

Dated: August 30, 1999.

Susan H. Wayland,

*Deputy Assistant Administrator for
Prevention, Pesticides and Toxic Substances.*

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ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-CO/A; FRL-6099-1]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Colorado Interim Approval of Lead-Based Paint Activities Program

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice; interim approval of the
Colorado TSCA Section 402/404 Lead-
Based Paint Accreditation and
Certification Program.

SUMMARY: On December 21, 1998, the State of Colorado submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Colorado provided a self-certification letter stating that its program is at least as protective of human health and the environment as the Federal program and it has the legal authority and ability to implement the appropriate elements necessary to receive interim enforcement approval. On April 13, 1999, EPA published in the **Federal Register** (64 FR 18017) (FRL-6060-6) a notice announcing receipt of the State's application and requesting public comment and/or opportunity for a public hearing on the State's application. The Agency did not receive any comments regarding any aspect of Colorado's program and/or application. Today's notice announces the approval of Colorado's application, and the authorization of the Colorado Department of Public Health and Environment, Air Pollution Control Division's Lead-Based Paint Activities Program to apply in the State of Colorado effective December 21, 1998, in lieu of the corresponding Federal program under section 402 of TSCA. This authorization provides interim approval for the compliance and enforcement program portion of Colorado's lead-based paint program. All elements for final compliance and enforcement program approval must be

fully implemented no later than
December 21, 2001.

DATES: Based upon the State's self-
certification, Lead-Based Paint
Activities Program authorization was
granted to the State of Colorado effective
on December 21, 1998. Interim approval
for the compliance and enforcement
portion of the program will expire on
December 21, 2001.

FOR FURTHER INFORMATION CONTACT:
Dave Combs, Regional Toxics Team
Leader, Environmental Protection
Agency, Region VIII, 999 18th St., Suite
500, 8P-P3-T, Denver, CO 80202-2466.
Telephone: 303-312-6021; e-mail
address: combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

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

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Under section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations (40 CFR part 745) governing lead-based paint activities in target housing and child-occupied facilities. States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, Subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

Under these regulations with regard to interim compliance and enforcement approval (40 CFR 745.327(a)(1)), a State must demonstrate that it has the legal authority and ability to immediately implement certain elements, including legal authority for accrediting training providers, certification of individuals,

work practice standards and pre-renovation notification, authority to enter, and flexible remedies. In order to receive final approval, the state must be able to demonstrate that it is able to immediately implement the remaining performance elements, including training, compliance assistance, sampling techniques, tracking tips and complaints, targeting inspections, follow up to inspection reports and compliance monitoring and enforcement.

The State of Colorado's environmental audit privilege and penalty immunity statute, sometimes known as S.B. 94-139 (codified at sections 13-25-126.5, 13-90-107(1)(j), and 25-1-114-5, C.R.S.) may impair the State's ability to fully administer and enforce the lead-based paint program. Interim compliance and enforcement approval will provide the State the opportunity to address problems and issues associated with the State's environmental audit privilege and penalty immunity law as well as the development and implementation of required performance elements under 40 CFR part 745.327(c). EPA will work with the State during this interim approval period to remedy any deficiencies in its laws or implementation of the required performance elements. Interim approval of the compliance and enforcement program portion of the State's program may be granted only once. EPA's interim approval of the compliance and enforcement program portion of the State's program expires on December 21, 2001.

If the State does not meet the requirements for final approval of its compliance and enforcement program by December 21, 2001, EPA may be compelled to initiate the process to withdraw Colorado's interim authorization pursuant to 40 CFR part 745.324(i). If Colorado has made modifications to its Audit Law necessary to meet the minimum requirements of its Federally authorized environmental programs, this law will no longer present a barrier to final approval of its lead-based paint activities program.

In order to maintain authorization, all program and enforcement elements, including all reporting requirements, must be met pursuant to the terms identified in Colorado's application. This approval does not authorize the State of Colorado to implement and/or enforce a lead-based paint activities program in Indian Country.

II. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or

fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

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

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

List of Subjects

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

Dated: August 26, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

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FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 90-314, FCC 99-200]

QUALCOMM Inc. Pioneer's Preference Granted

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 9, 1999, the Commission released a document granting QUALCOMM Incorporated (QUALCOMM) a pioneer's preference. The United States Court of Appeals for the District of Columbia Circuit ordered the Commission to grant QUALCOMM a pioneer's preference. The Commission in Compliance with the Court's decision, hereby grants QUALCOMM a pioneer's preference in the broadband Personal Communications Service.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418-2452.

SUPPLEMENTARY INFORMATION:

1. On July 23, 1999, the United States Court of Appeals for the District of Columbia Circuit ordered the Commission to grant QUALCOMM Incorporated (QUALCOMM) a pioneer's preference "forthwith." See, *QUALCOMM Incorporated v. Federal Communications Commission*, D.C. Cir. No. 98-1246. The Commission had previously dismissed QUALCOMM's request for a pioneer's preference in the 2 GHz broadband Personal Communications Services; See *Review of the Pioneer's Preference Rules*, ET Docket No. 93-266, Order, 62 FR 48951, September 18, 1997, *recon. denied*, Memorandum Opinion and Order, 63 FR 24126, May 1, 1998. QUALCOMM appealed that dismissal, and the Court granted QUALCOMM's petition for review. The Commission, in compliance with the Court's decision, hereby grants QUALCOMM a pioneer's preference. In accordance with the Court's instructions, the Commission plans to act promptly to identify suitable frequency spectrum for an award of a license to QUALCOMM.

2. Accordingly, *it is ordered* that a pioneer's preference is hereby *Granted* to QUALCOMM Incorporated in accordance with the Court's decision. This action is taken pursuant to Sections 4(i) and 303(r) of the