

FILED WITH LRC
TIME: 12:25pm
JUL 13 2021
Emily B Caudill
REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Public Health

3 Division of Public Health Protection and Safety

4 (Amendment)

5 902 KAR 48:040. Lead-hazard abatement permit fees, permit requirements and
6 procedures, and standards for performing lead-hazard detection and abatement.

7 RELATES TO: KRS 211.180, 211.9063, 211.9071, 217.801, 40 C.F.R. [Part] 745.227

8 STATUTORY AUTHORITY: KRS 211.090(3), [~~211.9064~~]211.9075

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9075 requires the

10 Department for Public Health [~~is required by statute~~] to promulgate administrative
11 regulations relating to lead-hazard detection and abatement. This administrative regulation
12 establishes the lead-hazard abatement permit application process, including application
13 and permit fees, permit requirements and procedures, and the standards for performing
14 lead-hazard detection and abatement activities in target housing or child-occupied
15 facilities.

16 Section 1. Work Practice Requirements and Methodologies. Lead-hazard detection
17 and abatement activities shall comply with:

18 (1) The work practice standards and procedures established by this administrative
19 regulation;

20 (2) Documented methodologies recognized in federal EPA rules identified in 40
21 C.F.R.[CFR Part] 745.227[,"Work practice standards for conducting lead-based paint

1 ~~activities: target housing and child-occupied facilities"]; [or]~~

2 (3) Equivalent methodologies; or

3 (4) Local ordinances.

4 Section 2. Lead-Hazard Inspections. ~~[A lead-hazard inspection shall comply with the~~
5 ~~following work practice standards and procedures:]~~

6 (1) A lead-hazard inspection shall be conducted by a certified lead-hazard inspector or
7 ~~[lead-hazard]~~ risk assessor.

8 (2) The sites and components specified in subsection (3) of this section shall be:

9 (a) Selected according to technical methodologies specified in Section 1 of this
10 administrative regulation; ~~[and]~~

11 (b) Tested for the presence of lead in paint; and

12 (c) Excluded from testing if the inspector or risk assessor determines that the
13 components were:

14 1. Replaced or built after 1978; or

15 2. Not coated with lead-based paint or similar coating.

16 (3) The sampling scheme shall be ~~[as follows]~~:

17 (a) For a single residential dwelling or child-occupied facility, interior and exterior
18 components with a distinct painting history; and

19 (b) For a multifamily dwelling or child-occupied facility, additional components with a
20 distinct painting history in common areas.

21 (4) Paint shall:

22 (a) Be sampled under the technical methodologies specified in Section 1 of this
23 administrative regulation; and

1 (b) Tested in the following manner:

2 1. The analysis of paint to determine the presence of lead shall be conducted using
3 documented methodologies that incorporate adequate quality control procedures; and

4 2. Paint chip samples that have been collected shall be analyzed by an EPA-
5 recognized laboratory to determine if they contain hazardous levels of lead.

6 (5) A certified lead-hazard inspector or risk assessor shall prepare a lead-hazard~~[an]~~
7 inspection report that shall include ~~[the following]~~:

8 (a) Date of each lead-hazard inspection;

9 (b) Address of building;

10 (c) Date of construction;

11 (d) Apartment numbers, if applicable;

12 (e) Name, address, and telephone number of the owner of each residential dwelling or
13 child-occupied facility;

14 (f) Name, signature, and certification number of the certified lead-hazard inspector or
15 risk assessor who conducted the inspection;

16 (g) Name, address, and telephone number of the firm or individual employing each
17 lead-hazard inspector or risk assessor, if applicable;

18 (h) Name, address, and telephone number of the laboratory that conducted an
19 analysis of collected samples, if applicable;

20 (i) The testing method, testing device, or sampling procedure employed for paint
21 analysis, including:

22 1. Quality control data; and

1 2. If used, the serial number and radioactive materials license number of the XRF
2 device;

3 (j) Specific locations of each painted component tested; and

4 (k) The results of the lead-hazard inspection expressed in terms appropriate to the
5 sampling method used.

6 (6) A copy of the lead-hazard inspection report shall be submitted to the department
7 within thirty (30) days after the completion of the inspection.

8 Section 3. Lead-Hazard Screens. [~~A lead-hazard screen shall comply with the~~
9 ~~following work-practice standards and procedures:~~]

10 (1) A lead-hazard screen shall be conducted by a certified lead-hazard risk assessor.

11 (2) For a residential dwelling or child-occupied facility, the lead-hazard risk assessor
12 shall:

13 (a) Collect background information regarding the physical characteristics and occupant
14 use patterns of the residential dwelling or child-occupied facility that may cause lead
15 exposure to a child;

16 (b) Conduct a visual inspection to determine if deteriorated paint is present;

17 (c) Test for the presence of lead on each surface with deteriorated paint determined to
18 have a distinct painting history;

19 (d) Collect paint chip and dust wipe samples using the technical methodologies
20 specified in Section 1 of this administrative regulation;

21 (e) Collect at least two (2) composite dust wipe samples from each room where
22 children are most likely to come in contact with dust, as follows:

23 1. One (1) from the floors; and

- 1 2. One (1) from the window troughs or sills;
- 2 (f) For a multifamily dwelling, collect one (1) additional sample from each common area
- 3 where children are most likely to come in contact with lead dust;
- 4 (g) Submit paint chip or dust samples to an EPA-approved laboratory for analysis;
- 5 (h) Prepare a lead-hazard screening report that shall include:
- 6 1. The applicable component information required for a complete lead-hazard risk
- 7 assessment identified in Section 4 of this administrative regulation~~[subsection (4) of this~~
- 8 ~~section];~~ and
- 9 2. If warranted, recommendations for a follow-up lead-hazard risk assessment and
- 10 other appropriate action; and
- 11 (i) Submit to the department, within thirty (30) days from the completion of the
- 12 assessment, a copy of the lead-hazard screening report.

13 Section 4. Lead-Hazard Risk Assessments. ~~[Risk assessment shall comply with the~~

14 ~~following work practice standards and procedures shall comply with the provisions of this~~

15 ~~section.]~~

- 16 (1) A risk assessment shall be conducted by a certified lead-hazard risk assessor.
- 17 (2) A lead-hazard risk assessor shall:
- 18 (a) Collect samples using a methodology specified in Section 1 of this administrative
- 19 regulation;
- 20 (b) Conduct a visual inspection of a residential dwelling or child-occupied facility to:
- 21 1. Locate deteriorated paint;
- 22 2. Assess the extent and causes of the deterioration of paint; ~~and]~~
- 23 3. Inspect for other potential sources of lead hazard; and

1 4. Observe any chewable, friction, or impact surfaces;

2 (c) Collect information regarding the physical characteristics and occupant use
3 patterns of the residential dwelling or child-occupied facility that may cause lead exposure
4 to children;

5 (d) Test every surface coated with visibly-deteriorated paint for the presence of lead;

6 (e) For a residential dwelling, collect dust wipe samples, either composite or single
7 surface, from the interior window sills[sill(s)] and floor, where children are most likely to
8 come into contact with dust in the living area;

9 (f) For a multifamily dwelling, collect additional dust wipe samples in the following
10 locations:

11 1. Each common area adjacent to the residential dwelling or child-occupied facility
12 from which samples have been taken; and

13 2. Each common area in the building;

14 (g) For a child-occupied facility, collect dust wipe samples in the following locations:

15 1. Each room, hallway, or stairwell; and

16 2. Other common areas;

17 (h) Collect~~[Collected]~~ soil samples at the following locations:

18 1. Exterior play areas where bare soil is present;

19 2. Dripline or foundation areas where bare soil is present; and

20 3. The rest of the yard where bare soil is present;

21 (i) Submit collected paint chip, dust wipe, or soil samples to an EPA-recognized
22 laboratory; and

23 (j) Prepare a lead-hazard risk assessment report.

- 1 (3) The information provided in a report shall include:
- 2 (a) Date of assessment;
- 3 (b) Address of each building;
- 4 (c) Date of construction of buildings;
- 5 (d) Apartment numbers, if applicable;
- 6 (e) Name, address, and telephone number of each owner of each building;
- 7 (f) Name, signature, and certification number of the lead-hazard[certified] risk assessor
- 8 conducting the assessment;
- 9 (g) Name, address, and telephone number of the firm or individual employing each
- 10 lead-hazard[certified] risk assessor, if applicable:
- 11 (h) Name, address, and telephone number of each recognized laboratory conducting
- 12 an analysis of collected samples;
- 13 (i) Results of the visual inspection;
- 14 (j) Testing method and sampling procedure for paint analysis employed;
- 15 (k) Specific locations of each painted component tested for the presence of lead;
- 16 (l) Diagram or floor plan showing testing locations;
- 17 (m) Data collected from on-site testing, including:
- 18 1. Quality control data; and
- 19 2. If used, the serial number of the XRF device;
- 20 (n) Results of laboratory analysis on:
- 21 1. Collected paint;
- 22 2. Soil; and
- 23 3. Dust wipe samples;

1 (o) Other sampling results;

2 (p) Background information collected described at subsection (2)(c) of this section;

3 (q) The history of any previous lead-hazard inspection or analysis for the presence of
4 lead, lead-hazard assessments, or other lead hazards found in the residence, that have
5 been given consideration, as a part of the present lead-hazard determination;

6 (r) A description of:

- 7 1. The location, type, and severity of identified lead hazards associated with paint; and
- 8 2. Other potential lead hazards;

9 (s) A description of interim controls or lead-hazard abatement for each identified lead
10 hazard, including:

- 11 1. Description of interim controls or lead-hazard abatement options; and
- 12 2. Recommendations for addressing the lead hazard; and

13 (t) If the use of an encapsulant or enclosure is recommended, a suggested
14 maintenance and monitoring schedule is required.

15 (5) A copy of the lead-hazard risk assessment report shall be submitted to the
16 department within thirty (30) days after the completion of the assessment.

17 Section 5. Lead-Hazard Abatement Permit Application. (1) The ~~[following items shall~~
18 ~~be submitted to the department by the]~~ certified person who prepared the abatement plan
19 shall submit:

20 (a) An "Application for Lead-Hazard Abatement Activities";

21 (b) An abatement plan with components as identified in Section 7(3)~~((b))~~ of this
22 administrative regulation;

1 ~~(c)~~~~(b)~~ An occupant protection plan with components identified in Section 7~~(4)~~~~(e)~~ of
2 this administrative regulation; and

3 ~~(d)~~~~(e)~~ The fee established by Section 6 of this administrative regulation.

4 (2) The department shall consider and render a decision regarding an application in
5 accordance with KRS 211.9063(6).

6 (3) If an application is not approved, the applicant shall:

7 (a) Be notified in writing of the deficiencies;

8 (b) Correct the deficiencies indicated in the department's notice of disapproval; and

9 (c) Submit to the department:

10 1. The corrected application; and

11 2. An additional application review fee.

12 (4) A lead-hazard~~[An]~~ abatement permit shall be valid for the dates of issuance, unless
13 extended by the department for the following conditions:

14 (a) Written request seven (7) days prior to expiration date by the lead-hazard
15 abatement permit holder; and

16 (b) Provision of the following information:

17 1. Amended dates of abatement;

18 2. An amended abatement plan, if applicable; and

19 3. An amended occupant protection plan, if applicable.

20 (5) If the lead-hazard abatement activity has not been completed within the dates of
21 issuance or permit dates extended, the lead-hazard abatement permit holder shall:

22 (a) Apply for an amended permit; and

1 (b) Pay the amended permit fee established in Section 6 of this administrative
2 regulation.

3 Section 6. Application and Lead-Hazard Abatement Permit Fee Schedule. (1) The fee
4 for a lead-hazard abatement permit shall be:

5 (a) For each single family dwelling or child-occupied facility, \$225;

6 (b) For a multifamily dwelling, \$100 per residence;

7 (c) Exterior abatement, \$125 per building; and

8 (d) Soil abatement, fifty (50) dollars per project.

9 (2) Other fees required are:

10 (a) Application review fee, fifty (50) dollars;

11 (b) Amended permit, twenty-five (25) dollars; and

12 (c) Reinspection fee, \$100.

13 Section 7. Lead-Hazard Abatement and Occupant Protection Plans. [~~Standards and~~
14 ~~requirements for abatement and occupant protection plans are as follows:]~~

15 (1) Lead-hazard abatement and occupant protection plans for small-scale projects
16 shall be prepared by a lead-hazard supervisor.

17 (2) Lead-hazard abatement and occupant protection plans shall be prepared by a lead-
18 hazard[~~certified~~] project designer if:

19 (a) The project is a large-scale project; and

20 (b) The planned abatement activity creates additional lead waste material not
21 considered low waste, such as:

22 1. Filtered personal or commercial water;

23 2. Disposable personal protective clothing; and

1 3. Plastic sheeting.

2 ~~(3)~~~~(2)~~ An abatement plan shall include:

3 (a) Name and certification number of the lead-hazard supervisor or project designer
4 ~~[individual]~~ who prepared the plan;

5 (b) Name and certification numbers of all lead-hazard personnel~~[individuals]~~ working at
6 the site;

7 (c) Anticipated start and finish dates;

8 (d) Daily work hours at the project;

9 (e) Copy of job specifications relating to the project;

10 (f) Location of the site;

11 (g) Type of structure;

12 (h) Sequence of work activity;

13 (i) Lead-hazard abatement methods to be used;

14 (j) Diagram or floor plan showing ~~[abatement locations]~~;

15 1. Containment locations, including fencing;

16 2. Lead-hazard warning signs;

17 3. Wash stations and waste locations; and

18 4. Entrance and egress;

19 (k) Enclosure and containment methods and locations;

20 (l) Locations of rooms and components where lead-hazard abatement will occur;

21 (m) Reason for the selection of particular lead-hazard abatement methods for each
22 component;

23 (n) If encapsulants are to be used, product usage information;

1 (o) Cleanup measures; and

2 (p) Name and address of the lead-hazard inspector or risk assessor~~[individual]~~

3 conducting lead-hazard clearance testing.

4 ~~(4)~~~~(3)~~ An occupant protection plan shall be:

5 (a) ~~[Be]~~ Unique to the residential dwelling or child-occupied facility;

6 (b) Developed prior to the lead-hazard abatement; and

7 (c) ~~[Be]~~ A detailed, written description of the measures and management procedures
8 that will be taken during the lead-hazard abatement to protect the occupants of the
9 building from exposure to lead hazards.

10 Section 8. Lead-Hazard Abatement On-site Project Requirements. (1) In compliance
11 with KRS 211.9063(5), a lead-hazard abatement activity shall not be conducted until the
12 department issues a permit.

13 (2) The abatement permit shall be kept at the lead-hazard abatement site until:

14 (a) Project is complete;

15 (b) Lead-hazard clearance is achieved; and

16 (c) The department has conducted the quality assurance inspection required by KRS
17 211.9063(6).

18 (3) Only lead-hazard personnel~~[a certified person]~~ shall be allowed on the lead-hazard
19 abatement site during the time that lead-hazard abatement activities are being conducted.

20 (4) All lead-hazard personnel~~[A certified person]~~ shall keep the department-issued
21 identification card in possession while on site.

22 (5) The lead-hazard~~[certified]~~ supervisor or ~~[certified]~~ project designer who prepared
23 the lead-hazard abatement plan shall be:

1 (a) Available, within two (2) hours, to the lead-hazard abatement~~[lead-abatement]~~
2 workers while lead-hazard abatement~~[lead-abatement]~~ activities are conducted; and

3 (b) On site during:

4 1. Work site preparation;

5 2. The post lead-hazard~~[postlead-]~~abatement cleanup of work areas; and

6 3. At the time of the departmental quality assurance inspection.

7 (6) The lead-hazard abatement permit holder shall ensure that all[a] lead-hazard
8 abatement and post lead-hazard ~~[postlead-]~~abatement activities comply with Section 1 of
9 this administrative regulation~~[activity complies with applicable federal, state, and local law~~
10 ~~and requirements]~~.

11 Section 9. Specific Lead-Hazard Abatement Practices. (1) Soil abatement shall be
12 conducted as follows:

13 (a) If soil containing a hazardous level of lead is removed, the lead-hazard abatement
14 permit holder shall~~[will]~~ provide analytical information to the department that the
15 replacement soil does not contain amounts over the established in Section 14 of this
16 administrative regulation~~[soil lead-hazard levels]~~; or

17 (b) If soil containing a hazardous lead level is not removed, the lead hazard in the soil
18 shall be considered ~~[as]~~ abated when permanently covered soil is obtained by a method
19 identified in Section 1 of this administrative regulation.

20 (2) The following work practices used for lead-based paint removal shall be prohibited:

21 (a) Open-flame burning or torching; or

1 (b) Machine sanding or grinding, or abrasive blasting or sandblasting unless conducted
2 using a high efficiency particulate air exhaust control that removes particles of three-tenths
3 (0.3) microns or larger from the air at 99.97 percent or greater efficiency.

4 (c) Dry scraping unless:

5 1. In conjunction with heat guns; [øf]

6 2. Around electrical outlets; or

7 3. In the treatment of defective paint spots that total no more than:

8 a. Two (2) square feet on surfaces within a room; or

9 b. Twenty (20) square feet on exterior surfaces.

10 (d) Use of a heat gun at temperatures that exceed 1,100 degrees Fahrenheit.

11 Section 10. Post Abatement Lead-Hazard[~~Postabatement~~] Clearance Procedures. (1)

12 Post abatement lead-hazard[~~Postabatement~~] clearance procedures shall be performed
13 according to a method identified in Section 1 of this administrative regulation.

14 (2) Post abatement lead-hazard[~~Postabatement~~] clearance shall be performed by a
15 lead-hazard[~~certified~~] inspector or [~~certified~~] risk assessor.

16 (3) Lead-hazard[~~Postlead-hazard~~] clearance after a nonabatement activity, such as
17 renovation or remodeling, shall be performed by a lead-hazard[~~certified~~] inspector, risk
18 assessor, or sampling technician.

19 (4) A visual inspection shall be conducted before sampling to examine for deteriorated
20 paint, dust, or debris.

21 (5) Clearance sampling shall not take place if deteriorated painted surfaces or visible
22 amounts of dust or debris are found during the visual inspection.

1 (6) Sampling shall be conducted using single or composite dust wipe sampling as
2 identified in Section 1 of this administrative regulation.

3 (7)(a) The certified person who conducted the clearance shall compare the residual
4 lead levels, as determined by the laboratory analysis from each dust wipe sample, with
5 clearance dust levels established by Section 13 of this administrative regulation.

6 (b) If the residual lead levels in a dust wipe sample exceed accepted clearance
7 levels, each component represented by the failed sample shall be recleaned and
8 retested until clearance dust levels have been met.

9 (8) In a multifamily dwelling with similarly[-] constructed and maintained residential
10 units, random sampling for clearance shall be conducted in accordance with
11 documented methodologies.

12 (9) The person who conducted the lead-hazard abatement and post
13 abatement~~[postabatement]~~ cleanup in the residential dwelling shall not be provided
14 knowledge of the units selected for the random sample.

15 Section 11. Lead-Hazard Clearance Report. (1) After a lead-hazard clearance, the
16 certified person shall prepare a report containing ~~[the following information]~~:

17 (a) Name of the lead-hazard inspector, risk assessor, or sampling technician
18 conducting the clearance;

19 (b) Departmental certification number;

20 (c) Address of the property;

21 (d) Specified units and areas effected;

22 (e) Dates of clearance examination;

23 (f) Results of visual assessment;

- 1 (g) Results of dust wipe sample analysis;
- 2 (h) Name and address of laboratory used;
- 3 (i) Project activity information; and
- 4 (j) Lead-hazard reduction or abatement methods used.

5 (2) A copy of the lead-hazard clearance report shall be submitted to the department
6 within thirty (30) days after the completion of the lead-hazard clearance.

7 Section 12. Levels of Lead in Paint. The determination of lead-based paint shall be
8 in accordance with 40 C.F.R. 745.227(h)~~[The following lead levels shall be used to~~
9 ~~determine if paint or similar coatings are considered as lead-based paint:~~

- 10 ~~(1) Equal to or in excess of one (1.0) milligrams per square centimeter; or~~
- 11 ~~(2) More than five tenths (0.5) percent by weight].~~

12 Section 13. Dust-Lead Hazards and Clearance Dust Levels. The maximum
13 acceptable levels used for lead-hazard clearance or other evaluation after the disturbance
14 of lead-based paint, or for determination of potential dust-lead~~[lead-dust]~~ hazards in a
15 residential structure or child-occupied facility shall be:

- 16 (1) In accordance with 40 C.F.R. 745.227 for interior components; and
- 17 (2) Below 800 µg/ft² for exterior components.~~[- are as follows:~~

Floors	40
Interior Window Sills	250
Window Troughs	400
Exterior Components	800]

1 Section 14. Soil Lead Hazards. The determination of a soil lead hazard shall be in
2 accordance with 40 C.F.R. 745.227(h)~~[Soil is considered to be a lead hazard on residential~~
3 ~~property or at a child-occupied facility if the lead level exceeds:~~

- 4 (1) ~~400 parts per million in a play area; or~~
- 5 (2) ~~1,200 parts per million of bare soil in the rest of the yard].~~

6 Section 15. Quality Assurance Inspection. (1) A lead-hazard abatement permit holder
7 shall notify the department of the completion of the abatement services and clearance
8 testing.

9 (2) The department shall proceed in accordance with quality assurance inspection
10 provisions of KRS 211.9063(6).

11 (3) An lead-hazard abatement permit holder shall provide the department with access
12 to the project unit to conduct a quality assurance inspection.

13 (4) If a department inspector discovers visual dust or paint chips, or violative work
14 practices and standards, the inspector shall:

15 (a) Not conduct sampling; and

16 (b) Notify the lead-hazard abatement permit holder that another inspection shall be
17 conducted after:

- 18 1. Cleanup has been completed; and
- 19 2. Another clearance is conducted.

20 (5) If a dust wipe sample exceeds clearance levels:

21 (a) The components making up the failed sample shall be:

- 22 1. Recleaned; or
- 23 2. Otherwise lead-hazard abated; and

1 (b) Another lead-hazard clearance shall be conducted.

2 (6) For each failed inspection, the lead-hazard abatement[a] permit holder shall pay a
3 reinspection fee as established by Section 6 of this administrative regulation.

4 Section 16. Post-Abatement[~~Postabatement~~] Report. (1)(a) A post-abatement
5 [~~postabatement~~] report shall be prepared by either the lead-hazard[~~certified lead-hazard~~]
6 supervisor or [~~lead-hazard~~] project designer who prepared the abatement plan.

7 (b) The post-abatement[~~postabatement~~] report shall include the:

8 1. Start and completion dates of lead-hazard abatement;

9 2. Name and addresses of the lead-hazard supervisor or project designer[~~certified~~
10 ~~individual~~] preparing the report;

11 3. Changes made to the occupant protection plan and the lead-hazard abatement
12 plan;

13 4. Name, address, and signature of each lead-hazard[~~certified~~] risk assessor or
14 [~~certified~~] inspector conducting lead-hazard clearance sampling and the date of [~~clearance~~]
15 testing;

16 5. The name of each recognized laboratory that conducted the analysis;

17 6. Results of:

18 a. Lead-hazard clearance testing; and

19 b. Soil analysis, if applicable; and

20 7. Suggested monitoring of encapsulation or enclosure plan according to a
21 methodology identified in Section 1 of this administrative regulation.

22 (2) The post-abatement[~~postabatement~~] report shall be submitted to the department
23 within thirty (30) days after the completion of the lead-hazard abatement project.

1 Section 17. Recordkeeping. A report required by this administrative regulation shall be
2 retained by the lead-hazard abatement permit holder, or other certified individual who
3 prepared the report, for three (3) years.

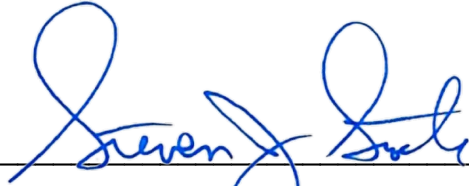
4 Section 18. Administrative Hearings. An administrative hearing relating to the subject
5 matter of this administrative regulation shall be conducted in accordance with 902 KAR
6 1:400.

7 Section 19. Incorporation by Reference. (1) "Application for Lead-Hazard
8 Abatement Activities", 4/2021, is incorporated by reference.

9 (2) This material may be inspected, copied, or obtained, subject to applicable
10 copyright law, at the Environmental Lead Program, Division of Public Health Protection
11 and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky
12 40621, Monday through Friday, 8 a.m. to 4:30 p.m. or online at
13 <https://chfs.ky.gov/agencies/dph/dphps/psb/Pages/lead.aspx>.

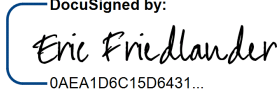
902 KAR 48:040

REVIEWED:

 6/15/2021

Steven J. Stack, MD, MBA Date
Commissioner, Department for Public Health

APPROVED:

DocuSigned by:
 6/17/2021
Eric Friedlander
0AEA1D6C15D6431...

Eric C. Friedlander Date
Secretary, Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on September 27, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by September 20, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 902 KAR 48:040

Agency Contact: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov or Krista Quarles, (502) 564-6746, CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the lead-hazard abatement permit application process, including abatement permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure those engaged in lead-hazard abatement and clearance activities are properly permitted, and follow safe work practices and procedures.

Lead is a toxic metal used in some paints made before 1978. Children are exposed to lead when older buildings are in poor condition. Today, childhood lead poisoning affects 310,000 children in the U.S. six (6) years old and younger. Common renovations can create lead hazards, which can be harmful. Workers who disturb lead-based paint in structures built earlier than 1978 must be certified and follow work practices to keep children safe.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9075 requires the department to promulgate administrative regulations to establish the standards for performing lead-hazard detection or lead-hazard abatement procedures in target housing or child-occupied facilities. This administrative regulation establishes those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure the reliability, effectiveness, and safety of lead-hazard detection and lead-hazard abatement procedures in target housing or child-occupied facilities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this amendment clarifies the requirements for an abatement floor plan and cites to the federal Environmental Protection Agency (EPA) hazard values to ensure continuity between federal and state laws.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to update to the most current EPA standard for dust-lead hazard levels for clearances. The amendment to this administrative regulation aligns the state program with the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.9071 requires the Department for Public Health to comply with the applicable rules and regulations of the United States Department of Housing and Urban Development, the United States Occupational Safety and Health Administration, the United States Environmental Protection Agency, and other federal agencies with jurisdiction over issues concerning lead hazards. KRS 211.9075 requires the Department for Public

Health to promulgate administrative regulations to establish standards for performing lead-hazard detection or lead-hazard abatement procedures. This amendment ensures that this regulation aligns with the United States Environmental Protection Agency.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist regulated entities with having continuity between federal and state regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation impacts the fifty-four (54) companies, 295 individuals, and seven (7) training providers currently registered with the department.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: There will be no changes in how the regulated entities conduct their work. Regulated entities have been following the more stringent EPA regulations since they went into effect.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There will be no additional cost to regulated entities since they are required by federal law to meet these standards.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefit to regulated entities is consistency between state and federal regulations.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This is an ongoing program, there are no initial costs to implement the amendment to this administrative regulation.

(b) On a continuing basis: No cost changes due to the fact that the entities are already following the stricter federal standards.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Environmental Lead Program is funded through a mix of federal dollars and revenue received from the fees for certification, permitting, and training program accreditation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fees established by this administrative regulation are not amended.

(9) TIERING: Is tiering applied? (Explain why or why not.) Tiering is not applied. This administrative regulation affects all those engaged in lead-hazard detection and abatement activities equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 902 KAR 48:040

Agency Contact: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov or Krista Quarles, (502) 564-6746, CHFSregs@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Public Safety Branch in the Division of Public Health, Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.090 and 211.9075.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No change in revenue due to no change in fees.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No change in revenue due to no change in fees.

(c) How much will it cost to administer this program for the first year? No change in administration cost due to no change in work activities.

(d) How much will it cost to administer this program for subsequent years? No change in administration cost due to no change in work activities.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The federal Environmental Protection Agency (EPA) provides eighty-five (85) to ninety (90) percent of the funding for the Environmental Lead Program. This funding is dependent upon the current grant cycle. Program income received from fees and state general fund dollars cover the remaining balance. Funds used to cover program expenses cycle between federal monies and the state program income depending upon receipt of the federal allotments. Grant funding periods range from three (3) to five (5) years. The Environmental Lead Program has maintained this grant since the late 1990s. At this time, the EPA does not see an end to this grant program and continues to fund all eligible states.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 902 KAR 48:040

Agency Contact: Julie Brooks

Phone Number: (502)564-3970

Email: julied.brooks@ky.gov

1. Federal statute or regulation constituting the federal mandate. 40 C.F.R. 745.227
2. State compliance standards. KRS 211.9071 requires compliance with federal rules and regulations for all persons certified to perform lead-hazard detection and abatement activities; all training programs for personnel engaged in these activities; and the Department for Public Health. State standards will directly reference the Environmental Protection Agency's lead standards to allow for consistency.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation cites to the EPA standards for all work practices, the determination of a lead-based paint hazard, dust-lead hazards and clearance dust level, and soil lead hazards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose a stricter requirement, or an additional or different responsibility or requirement, than required by federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR PUBLIC HEALTH

902 KAR 48:040

Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

Summary of Material Incorporated by Reference

The “Application for Lead-Hazard Abatement Activities”, 4/2021 edition, is submitted by an individual who is applying for a permit to perform lead-hazard abatement activities. This is a newly incorporated form. This form has one (1) page.