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California Department of Public Health



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Governor

NOTICE OF PROPOSED RULEMAKING
Title 17, California Code of Regulations
DPH-20-011 Lead Dust Update
Notice Published November 12, 2021

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write or call: David Martin, Office of Regulations, 1415 L Street Suite 500, Sacramento, CA 95814, at (916) 440-7673, email to david.martin@cdph.ca.gov or use the California Relay Service by dialing 711.

PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a public hearing if a written request for a public hearing is received from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations by December 28, 2021 which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written Comments must be submitted as follows:

California Department of Public Health
Office of Regulations 1415 L Street, Suite 500, Sacramento, CA 95899-7377
Phone (916) 558-1710 • Fax (916) 440-5747
[Department website: \(www.cdph.ca.gov\)](http://www.cdph.ca.gov)

1. By email to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier “DPH-20-011 Lead Dust Update” in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By postal service or hand delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All comments, including email or fax transmissions, should include the regulation package identifier, DPH-20-011 “Lead Dust Update”, along with your name and your mailing address or email address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

Authority and Reference

Authority for the proposed regulatory change is provided in sections 105250, 124160, and 131200 of the Health and Safety Code and section 4851 of the United States Code. This proposal implements, interprets and makes specific sections 105250, 124160 and 131051 of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Proposal

The California Department of Public Health (Department) proposes to amend the definition of lead-contaminated dust in the California Code of Regulations, title 17 (hereafter 17 CCR), section 35035, in order to comply with the new United States Environmental Protection Agency (US EPA) final ruling issued in July 2019. (84 Fed.Reg. 32648, July 9, 2019.) The final ruling changes the definition of “dust-lead hazard” from “40 µg/ft² on floors or 250 µg/ft² on interior window sills based on wipe samples” to “10 µg/ft² on floors or 100 µg/ft² on interior window sills based on wipe samples” (84 FR 32648, July 9, 2019). The effective date of the final ruling is January 6, 2020.

Background

The proposed regulatory change is necessary for the Department to comply with authorization standard of the US EPA for Lead-Related Construction (LRC) programs, and to ensure the Department’s continued eligibility for federal and state funding of lead-hazard reduction activities in the state. (Health & Saf. Code, § 105250, subd. (e).) The US EPA granted California authorization to run its own Lead Based Paint (LBP) activities program as long as “the State or Tribal program is at least as protective of

human health and the environment as the corresponding Federal program” and “provides adequate enforcement.” (40 C.F.R. §§ 745.324, subd. (e)(2), and 745.324. subd. (i).) In order to meet the requirements of an authorized state program, the Department is required to meet or exceed the updated federal lead-dust standards by January 6, 2022. (40 C.F.R. § 745.325, subd. (e)(1).)

The regulations implementing requirements for Accreditation, Certification, and Work Practices for Lead-Based Paint and Lead Hazards are contained in the 17 CCR sections 35001 through 36100. The Department has determined that revisions to 17 CCR section 35035 are necessary to maintain US EPA-authorized state program status as stated in 40 Code of Federal Regulations (hereafter 40 CFR) part 745.324.

Problem Statement

As currently written, 17 CCR section 35035 defines lead-contaminated dust as forty micrograms of lead per square-foot of surface area (40 µg/ft²) for interior floor surfaces and 250 µg/ft² for interior horizontal surfaces. This is inconsistent with the new US EPA final ruling that was issued on July 9, 2019.

By revising 17 CCR section 35035 to match the US EPA standards, the Department will fulfill the federal requirement for LBP activities programs by being “at least as protective of human health and the environment as the corresponding Federal program” and providing “adequate enforcement.” If the proposed revision is not approved, the Department may lose its authorization through the US EPA to run its LBP activities program. With the absence of the state authorized program, US EPA’s Lead Abatement Program would take effect, which is less stringent than the Department’s lead hazard reduction program. As such, the US EPA’s Lead Abatement Program is less health protective than the state authorized program currently in place.

Additionally, if no state authorized program existed in California, the Department and local California jurisdictions would no longer qualify for federal lead abatement grants (42 U.S.C. § 4852(n)) which have totaled tens of millions of dollars over the years, including the \$16.8 million recently awarded to the County of Fresno, City of Pomona, County of Alameda, and City of Los Angeles. These jurisdictions would no longer receive additional funding to help abate lead hazards in densely populated communities throughout California.

Objectives (Goals) of the Regulation

Broad objectives of this proposed regulatory action are:

- Reduce the threat of childhood lead poisoning and other lead-based hazards.
- Increased vigilance by Lead-Related Construction programs to reduce lead-hazards.
- Closer alignment of state and federal law relating to lead-dust standards.
- Improved human health protection for the people of California.

Anticipated Benefits

- Help reduce the exposure of children to lead hazards.
- Help preserve the health and wellbeing of children and families in California.
- Improved health outcomes and increased learning abilities.

EVALUATION AS TO WHETHER THE PROPOSED REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE AND FEDERAL REGULATIONS

The Department evaluated whether the proposal is inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department's existing state regulations and those regulations specific lead hazard reduction activities. An internet search of other state agency regulations was also performed. The Department determined no other state agency regulation addressed the same subject matter and this proposal is not inconsistent or incompatible with other state regulations.

FORMS INCORPORATED BY REFERENCE (Identified in the Informative Digest)

None.

MANDATED BY FEDERAL LAW OR REGULATIONS

These regulatory changes do not conflict with or duplicate any federal statutes, regulations or policies.

OTHER STATUTORY REQUIREMENTS

Not applicable.

LOCAL MANDATE

The Department has determined these regulations will not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

- A) Costs to any Local or School District Requiring Reimbursement Pursuant to section 17500 et seq.:** The proposed rulemaking would not impose a mandate on local governments that require state reimbursement because the proposed regulations do not require local governments to undertake a new program or to provide an increased level of service in an existing program.
- B) Costs or Savings to any State Agency:** Any fiscal effect will be negligible. Any additional costs for enforcing the more stringent standard will be absorbed within the Childhood Lead Poisoning Prevention Branch budget and resources.

C) Costs or Savings in Federal Funding to the State: No fiscal impact exists for federal funds. However, if the amendment is not approved and the state loses its federally authorized program, the state and locals will no longer be eligible for millions in federal lead grants.

D) Other Nondiscretionary Costs or Savings Imposed on Local Agencies: If there were any fiscal impact it would be the same whether the state regulation is amended, or whether the state loses its federally authorized program for non-compliance and the federal standard goes into effect anyway. Local governments are required to enforce State Housing Law, including HSC section 17920.10 regarding lead hazards, but that enforcement usually is done regarding deteriorated or disturbed presumed lead-based paint and does not require dust sampling. Local governments may contract with the Department to investigate homes of lead-poisoned children to collect dust samples during an Environmental Investigation, but they are not required to contract with Department.

HOUSING COSTS

The Department has determined that the rulemaking has no impact on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The proposed regulations will not have any significant statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined the rulemaking has the potential to increase the number of jobs within the state but will not significantly impact the creation or elimination of jobs or the creation of new businesses or the elimination of existing businesses within the state, or the expansion of businesses currently doing business with the state. The Department has determined the benefits of the regulation are expected to increase and strengthen the health and welfare of California residents, worker safety, and the state's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Department has determined that there is no cost effect on private persons. However, there may be potential costs to businesses resulting from the proposed amendment. The more stringent dust standard is expected to increase the number of jobs where lead-hazard reduction services are required. There will be increased costs to address the additional lead-hazards at properties and to analyze additional laboratory samples using lower detection limits. It is estimated that the total annual costs to businesses in California will be \$3.8 million. These costs will occur whether California adopts the federal standards, or California loses its federally authorized program and the federal standards go into effect by default.

BUSINESS REPORTING REQUIREMENTS

The proposed regulatory amendments do not change current business reporting requirements.

EFFECT ON SMALL BUSINESS

Costs for a small business are expected to be the same as costs for a typical business. Initial costs are expected to be negligible since new equipment is not needed, but more cleaning and repair will occur to address lead in dust. Costs are estimated to be annual and ongoing. It is presumed that costs will be borne by businesses and not individuals.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed (to align 17 CCR with 40 C.F.R. § 745.65 as required by 40 C.F.R. § 745.325(e)(1)), would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory intent of 17 CCR section 35035 or other provision of law.

The Department invites interested persons to present alternatives with respect to the proposed regulation either during the public comment period or at the public hearing (if scheduled).

TECHNICAL, THERETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON

- “Economic Analysis of the Final Rule to Revise the TSCA Dust-Led Hazard Standards,” June 2019, Office of Pollution and Toxics, United States Environmental Protection Agency.
- November 21, 2019, letter from Nancy Kain, Region IX Lead Coordinator, U.S. Environmental Protection Agency to William Hale, Chief of the Lead Hazard Reduction Section, Childhood Lead Poisoning Prevention Branch, California Department of Public Health.
- Federal Register, Volume 84, No. 131, Tuesday, July 9, 2019, pages 32632-32648, document 2019-14024, Dust-Lead Hazard Standards; Definition of Lead-Based Paint.

- October 1, 2008, letter from Jon L. Gant, Director of the Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, to California Governor Arnold Schwarzenegger.
- Office of Management and Budget, Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs.

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Valerie Yep of the Center for Environmental Health at (510) 620-5688.

All other inquiries concerning the action described in this notice may be directed to David Martin Office of Regulations, at (916) 440-7673.

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH-20-002.

AVAILABILITY STATEMENTS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations at, 1415 L Street, Suite 500, Sacramento, CA 95814, will be the custodian of public records, including reports, documentation, and other material related to the proposed regulations.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7673 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

Final Statement of Reasons

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available

via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending & Opportunities for Public Participation, Proposed Regulations.

INITIAL STATEMENT OF REASONS

Problem Statement

The California Department of Public Health (Department) proposes to amend the definition of lead-contaminated dust in the California Code of Regulations, title 17, (hereafter 17 CCR) section 35035 to comply with the new United States Environmental Protection Agency (US EPA) final ruling issued in July 2019. (84 Fed.Reg. 32648, July 9, 2019.)

The proposed regulatory change is necessary so that the Department may comply with US EPA standards for Lead-Related Construction (LRC) programs, and to ensure continued eligibility for federal and state funding of lead-hazard reduction activities in California. (Health & Saf. Code, § 105250, subd. (e).) The US EPA grants California authorization to run its own Lead Based Paint (LBP) activities program as long as “the State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program,” and “provides adequate enforcement.” (40 C.F.R. §§ 745.324, subd. (e)(2), and 745.324, subd. (i).) In order to meet the requirements of an authorized State program, the Department is required to meet or exceed the updated federal lead-dust standards by January 6, 2022. (40 C.F.R. § 745.325, subd. (e)(1).)

The regulations implementing requirements for Accreditation, Certification, and Work Practices for Lead-Based Paint and Lead Hazards are contained 17 CCR sections 35001 through 36100. The Department has determined revisions to 17 CCR section 35035 are necessary to maintain US EPA-authorized State program status as stated in 40 Code of Federal Regulations (hereafter 40 CFR) part 745.324.

As currently written, 17 CCR section 35035 defines lead-contaminated dust as 40 micrograms of lead per square-foot of surface area ($40 \mu\text{g}/\text{ft}^2$) for interior floor surfaces and $250 \mu\text{g}/\text{ft}^2$ for interior horizontal surfaces. This is inconsistent with the new US EPA final ruling, issued on July 9, 2019 (Final Ruling). The final ruling changes the definition of “dust-lead hazard” from “ $40 \mu\text{g}/\text{ft}^2$ on floors or $250 \mu\text{g}/\text{ft}^2$ on interior window sills based on wipe samples” to “ $10 \mu\text{g}/\text{ft}^2$ on floors or $100 \mu\text{g}/\text{ft}^2$ on interior window sills based on wipe samples” (84 FR 32648, July 9, 2019). The effective date of the Final Ruling is January 6, 2020.

By revising 17 CCR section 35035 to match the US EPA standards, the Department will fulfill its federally mandated requirement to be “at least as protective of human health and the environment as the corresponding Federal program,” and to provide “adequate enforcement.” If the proposed revision is not approved, the Department will be out of compliance with federal requirement and will lose its authorization to run its LBP activities program. In the absence of the state authorized program, US EPA’s Lead Abatement Program would take effect, which is less stringent than the State authorized program currently in place. Additionally, if no state authorized program existed in California, the Department and local California jurisdictions would no longer qualify for federal lead abatement grants (42 U.S.C. § 4852(n)) which have totaled tens of millions of dollars over the years, including the \$16.8 million recently awarded to the County of Fresno, City of Pomona, County of Alameda, and City of Los Angeles. These

jurisdictions would no longer receive additional funding to help abate lead hazards in densely populated communities throughout California.

Benefits

As the US EPA noted in its Final Ruling, the Centers for Disease Control and Prevention (CDC) now considers that no blood lead levels (BLLs) are safe for children. It is anticipated that lowering the definition of lead-contaminated dust will help reduce the exposure of children to lead hazards.

Reducing the threat of childhood lead poisoning and other residential, lead-based hazards is a goal of the statute. (Health & Saf. Code, § 105250, subd. (a) & 42 U.S.C. § 4851, subd. (a).) The Department anticipates that by lowering the lead-dust standard, children are less likely to be exposed to lead hazards, which will help preserve the health and wellbeing of children and families in California. The benefits of reduced lead exposure to children can include (but is not limited to): improved health outcomes and increased learning abilities. The full economic benefits of decreased lead exposure and healthier children may never be known.

Purpose

The purpose of this regulatory proposal is to revise 17 CCR section 35035 in order to adhere to the Final Rule document issued by US EPA on July 9, 2019, and to ensure that the Department's definition of dust-lead hazard is at least as protective as the standards set forth in 40 CFR part 745.65. The Final Rule document changes the definition of "dust-lead hazard" from "40 µg/ft² on floors or 250 µg/ft² on interior window sills based on wipe samples" to "10 µg/ft² on floors or 100 µg/ft² on interior window sills based on wipe samples" (40 C.F.R. § 745.65). The effective date of the Final Rule is January 6, 2020.

The Department has found that no alternative to the proposal would lessen any adverse impact on small business or be equally effective in implementing the statutory intent of 17 CCR section 35035.

Necessity

As stated above, the proposed changes to 17 CCR section 35035 are necessary in order to maintain the LRC program's status as an US EPA State Authorized Lead Abatement Program.

Technical, Theoretical, and/or Empirical Study, Reports Or Documents

1. "Economic Analysis of the Final Rule to Revise the TSCA Dust-Led Hazard Standards," June 2019, Office of Pollution and Toxics, United States Environmental Protection Agency.
2. November 21, 2019, letter from Nancy Kain, Region IX Lead Coordinator, U.S. Environmental Protection Agency to William Hale, Chief of the Lead Hazard Reduction Section, Childhood Lead Poisoning Prevention Branch, California Department of Public Health.

3. Federal Register, Volume 84, No. 131, Tuesday, July 9, 2019, pages 32632-32648, document 2019-14024, Dust-Lead Hazard Standards; Definition of Lead-Based Paint.
4. October 1, 2008, letter from Jon L. Gant, Director of the Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development, to California Governor Arnold Schwarzenegger.
5. Office of Management and Budget, Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs.

Economic Impact Assessment/Analysis

The Department relied upon a federal economic analysis (Economic Analysis of the Final Rule to Revise the TSCA Dust-Lead Hazard Standards, June 2019, Office of Pollution and Toxics, United States Environmental Protection Agency) in order to estimate impact in California. It is important to note that if California does not create dust standards at least as protective as the revised federal dust standards, then California risks losing its federally authorized Lead-Related Construction Program, which would lead to the federal dust standards taking effect in California anyway.

The Department estimates the following impacts on the economic areas listed below:

A) *The creation or elimination of jobs within the State of California*

The federal economic analysis for the dust-lead hazard standards in section 7.3 listed Employment Effects stating, "...given the low cost of the final rule, the cost impact on employment is likely to be negligible." The analysis further notes, "The net effect on short run labor demand in the affected sectors is ambiguous but expected to be small." The US EPA does not anticipate significant longer term cost impacts on regulated entities and therefore the rule is not expected to have any significant longer term employment effects. Residential remodelers and remediation services firms may be able to pass some compliance costs on to their customers. Annual compliance costs are also not expected to significantly impact property owners.

B) *The creation of new businesses or the elimination of existing businesses within the State of California*

The amendment is not expected to have significant impact on the creation or elimination of existing businesses within California. The amendment is estimated to impact approximately 2664 small businesses in California. Per the federal economic analysis, overall, 93% of small firms are expected to have cost impacts of less than 1% of annual revenues, 5% are expected to have impacts between 1-3%, and 2% are expected to have impacts of more than 3% of annual revenues.

C) *The expansion of businesses currently doing business within the State of California:*

The amendment is not expected to have significant impact on the expansion of existing businesses within California. The more stringent dust standard is expected to increase the number of jobs where lead-hazard reduction services are required, increasing the demand for the services they provide.

D) *The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:*

The following is based on language in the federal economic analysis. Lead exposure has the potential to impact individuals of all ages, but it is especially harmful to young children where it can cause irreversible and life-long health effects. Lead exposure to children can result from multiple sources but ingestion of lead-contaminated soil and dust is a major contributor to blood lead levels in children. The CDC now considers that no safe BLL in children has been identified. Even low levels of lead in blood have been shown to affect Intelligence Quotient (IQ), ability to pay attention and academic achievement.

The US EPA's federal economic analysis quantified the benefits of reduced lead exposure to children from avoided IQ loss as an indicator of improved cognitive function. The estimated annual benefits are \$10.5 million in California. When combined with the estimated \$3.8 million costs to businesses, this provides estimated annual net benefits of \$6.7 million in California. In addition to the monetized benefits to children from avoided IQ losses, additional unquantified benefits to both adults and children will likely result from a revision to the dust hazard standards. Avoided adverse health effects in children from reduced lead exposure include increased risk of attention-related behavioral problems, greater incidence of problem behaviors, decreased cognitive performance, reduced post-natal growth, delayed puberty and decreased kidney function. Avoided adverse health effects in adults from reduced lead exposure include increased risks to the nervous system, cardiovascular, renal, hematological, reproductive effects.

Significant Statewide Adverse Economic Impact Directly Affecting Business

The proposed regulatory revision should not significantly create or eliminate new or existing businesses in California.

The Department relied upon a federal economic analysis (Economic Analysis of the Final Rule to Revise the TSCA Dust-Lead Hazard Standards, June 2019, Office of Pollution and Toxics, United States Environmental Protection Agency) in order to estimate impact in California. It is important to note that if California does not create dust standards at least as protective as the revised federal dust standards, then California risks losing its federally authorized Lead-Related Construction Program, which would lead to the federal dust standards taking effect in California anyway.

The federal economic analysis for the dust-lead hazard standards in section 7.3 listed Employment Effects stating, "...given the low cost of the final rule, the cost impact on employment is likely to be negligible." The analysis further notes, "The net effect on short run labor demand in the affected sectors is ambiguous but expected to be small." Per the federal analysis, "EPA is not anticipating any significant longer term cost impacts on regulated entities and therefore the rule is not expected to have any significant longer term employment effects. As previously stated, residential remodelers and remediation services firms may be able to pass some compliance costs on to their customers. Annual compliance costs are also not expected to significantly impact property owners."

**Title 17, California Code of Regulations
Division 1, Chapter 8, Article 1**

Amend Section 35035 to read as follows:

§35035. Lead-Contaminated Dust.

“Lead-contaminated dust” means dust that contains an amount of lead equal to, or in excess of:

- (a) ~~forty~~ten micrograms per square foot (~~40~~10 $\mu\text{g}/\text{ft}^2$) for interior floor surfaces; or
- (b) ~~two hundred and fifty~~one hundred micrograms per square foot (~~250~~100 $\mu\text{g}/\text{ft}^2$) for interior horizontal surfaces; or
- (c) four hundred micrograms per square foot ($400 \mu\text{g}/\text{ft}^2$) for exterior floor and exterior horizontal surfaces.

Note: Authority cited: Sections 105250(a) and (b), 124160 (b) and 131200, Health and Safety Code. Reference: Sections 105250(a) and (b), 124160 (b) and 131051, Health and Safety Code.