

Minnesota Department of Health

Environmental Health Division

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Proposed Amendments to Rules Governing Lead Abatement, *Minnesota Rules*, part 4761.2510, subpart 2 and new subpart 5; Revisor's ID, R-4694; OAH 65-9000-38460

Introduction. The Department of Health (Department) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until September 14, 2022.

Comments. You must submit any written comments via the Office of Administrative Hearings Rulemaking eComments website (<https://minnesotaoah.granicusideas.com/discussions>). You may review the rule, Statement of Need and Reasonableness (SONAR), and posted comments, at this site.

A copy of the proposed rule is published in the State Register and attached to this notice as mailed. A free copy of the rules is also available upon request from the agency contact person listed below.

Agency Contact Person. You must submit written requests for a public hearing to the agency contact person. The agency contact person is Jacqueline Cavanagh, Environmental Health Division, Minnesota Department of Health, 625 Robert Street North, P.O. Box 64975, St. Paul, MN 55164-0975, 651-201-4151, jacqueline.cavanagh@state.mn.us.

Questions. You may submit questions to the Agency Contact Person listed above.

Subject of Rules and Statutory Authority. The proposed rules are about lead abatement, specifically the dust-lead hazard standards (DLHS) and dust-lead clearance standards (DLCL). These revisions lower the standards from 40 micrograms of per square foot ($\mu\text{g}/\text{ft}^2$) to 10 $\mu\text{g}/\text{ft}^2$ for floors, and from 250 $\mu\text{g}/\text{ft}^2$ to 100 $\mu\text{g}/\text{ft}^2$ for windowsills. These changes are consistent with the Environmental Protection Agency's (EPA) final rule 84 FR 32632, effective January 6, 2020 (<https://www.federalregister.gov/documents/2019/07/09/2019-14024/review-of-the-dust-lead-hazard-standards-and-the-definition-of-lead-based-paint>) and final rule 86 FR 983, effective March 8, 2021 (<https://www.federalregister.gov/d/2020-28565>).

The DLHS is used to identify when a lead hazard is present in a property affected by the residential lead abatement rules. The DLCL is used for determining when a project is free of lead hazards after an abatement activity is complete. EPA's original DLHS and DLCL standards were developed in 2001. Medical and scientific knowledge of lead exposure has evolved in the 20 years that EPA issued the original standards. According to the Centers for Disease Control (CDC) and Prevention, no safe blood lead level in children has been identified. Even low levels

of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement. EPA recently published the updates to the DHLS and DLCL standards with the goal of reducing childhood lead exposure. The Department is amending its rules to do the same. The Department is also adding a new subpart 5 to part 4761.2510 that automatically incorporates future revisions to the federal requirements.

Minnesota Statutes, section 144.9508, subdivisions 1 and 2, authorize the Department to adopt rules for regulated lead work standards and for lead in paint, dust, drinking water, and soil in a manner that protects public health and the environment for all residences, including residences also used for a commercial purpose, childcare facilities, playgrounds, and schools.

Comments. You have until 4:30 p.m. on Wednesday, September 14, 2022, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and be posted on the Office of Administrative Hearings Rulemaking eComments website (<https://minnesotaoah.granicusideas.com/discussions>) by the due date. The Department encourages comments. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. Your request must be in writing and the agency contact person must receive it by 4:30 p.m. on September 14, 2022. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. **Please do not post your request on the Office of Administrative Hearings website as it will not be considered a valid request. You must submit requests for hearing to the agency contact person directly.**

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department may modify the proposed rules as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is posted at [Rule Amendments to Residential Lead Abatement Rule - EH: Minnesota Department of Health \(state.mn.us\)](https://www.health.state.mn.us/communities/environment/lead/rules/abate/index.html) (<https://www.health.state.mn.us/communities/environment/lead/rules/abate/index.html>) and is now available from the agency contact person for the cost of reproduction by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will then submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the Department submits the rules to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

August 5, 2022

Jan Malcolm
Commissioner of Health