

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**

ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT STATEMENT

MORE STRINGENT RULES: OAC 252:110-13-7.

The proposed rulemaking is more stringent than its corresponding federal rule and current state rules in the following way:

The above-listed provision imposes more stringent dust-lead clearance levels than are included in the corresponding federal rule, 40 C.F.R. § 745.227(e)(8)(viii). The Department of Environmental Quality (DEQ) is seeking to update dust-lead clearance levels in order to match the U.S. Environmental Protection Agency's (EPA) new dust-lead hazard standards and clearance levels already required for grantees of the U.S. Department of Housing and Urban Development's (HUD) Office of Healthy Homes and Lead Hazard Control (OLHCHH) performing lead hazard control work.¹

On July 9, 2019, EPA lowered the dust-lead hazard standards from 40 µg/ft² and 250 µg/ft² to 10 µg/ft² and 100 µg/ft² on floors and window sills, respectively. 84 Fed. Reg. 32632. (Jul. 9, 2019). In this action, commonly referred to as the Lead Dust Rule, EPA left the dust-lead clearance levels unchanged at 40 µg/ft² and 250 µg/ft² on floors and window sills. *Id.* at 32634. There is not a dust-lead hazard standard for window troughs, and the existing clearance level for window troughs of 400 µg/ft² was not addressed or changed in the 2019 Lead Dust Rule.

The recent change in the dust-lead hazard standards was a result of a U.S. Court of Appeals decision. While the court ruling required EPA to lower the dust-lead hazard standards, it did not address the dust-lead clearance levels. *Community Voice v. United States EPA*, 878 F.3d 779, 788. (9th Cir. 2017). This is because the Petitioners requested only that the court order EPA to finalize a rule to update the dust-lead hazard standard. Subsequently, EPA lowered only the dust-lead hazard standards leaving the dust-lead clearance levels unchanged.

EPA based its new dust-lead hazard standards on a survey it conducted in 2015 of dust-lead clearance levels used by HUD's OLHCHH. EPA stated in the proposed Lead Dust Rule:

The survey concluded that “a reduction in the federal clearance standard for floors from 40 µg/ft² to 10 µg/ft², [and] a reduction in the federal clearance standard for windowsills from 250 µg/ft² to 100 µg/ft² . . . are all technically feasible using the methods currently employed by OLHCHH [Lead Hazard Control] LHC grantees to prepare for clearance.” 83 Fed. Reg. 30889, 30890 (Jul. 2, 2018).

¹ See U.S. Department of Housing and Urban Development, Policy Guidance No. 2017-01 (Jan. 31, 2017) (copy available at <https://www.hud.gov/sites/documents/LEADDUSTCLEARANCE.PDF>) and HUD Office of Lead Hazard Control and Healthy Homes Fact Sheet on Revised Dust-Lead Action Levels for Risk Assessment and Clearance; Clearance of Porch Floors, Policy Guidance No. 2017-01 Rev. 1 (Feb. 17, 2017) (copy available at https://www.hud.gov/sites/documents/FS_LHC_DUSTLEAD_POLICY.PDF).

Thus, EPA's survey concluded that HUD's dust-lead clearance levels of 10 µg/ft² for floors and 100 µg/ft² for window sills are technically feasible. *Id.* at 30890. In its recent rule change, EPA used HUD's dust-lead clearance levels in setting its new dust-lead hazard standards only. *Id.* DEQ is now seeking to adopt HUD's dust-lead clearance levels which have been proven to be technically feasible, in order to match EPA's dust-lead hazard standards.

In addition, DEQ proposes to use the more stringent 100 µg/ft² clearance level for window troughs that HUD's OLHCHH requires of its grantees.

RATIONALE: The reason for the more stringent rules is as follows:

EPA has stated that any exposure to lead in dust would have adverse health effects. 66 Fed. Reg. 1205, 1213 (Jan. 5, 2001). EPA and HUD have stated that the dust-lead clearance levels of 10 µg/ft² for floors and 100 µg/ft² for window sills and window troughs are technically feasible. 83 Fed. Reg. 30889, 30890. (Jul. 2, 2018).² The current dust-lead clearance levels are higher than the dust-lead hazard standards set forth in the 2019 Dust Lead Rule. Leaving the clearance levels unchanged could possibly allow abatement projects to result in dust-lead levels that are higher than initial lead testing after abatement work is completed. The proposed dust-lead clearance levels would match the HUD dust-lead clearance levels for certain HUD grantees. This proposed rulemaking is intended to protect Oklahomans from harm by lowering the dust-lead clearance levels.

ENVIRONMENTAL BENEFIT:

The proposed rule should result in improved public health and safety for the citizens of Oklahoma, especially children. Updating state regulations to match federal dust-lead hazard standards and aligning dust-lead clearance levels with the updated dust-lead hazard standards is intended to reduce the risk of exposure to LBP hazards by preventing abatements from creating higher dust-lead levels.

Exposure to lead from lead-based paint can cause a wide array of negative effects on multiple organ systems. Most notable are the effects of lead-based paint in children under the age of six (6) years old, who are still developing. The proposed rules would result in improved public health, safety, and protection of the environment by reducing the risk of exposure to lead-based paint hazards by lowering the hazard standards and clearance levels.

ECONOMIC IMPACT:

The Department anticipates no significant economic impact as a result of the proposed changes. To reach the revised clearance levels, minimal costs may be incurred by contractors and firms that perform lead-based paint abatement activities for compensation. Property owners may incur increased costs if said costs are passed through by the contractors.

² See also U.S. Department of Housing and Urban Development, Policy Guidance No. 2017-01 (Jan. 31, 2017) (copy available at <https://www.hud.gov/sites/documents/LEADDUSTCLEARANCE.PDF>) and HUD Office of Lead Hazard Control and Healthy Homes Fact Sheet on Revised Dust-Lead Action Levels for Risk Assessment and Clearance; Clearance of Porch Floors, Policy Guidance No. 2017-01 Rev. 1 (Feb. 17, 2017) (copy available at https://www.hud.gov/sites/documents/FS_LHC_DUSTLEAD_POLICY.PDF).

Additionally, the State of Oklahoma may see a reduction of costs in the long term associated with illness and services for children exposed to lead dust.

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