting from stripping and re-painting of residential walls would be part of the household waste stream and not subject to RCRA Subtitle C regulation (Ref. 8). The Agency believed then and continues to believe that such re-painting efforts within a residence are routine maintenance and that any LBP waste resulting from these activities should fall within the household exclusion. EPA now believes that LBP waste resulting from renovation or remodeling efforts by residents of

households or "do-it-yourselfers," should also fall within the household waste exclusion.

Although the Agency stated in 1984 that waste from renovation should not be covered by the household waste exclusion (because the waste was not composed primarily of materials routinely generated by consumers in a home), it has become evident that more and more residents are engaging in renovation or remodeling of their homes. This is strongly suggested by the greatly increased number of building permits that have been issued throughout the country for renovation of residences. EPA believes that, although many renovation and remodeling efforts are conducted by professional contractors, more and more are done by residents on their own. This may be shown, in part, by the widespread openings of home improvement stores throughout the United States which cater to do-it-yourselfers. It is also evident from: (a) The doubling of retail sales of lumber and other materials to consumers over the last 10 years from \$45 to \$89 billion; (b) steady increases of approximately 25% in hardware sales every 5 years; (c) the increase in consumers' purchase of home improvement products from \$38 to \$90 billion between 1980 and 1995; and (d) the projected increase in sales of home improvement products to consumers to almost \$115 billion by the year 2000 (Ref. 9). Thus, EPA now believes that LBP waste resulting from renovation or remodeling efforts conducted by residents of households does meet the two criteria for the household exclusion outlined above (i.e., the waste is generated by individuals in a household and it is of the type that consumers generate routinely in their homes).

ii. *Residential abatements.* EPA has decided to include within the scope of the household waste exclusion LBP waste resulting from a do-it-yourselfer abatement conducted in homes. (EPA recommends that homeowners/residents do not try to remove lead paint or painted architectural components from older, pre-1978 homes without adequate understanding of the lead risks, especially to children, and proper ways to minimize the risks of exposure to dust and paint when removing and storing painted doors, windows, and other architectural components.) Although such abatements are less routine than renovation or remodeling activities, the Agency believes such LBP abatement waste should be covered by the household waste exclusion to avoid the incongruities that would result from the fact that the TSCA disposal and management standards being proposed

today do not apply to homeowners. The TSCA proposal applies to persons (i.e., properly trained and certified LBP abatement contractors) who generate, store, transport, reuse, reclaim and/or dispose of LBP debris resulting from target housing abatements, deleading of public or commercial buildings, and renovation, remodeling and demolition of target housing, residential, public, and commercial buildings. However, the TSCA proposed rule does not apply to residents of households who conduct any of these activities within a target house that they own (unless people other than immediate family members are occupying the target house). See § 745.300(a) and (b) of the regulatory text of the TSCA proposed rule.

If EPA chose to interpret the household exclusion not to apply to LBP waste resulting from residential renovation and remodeling or abatements done by households, the result would be that contractors conducting residential abatements, remodeling or renovation of LBP-contaminated residences would be subject to the TSCA standards (and not RCRA Subtitle C); however, residents conducting their own remodeling or renovation or LBP abatements would be subject to RCRA Subtitle C requirements (unless the Conditionally Exempt Small Quantity Generator exemption discussed below were to apply). Thus, residents/homeowners, but not contractors, would be required to determine whether the resulting LBP waste was hazardous. If the waste was hazardous, i.e., failed the TCLP regulatory level for lead, the resident would be required to comply with RCRA Subtitle C requirements. The Agency does not believe it is appropriate to apply RCRA Subtitle C requirements to LBP waste resulting from a resident's own renovation or remodeling or abatement actions, while allowing contractors generating the same type of LBP waste through the same activities at residences to comply with the less burdensome TSCA standards being proposed today.

EPA does not intend that its interpretation to exclude LBP waste generated by do-it-yourselfer abatements at homes from Subtitle C to be taken as a sign that EPA is encouraging people to conduct their own LBP abatements. Rather, the Agency believes that in situations where LBP in a residence presents risks to human health, trained and certified abatement contractors should conduct the LBP abatement.

iii. *Management of LBP waste generated by "do-it-yourselfer" households.* Identification of the waste as falling within the household waste

exclusion, however, does not make exposure to LBP less hazardous, and the LBP waste should be managed properly. EPA, therefore, recommends that residents/households generating LBP waste take the following steps for proper handling and disposal of LBP waste:

- Collect paint chips and dust, and dirt and rubble in plastic trash bags for disposal.
- Store larger LBP architectural debris pieces in containers until ready for disposal.
- Consider renting a covered mobile dumpster for storage of LBP debris until the job is done.
- Contact local municipalities or county offices to determine where and how LBP debris can be disposed. These precautionary measures would minimize generation of lead dust, and limit access to stored debris.

2. *Conditionally exempt small quantity generator waste.* LBP waste that does not fall within the scope of the TSCA LBP debris disposal standards and complimentary temporary TC deferral proposed today (i.e., paint chips and dust, sludges and filtercake, and contaminated clothing and equipment) may still be conditionally exempt from substantive RCRA hazardous waste management regulations, as explained below.

If LBP waste is produced in small quantities (no more than 100 kilograms per month (approximately 220 pounds)), the waste may fall within the conditionally exempt small quantity generator (CESQG) waste exemption from RCRA hazardous waste regulation (40 CFR 261.5). The CESQG rule generally exempts generators who produce hazardous waste in such small quantities from having to comply with the RCRA Subtitle C requirements. However, EPA has promulgated disposal requirements for CESQG waste (see 61 FR 34252, July 1, 1996). Generators of CESQG waste are required to dispose of such waste in solid waste disposal facilities which meet location, ground water monitoring, and corrective action standards promulgated in accordance with RCRA section 4010(c) (40 CFR part 257, subpart B), in permitted RCRA Subtitle C facilities, or in interim status RCRA Subtitle C facilities. Id.

3. *Scrap metal.* RCRA Subtitle C regulations exempt scrap metal being reclaimed from hazardous waste management requirements (40 CFR 261.6(a)(3)(ii)). Additionally, non-consumer scrap metal (e.g., home, prompt and processed scrap metal) being recycled have been excluded from the definition of solid waste and therefore, not regulated under RCRA (40

CFR 261.4(a)(13)). Home scrap is scrap metal generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings. Prompt scrap, also known as industrial or new scrap is scrap metal generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punching, and borings. Processed scrap metal is scrap metal that has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Under both the exemption and exclusion, recyclable materials such as steel beams and other metal components being sent for reclamation are not subject to the RCRA C regulations (40 CFR parts 262–266, 268, 270, and 124). Generators of these materials are not subject to the notification requirements of section 3010 of RCRA.

VI. State Authorization Considerations

A. *Applicability of Rules in States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA Subtitle C program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements promulgated under RCRA Subtitle C did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do

so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in the authorized State in the interim.

Today's proposed suspension of the TC is less stringent than the current RCRA program. Therefore, although the suspension is proposed under section 3001(g) of RCRA, a provision added by HSWA, States are not required to adopt it when promulgated. Nonetheless, EPA strongly encourages States to adopt the TC suspension for the reasons set out in this proposal. (It should be noted, however, that the TSCA management and disposal standards, once finalized, would apply to LBP debris even if it does not fail the TCLP test).

B. The TC Suspension in States Which Have Adequate TSCA Title IV Programs

EPA is proposing to allow the temporary suspension of the RCRA TC rule to take effect in those States where there is an effective TSCA Title IV program addressing the management and disposal of LBP debris. Therefore, a prerequisite for the temporary TC suspension, in the first 2 years, is a State TSCA Title IV program has been approved by EPA, or, after 2 years, EPA is implementing the Federal TSCA Title IV program for the management and disposal of LBP debris because the State has not been approved for the program under the requirements of TSCA section 404. This limitation applies to all States, regardless of whether they have been authorized for the RCRA hazardous waste program.

1. *Approval of States for the TSCA Title IV Program concerning the management and disposal of LBP debris.* Any State which seeks to administer and enforce the standards, regulations, or other requirements established under section 402 or 406 of TSCA may submit an application to EPA for approval of such TSCA program. TSCA section 404(b) states that EPA may approve such an application only after finding that the State TSCA program is at least as protective of human health and the environment as the Federal program established under section 402 or 404 and that it provides adequate enforcement.

There are two ways by which States may be approved for a TSCA Title IV program. Under the first method, when a State submits an application for LBP debris management and disposal program approval, the State may certify that it has such program, and that the program meets the requirements of TSCA sections 404(b)(1) and 404(b)(2). The TSCA certification must take the form of a letter from either the Governor

or the State Attorney General to the Administrator. It must include a description demonstrating that the State's TSCA program is at least as protective as the Federal program and provides for adequate enforcement. If this certification, or certificate of compliance, is contained in a State's application, the State program shall be deemed to be approved by EPA under TSCA section 404, until such time as the Administrator withdraws the approval (see § 745.312 of the regulatory text of today's TSCA proposed rule).

Under the second approval method, if the application does not contain such a certification, the State LBP debris management and disposal program would be considered approved only after EPA reviews and approves the State application (see § 745.315 of the regulatory text of today's TSCA proposal).

During the development of today's proposed rule, EPA considered restricting the proposed temporary suspension of the TC rule to only those States which had submitted applications and obtained actual approval of their TSCA section 404 programs under the second method described above. However, limiting the temporary exemption in this way might unnecessarily delay implementation of the State program because of the time it takes to approve or disapprove a State program. See 15 U.S.C. 2684(b). Because LBP abatements and deleading activities may be postponed until the TC suspension goes into effect, this delay may be detrimental to human health and the environment.

Thus, although the Agency will review the State TSCA program applications to ensure that the statutory standards for State programs under TSCA section 404 are met, EPA believes that it is appropriate to allow the temporary TC suspension to be applicable in States which submit certification Statements in conformance with § 745.312 of the regulatory text of today's TSCA proposed rule. Such a certification must assure EPA that the State TSCA program provides for adequate enforcement and is at least as protective of human health and the environment as the Federal program to be established for LBP debris under TSCA section 402. Therefore, the Agency believes that protection of human health and the environment will not be compromised by allowing LBP debris to be subject to the management and disposal requirements of the relevant State program.

Procedures for State or Tribal applications for TSCA program authorization are discussed in Unit VII.

of the TSCA proposed rule preamble published elsewhere in today's **Federal Register**. EPA has promulgated procedures for the submission and approval of State LBP worker training and certification programs developed under section 404, as well as a model State program (see 61 FR 45825-45827, August 29, 1996). For the purposes of the disposal standards developed pursuant to TSCA section 402, the requirements found in that TSCA rule will serve as the model State program (see 61 FR 45825-30, August 29, 1996).

2. *Federal implementation of the TSCA Title IV Program concerning the management and disposal of LBP debris.* EPA is required to enforce these TSCA Title IV regulations in any State which has not adopted a program to carry out the Federal requirements 2 years after promulgation of today's proposed TSCA Title IV regulations (see TSCA section 404(h)). Thus, today EPA is proposing to make the TC temporary suspension applicable once the Federal TSCA Title IV program for LBP disposal and management becomes federally enforceable in any State that has not adopted an approved TSCA program. EPA plans to issue a notice[s] in the **Federal Register** 2 years after the LBP TSCA regulations and TC temporary suspension are promulgated which provides a list of States that have not adopted a TSCA program. The notice will announce that the Agency intends to enforce the Federal TSCA program for LBP debris disposal and management in those States which have not been approved for the TSCA program.

C. Applicability of TC Suspension in States Without a TSCA Title IV Program

Under TSCA section 404(h), the Administrator of EPA is authorized to enforce TSCA Title IV regulations 2 years after the regulations have been promulgated in any State which has not adopted a program to carry out the Federal requirements. Thus, in addition to authorizing States for the temporary suspension of the TC rule once they have obtained approval of their TSCA program or submitted the requisite certification, EPA is also proposing to make the TC temporary suspension effective once the Federal TSCA Title IV program for LBP debris management and disposal becomes federally enforceable in any State that has not adopted an approved TSCA program. [EPA plans to issue a notice as discussed in section B above.]

D. Effect of Today's Proposed Rule in States Where EPA Implements RCRA Hazardous Waste Regulations

Under today's proposal, LBP debris would not be hazardous waste in those States without RCRA base program authorization, at the time those States have been approved for the TSCA Title IV program, or when EPA's implementation of such program becomes effective.

E. Effect of Today's Proposed Rule in States That Are Authorized for RCRA Subtitle C

1. *States that are not authorized for the toxicity characteristic.* In States that are not authorized for the TC regulation, EPA implements the TC regulation and would implement this suspension of the TC regulation for LBP debris in States which have approved TSCA Title IV programs, or where EPA implements the Federal TSCA Title IV program.

One important factor that States with base RCRA authorization should consider is the operation of their Extraction Procedure (EP) toxicity characteristic under State law. The EP procedure was part of the base State authorized program for those States authorized for RCRA before 1991. When the TCLP was promulgated by EPA, this more stringent procedure superseded the EP procedure. However, some States may still be implementing the EP under State law, even though the more stringent TCLP is in effect under RCRA. (At the time this proposal was written, 35 of the 49 authorized States and Territories were authorized for the TC rule.) Because LBP debris could also be considered hazardous under the EP, States may have to suspend or waive the operation of the EP under State law to allow this waste to be regulated exclusively under the TSCA Title IV program. Therefore, States that submit and certify (or simply submit) their TSCA Title IV program applications to EPA should also determine whether the EP toxicity characteristic is still in effect and take appropriate action. States should note that any such action to suspend or waive the EP would not require approval from EPA since this solely is a matter of State law.

2. *States that are authorized for the toxicity characteristic.* States that are authorized for both the RCRA-base program and the TC would need to revise their hazardous waste programs to adopt a suspension similar to the Federal TC suspension. If a State amends its RCRA and TC regulations, the new State RCRA regulations must be no less stringent than the Federal TC temporary suspension. If State TC

regulations are changed in a manner that is less stringent than this temporary suspension (e.g., the State suspension is permanent rather than temporary or addresses other types of LBP debris, e.g., LBP dust, LBP chips or blast media), EPA will not authorize the change and will enforce the more stringent Federally-authorized State TC rule provisions pursuant to section 3008 of RCRA. Some States may choose to use a State waiver authority to lift the TC requirements for LBP debris instead of amending their regulations. Use of such waiver authority would also have to be in a manner no less stringent than the Federal TC suspension.

On the other hand, States that have RCRA-base programs and are TC-authorized, and which choose not to change their RCRA regulations or use a State waiver authority to lift TC requirements for LBP debris, or do not have an approved TSCA Title IV program, would still administer and enforce their existing TC authorized requirements for LBP debris. In this circumstance, non-hazardous LBP debris would be regulated exclusively under a State or Federal TSCA program. Hazardous LBP debris would technically be subject to both the State RCRA program and the State or Federal TSCA program; however, compliance with both sets of requirements could be satisfied only by treating the LBP debris as a hazardous waste.

F. Procedure for Authorizing States for the TC Temporary Suspension

As discussed previously, in order for the TC temporary suspension to be effective in any State, the State must be approved for the TSCA Title IV program or be a State where EPA implements the Federal TSCA Title IV program. In States with the Federal TSCA Title IV program, EPA will take action to make the TC suspension effective.

For States that are authorized for the TC rule, EPA is prepared to expedite the review and approval of TC rule revision applications. EPA further encourages States which are in the process of applying for TC authorization to suspend or waive the operation of the TC for LBP debris as part of their TC application.

EPA requests comment regarding the use of the abbreviated authorization procedure proposed on August 22, 1995 (see 60 FR 43688) for the authorization of TC suspension. This proposed procedure, designated as Category 1, would abbreviate the contents of a State application regarding applicable rules, and shorten the length of time allocated for EPA review and determination. The abbreviated application required by the

proposed Category 1 procedures should also cite and reference the State's approved TSCA Title IV program. EPA believes that today's proposed rule may be appropriate for the use of this procedure due to the minor effect of today's rule on an overall TC program, its environmental benefit, and the straight-forward nature of today's proposed amendments to the RCRA regulations. EPA believes that the proposed application procedure will encourage States to adopt the TC suspension and become authorized for it.

Under TSCA Title IV, Indian Tribes may apply for approval of lead-based paint programs (see 61 FR 45805-45808, August 29, 1996). Thus, EPA is proposing in the accompanying TSCA proposal for LBP management and disposal standards, that Indian Tribes may apply for approval of management and disposal of LBP debris management and disposal programs. However, in an opinion issued by the U.S. Court of Appeals for the District of Columbia, the Court held that EPA does not have authority under RCRA Subtitle D to approve tribal solid waste permit programs. *Backcountry Against Dumps v. EPA*, 100 F.3d. 147 (D.C. Cir. 1996). Partly, as a result of this decision, EPA expects that it will not be authorizing tribal hazardous waste programs under RCRA Subtitle C. Thus, after consulting with Tribes, EPA expects to implement and enforce this temporary suspension of the TC rule for LBP debris in Indian Country when a TSCA Title IV program (either Tribal or Federal is operable in the Tribe's jurisdiction).

VII. Public Docket and Electronic Submissions

The complete record for this proposed rule is contained in the RCRA Docket office at the following address: Environmental Protection Agency, RCRA Docket, Crystal Gateway, North #1, 1235 Jefferson Davis Highway, First Floor, Arlington, VA and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603-9230. Copies may be made at a cost of \$ 0.15 per page. Charges under \$25.00 are waived.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comment received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the record maintained at the address in the beginning of this document. EPA

responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this proposal. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

VIII. References

The following books, articles, reports and sources were used in preparing this notice and were cited in this proposal by the number indicated below:

1. U.S. Department of Health and Human Services, Center for Disease Control. Update: Blood Lead Levels-United States, 1991-1994, Morbidity and Mortality Weekly Report. Vol. 46, No. 7. February 21, 1997.
2. HUD. Department of Housing and Urban Development, "National Housing Survey." Washington, DC. 1994.
3. Task Force on Lead-Based Paint Hazard Reduction and Financing, Letter to Honorable Carol Browner, Administrator, USEPA, Washington, DC, April 13, 1994.
4. HUD. Lead-Based Paint Hazard Reduction and Financing Task Force, Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing. HUD-1547-LBP. July 1995.
5. Science Applications International Corporation (SAIC). Analytical Results of Lead in Construction Debris. May 1992.
6. SAIC. Background Document on Lead Abatement Waste Study (Interim Draft). Prepared for USEPA, Office of Solid Waste. September 1994.
7. USEPA. TSCA Title IV, Sections 402/404: Lead-Based Paint Debris Management and Disposal Standards Proposed Rule Economic Analysis. Office of Pollution Prevention and Toxics. September 24, 1998.
8. USEPA. RCRA/Superfund Hotline Summary - RCRA Question No. 6 (March 1990).
9. USEPA. Table 1: Home Improvement Products Market 1980 to 2000 and Table 2: Retail Sales for Lumber and Other Building Materials and Hardware - 1980 to 1995. June 1997.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the

requirements of the Executive Order. A significant regulatory action is defined as an action 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 entitlement, grants, user fees, or loan programs or the rights and obligations of 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.

Pursuant to the terms of the Executive Order, EPA has determined that today's proposed rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations are documented in the public record.

In addition, EPA has prepared an economic analysis of the impact of this action and the companion TSCA rule, which is contained in a document entitled, "TSCA Title IV, §§ 402/404: Lead-Based Paint Debris Management and Disposal Proposed Rule: Economic Analysis," which is available in the public record for this proposal.

The proposed TSCA and RCRA rules will result in an estimated cost savings of \$119 million annually after the first year. The cost savings results from reduced disposal costs minus new compliance costs. Compliance costs of these two rules, due primarily to recordkeeping and notification, are \$30.86 million annually after the first year. States are expected to incur \$0.95 million in the first year to apply for EPA approval and then 0.06 million in the second and third years and biennially thereafter to submit reports.

The public housing sector will benefit from reduced costs of disposal of LBP debris. Decreased disposal costs should lead to a decrease in the costs of abatements, saving the public housing authorities \$17.13 million per year. This money, earmarked specifically for abatement activity, will allow an increase in the number of abatements in public housing conducted per year, thus eliminating the stock of public housing containing LBP 1 year earlier than

predicted in the absence of these proposed rules.

Please refer to the companion TSCA proposal for a further discussion of the costs and benefits of this and the TSCA proposal.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-12, as amended by the Small Business Regulatory Enforcement and Fairness Act, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, under the Regulatory Flexibility Act, an agency is not required to prepare a regulatory flexibility analysis for a proposed rule if the agency head certifies that the proposal will not have a significant adverse economic impact on a substantial number of small entities.

This proposed rule will generally provide regulatory relief to small and medium entities that are involved in lead abatement, renovation, remodeling, deleading, and demolition. For this reason, I certify that this proposed rule will not have a significant adverse impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. The proposed rule will offer cost savings to homeowners and public/private property owners of target housing and public or commercial buildings faced with LBP abatements, deleadings, renovations, and demolitions. For further discussion of the cost savings associated with this proposed suspension of the TC rule, see the Economic Analysis prepared for the TSCA LBP debris management and disposal standards (Ref. 7).

C. Paperwork Reduction Act

Today's proposed rule, which would temporarily suspend the TC rule for specified LBP debris, does not add any new burden as defined by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The existing RCRA information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB control number 2050-0041 (EPA ICR No. 969). This proposed rule would temporarily suspend the RCRA TC requirements for specified LBP debris, which would be replaced by TSCA Title IV requirements which are proposed elsewhere in today's **Federal Register**. As indicated

in the TSCA Title IV proposed rule entitled "Lead; Management and Disposal of Lead-Based Paint Debris," an Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1822.01) and submitted to OMB in accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and the procedures at 5 CFR 1320.11. For information on the TSCA requirements and the accompanying ICR, please refer to the TSCA Title IV proposed rule. A copy of the ICR can be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or electronically by sending an e-mail message to, "farmer.sandy@epa.gov." An electronic copy of the ICR has also been posted with the **Federal Register** notice on EPA's Homepage at "http://www.epa.gov/icr." The RCRA temporary suspension and the new information requirements contained in the TSCA proposal are not effective until promulgation. An agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to OMB approval under PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations after initial publication in the final rule, are maintained in a list at 40 CFR part 9.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and Tribal governments in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the

development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that adoption of the proposed temporary suspension of the TC rule for LBP debris is voluntary; therefore, there is no unfunded mandate. The proposed rule would relieve generators, including States, local or Tribal governments, and the private sector, of their obligation to comply with the TC rule, which may lead to significant cost savings from both not having to sample and conduct the TCLP on LBP debris but, more importantly, from not having to manage LBP debris as a RCRA hazardous waste if the waste is determined to be hazardous. EPA has estimated that the cost savings to the private sector from this temporary suspension of the TC rule would be approximately \$120 million annually.

Moreover, the Act generally excludes from the definition of a "Federal intergovernmental mandate" (in sections 202, 203, and 205) duties that arise from participation in a voluntary Federal program. Adoption by States of this proposed temporary TC suspension is voluntary and imposes no Federal intergovernmental mandate within the meaning of the Act. Rather, States may continue to impose more strict standards for LBP debris by choosing to maintain the TC rule in their authorized State programs. The only costs to States which choose to adopt the temporary TC suspension would be that cost of certifying that it has a State TSCA Title IV LBP debris management and disposal program at least as protective as the Federal program. EPA estimates that it may cost States \$0.40 million to provide a certification to EPA (Ref. 7).

In response to section 203 of the Act, EPA has determined that the proposed rule will not significantly or uniquely affect small governments, including Tribal governments. As indicated above, if small governments, such as small municipalities or Tribes, are generators of LBP debris, then they would save the costs of complying with the TC rule and any of the costs of complying with the RCRA Subtitle C hazardous waste standards if the debris failed the TCLP and a temporary suspension of the TC rule had not been promulgated. Under this proposed rule, small governments, including Tribal governments, are not being treated in a unique way.

EPA has, however, worked closely with States and small governments in the development of the temporary suspension of the TC rule. EPA held a

stakeholder meeting in the fall of 1994 and sent a stakeholder mailing in the summer of 1996 to discuss a temporary suspension of the TC for lead abatement waste and new TSCA management and disposal standards. Among the attendees/recipients were representatives from State governments, environmental groups, labor organizations, professional organizations representing the building and waste management trades, and private LBP abatement contractors. EPA has also transmitted a draft proposed rule to a number of State government regulatory agencies which act as co-regulators under RCRA and TSCA Title IV.

In working with these various States and other organizations, EPA has provided notice to small governments of the potential regulatory relief provided by the temporary TC suspension; obtained meaningful and timely input from them; and informed, educated, and advised small governments on how to comply with the requirements of the proposed rule. Thus, any applicable requirements of the Act have been met.

E. Executive Order 12898

Pursuant to Executive Order 12898 entitled "Environmental Justice Considerations" (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this proposed action on the environmental and health conditions in low-income and minority communities. This examination shows that existing LBP hazards are a risk to all segments of the population living in pre-1978 housing. However, literature indicates that some segments of our society are at relatively greater risk than others.

A recent study by the National Health and Nutrition Examination Survey (NHANES) indicates that children of urban, minority (e.g., African American, Asian Pacific American, Hispanic American, American Indian), or low-income families, or who live in older housing, continue to be most vulnerable to lead poisoning and elevated blood-lead levels. The February 21, 1997 Center for Disease Control's Morbidity and Mortality Weekly Report states that: "Despite the recent and large declines in BLLs [blood lead levels], the risk for lead exposure remains disproportionately high for some groups, including children who are poor, non-Hispanic black, Mexican American, living in large metropolitan areas, or living in older housing" (Ref. 1).

Although the baseline risks from lead-based paint fall disproportionately on

poorer sub-populations, it may be more likely that abatements will take place in residential dwellings occupied by mid-to upper-level income households. Abatements are voluntary, and wealthier households are more likely to have the financial resources to abate an existing problem in their home, or to avoid LBP hazards by not moving into a residential dwelling with LBP. Even though a national strategy of eliminating LBP hazards targets a problem affecting a greater share of poor households and minorities, the impact of income on the ability to undertake voluntary abatements may result in an inequitable distribution of LBP risks.

By making abatements more affordable, today's proposal helps to address this situation. To the extent that the proposal results in additional abatements, renovation and remodeling, and demolitions that reduce LBP hazards, there is a likelihood that poor and minority populations will benefit the most from risk reductions. This potential will likely be realized to the greatest extent in the case of public housing units with LBP hazards. The decrease in the cost of abatements in public housing will lead to an increase in abatement activity in public housing and a subsequent acceleration in the depletion of public housing with LBP hazards. The occupants of these public housing units are disproportionately lower income and minority populations. As the price of abatements is lowered as a result of cost savings associated with today's proposed rule, more low-income families will be able to afford to make the decision to remove LBP hazards from their homes.

EPA also determined that the potential impact on minority-owned businesses in industries affected by the proposed rule would be minimal. Available information suggests that minority-owned business would not particularly benefit from this proposed rule, since minority ownership rates for firms that generate LBP debris are no higher than average.

F. Executive Order 13045

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this proposal is not an economically significant regulatory action as defined by E.O. 12866. The environmental health or safety risks addressed by this action have a beneficial effect on children. This proposal will benefit children by allowing less costly management and disposal of lead-based paint therefore

lessening the cost of abatements. Reducing the costs of abatements will also reduce the amount of time needed to complete abatements in public housing. Lower abatement costs will increase the amount of private homes undergoing abatements. By reducing costs associated with management and disposal of LBP debris, the Agency believes that the number of abatements will increase thus resulting in a reduction of children exposed to LBP. Children are the primary beneficiaries of this proposed rule.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are effective. The Act requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards.

EPA is not proposing any new test methods or other technical standards as part of today's proposed temporary suspension of the TC rule for LBP debris. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule. EPA invites comments on this analysis.

H. 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 the Office of Management and Budget 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 proposed rule does not create a mandate on State, local or tribal governments. The proposed rule 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 proposed rule.

I. 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 to the Office of Management and Budget, 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: December 9, 1998.

Carol M. Browner,
Administrator.

Therefore, it is proposed that chapter I of 40 CFR be amended as follows:

PART 260—[AMENDED]

1. In part 260:

a. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

b. Section 260.10 is amended by alphabetically adding the following definitions to read as follows:

§ 260.10 Definitions.

* * * * *

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil.

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility [target housing] that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with § 745.226 of this chapter, unless such projects are covered by paragraph (4) of this definition.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards (at target housing), that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

* * * * *

Commercial building means any building which is used primarily for commercial or industrial activity including but not limited to: manufacturing, service, repair, or storage.

* * * * *

Deleading means activities conducted by a person who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities in public buildings or commercial buildings.

Demolition means the wrecking, razing, or destroying any building or significant element thereof using a method that generates undifferentiated rubble.

* * * * *

Lead-based paint (LBP) means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per centimeter squared or more than 0.5% by weight.

Lead-based paint architectural component debris (LBPACD) means:

(1) Elements or fixtures, or portions thereof, of commercial buildings, public buildings, or target housing that are coated wholly or in part with or adhered to by LBP. These include, but are not limited to interior components such as: ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim, including sashes, window heads, jambs, sills, stools and troughs, built-in cabinets, columns, beams, bathroom vanities, and counter tops; and exterior components such as: painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors,

joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes, and wells.

(2) LBPACD is generated when an architectural component which is coated wholly or in part with or adhered to by LBP is displaced and separated from commercial buildings, public buildings, or target housing as a result of abatement, deleading, renovation or remodeling activities.

(3) LBPACD does not include other types of LBP waste such as paint chips, paint dust, sludges, solvents, vacuum filter materials, wash water, contaminated and decontaminated protective clothing and equipment except that paint chips and dust which are created after LBP debris is placed in a container or vehicle for transport to a disposal or reclamation facility specified in 40 CFR 745.309 is considered LBPACD.

(4) LBPACD which is reused in compliance with 40 CFR 745.311 is no longer LBPACD.

Lead-based paint debris (LBP debris) means lead-based paint architectural component debris (LBPACD) or lead-based paint demolition debris.

Lead-based paint demolition debris means any solid material which results from the demolition of target housing, public buildings, or commercial buildings which are coated wholly or in part with or adhered to by LBP at the time of demolition.

* * * * *

Public building means any building constructed prior to 1978, which is generally open to the public or occupied or visited by the public, including but not limited to schools, day care centers, museums, airport terminals, hospitals, stores, restaurants, office buildings, convention centers, and government buildings. Note: "child-occupied facilities" as defined in 40 CFR 745.223 of this chapter are included in the definition of public building.

* * * * *

Remodeling means any construction-related work on an existing property intended to either maintain or improve the property.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in this part. The term renovation includes but is not limited to: the removal or modification of painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such

activities that may generate paint dust); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

* * * * *

Reuse means to use again for any purpose other than reclamation or disposal. Examples of reuse include moving doors, windows, or other components from one structure to another to be put to similar use.

* * * * *

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age or under resides or is expected to reside in such housing for the elderly or person with disabilities) or any 0-bedroom dwelling.

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PART 261—[AMENDED]

2. In part 261:

a. The authority section for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

b. Section 261.4 is amended by adding (b)(15) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(15)(i) Lead-based paint architectural component debris subject to the management and disposal standards under part 745, subpart P of this chapter which results from abatements conducted at target housing; deleading activities conducted at public buildings or commercial buildings; or renovation or remodeling activities conducted at target housing, public buildings, or commercial buildings. This exclusion does not apply if the LBP architectural component debris is hazardous for any other reason than failure of the Toxicity Characteristic (§ 261.24) for lead (Hazardous Waste Code D008),

(ii) Lead-based paint demolition debris resulting from demolition(s) conducted at target housing, public building(s), or commercial building(s)

which is subject to the management and disposal standards under part 745, subpart P of this chapter. This exclusion does not apply if the LBP architectural component debris is hazardous for any other reason than failure of the Toxicity Characteristic (§ 261.24) for lead (Hazardous Waste Code D008).

(iii) The exclusions set forth in paragraph (b)(15)(i) and (ii) of this section shall apply in any State which has an EPA authorized program for management and disposal of LBP debris under TSCA Title IV; or in any State in which the Federal TSCA Title IV program has become effective.

(iv) If the Administrator determines that the State satisfies the standards in paragraph (b)(15)(iii) of this section, the Administrator shall publish a notice in the **Federal Register** to suspend the TC in that State. The suspension shall be effective immediately upon publication of the **Federal Register** notice.

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