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). As part of a broader update to Chapter 110. Lead-Based Paint Management, 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 Lead Hazard Control and Healthy Homes (OLHCHH) performing lead hazard control work.[1]

On July 9, 2019, EPA lowered the dust-lead hazard standards from 40 µg/ft^2 and 250 µg/ft^2 to 10 µg/ft^2 and 100 µg/ft^2 on floors and window sills, respectively. 84 Fed. Reg. 32632 (Jul. 9, 2019). In this action, commonly referred to as the 2019 Dust-Lead Hazard Standard (DLHS) Rule, EPA left the dust-lead clearance levels unchanged at 40 µg/ft^2 and 250 µg/ft^2 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/ft^2 was not addressed or changed in the 2019 DLHS 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 standards. 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 DLHS Rule preamble:

> The survey concluded that "a reduction in the federal clearance standard for floors from 40 µg/ft^2 to 10 µg/ft^2, [and] a reduction in the federal clearance standard for windowsills from 250 µg/ft^2 to 100 µg/ft^2 . . . 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/ft^2 for floors and 100 µg/ft^2 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*.

Subsequent to the Department's initial presentation of the referenced rule proposal to the Air Quality Advisory Council at its June 2020 meeting, EPA proposed to revise the dust-lead clearance levels that are included in 40 C.F.R. § 745.227(e)(8)(viii), following the approach used for its 2019 DLHS Rule. 85 Fed. Reg. 37810 (Jun. 24, 2020). EPA's proposed action would lower the dust-lead clearance levels from 40 µg/ft^2 and 250 µg/ft^2 to 10 µg/ft^2 and 100 µg/ft^2 on floors and window sills, respectively. EPA is not proposing to revise the existing clearance level for window troughs of 400 µg/ft^2 at this time.

DEQ is now seeking to adopt EPA's proposed revised dust-lead clearance levels, which are consistent with EPA's dust-lead hazard standards and HUD's dust-lead clearance levels that have been proven to be technically feasible. In addition, DEQ proposes to use the more stringent 100 µg/ft^2 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/ft^2 for floors and 100 µg/ft^2 for window sills and window troughs are technically feasible. 83 Fed. Reg. 30889, 30890 (Jul. 2, 2018) and 85 Fed. Reg. 37810 (Jun. 24, 2020).[2] The current dust-lead clearance levels are higher than the dust-lead hazard standards set forth in the 2019 DLHS Rule. Thus, a dust-lead hazard could remain even if an abatement meets the existing clearance levels. Additionally, 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 EPA's proposed revised dust-lead clearance levels for floors and window sills, and the HUD dust-lead clearance levels for window troughs that currently apply to 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 years old, who are still developing. The proposed rules would result in improved public health,

[2] *See* Footnote 1.

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.

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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