

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.

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