



Protecting, Maintaining and Improving the Health of All Minnesotans

August 9, 2022

Delivered electronically

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Re: In The Matter of the Proposed Rules of the Department of Health Governing Residential Lead Abatement, Minnesota Rules, part 4761.2510; Revisor's ID Number R-4694

Dear Librarian:

The Minnesota Department of Health intends to adopt rules governing residential lead abatement. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the August 15, 2022 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-4151.

Yours very truly,

/s/ Jacqueline Cavanagh
Policy & Rules Analyst

Enclosure: Statement of Need and Reasonableness



STATEMENT OF NEED AND REASONABLENESS

**In the Matter of Proposed Amendments to Rules
Governing Residential Lead Abatement, *Minnesota
Rules*, Part 4761.2510; OAH Docket # 65-9000-38460;
Revisor's ID Number R-4694**

Environmental Health Division

August 15, 2022

General information:

- 1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: [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) (www.health.state.mn.us/communities/environment/lead/rules/abate/index.html).
- 2) View older rule records at: [Rule Status Search \(mn.gov\)](http://www.revisor.mn.gov/rules/status/) (www.revisor.mn.gov/rules/status/).
- 3) Agency contact for information, documents, or alternative formats: Upon request, this SONAR can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Jacqueline Cavanagh, Rulemaking Coordinator, Minnesota Health Department, 625 N. Robert St., St. Paul, MN 55155; (651) 201-4151; jacqueline.cavanagh@state.mn.us; or use your preferred telecommunications relay service.
- 4) How to read a sample Minnesota Statutes citation: Minn. Stat. § 116.07, subd. 2(f)(2)(ii)(A) is read as Minnesota Statutes, section 116.07, subdivision 2, paragraph (f), clause (2), item (ii), subitem (A).
- 5) How to read a sample Minnesota Rules citation: Minn. R. 7150.0205, subp. 3(B)(3)(b)(i), is read as Minnesota Rules, chapter 7150, part 0205, subpart 3, item B, subitem (3), unit (b), subunit (i).

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Uncommon Acronyms

DLCL	Dust-Lead Clearance Standards
DLHS	Dust-Lead Hazard Standards
EBLL	Elevated Blood Lead Levels
µg/ft ²	Micrograms Per Square Foot

Introduction and overview

The Minnesota Department of Health (MDH or department) is proposing amendments to rules governing residential lead abatement to conform Minnesota's rule to recently revised federal regulations. States that administer residential lead abatement programs funded by EPA must update their rules within two years of the effective date of a revision to an EPA lead rule.¹ The department's residential lead abatement program is funded by an EPA grant and therefore its rules must be updated accordingly.

The proposed rule amendments lower the dust-lead hazard standards (DLHS) and dust-lead clearance standards (DLCL) from 40 micrograms per square foot (µg/ft²) to 10 µg/ft² for floors, and from 250 µg/ft² to 100 µg/ft² for windowsills. These changes are consistent with the United States Environmental Protection Agency's (EPA) identical updates to final rule 84 FR 32632, effective January 6, 2020,² and final rule 86 FR 983, effective March 8, 2021.³

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 issued in 2001. Medical and scientific knowledge of lead exposure has evolved in the 20 years since the 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.⁴

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.

Background

Lead is found in the air, soil, and dust. It is also found in paint, and the interior and exterior of homes and other buildings, especially those built before 1978. Residential use of lead-based paints was banned beginning in 1978, but there still are many residential buildings in Minnesota with lead-based paint. Lead exposure is especially harmful to children. Lead exposure, even in small amounts, can cause serious health problems, such as brain damage, hyperactivity, hearing loss, slow growth and learning disabilities.

¹ 40 C.F.R. 745.325(e)(1).

² [Federal Register, Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint](https://www.federalregister.gov/documents/2019/07/09/2019-14024/review-of-the-dust-lead-hazard-standards-and-the-definition-of-lead-based-paint) (https://www.federalregister.gov/documents/2019/07/09/2019-14024/review-of-the-dust-lead-hazard-standards-and-the-definition-of-lead-based-paint)

³ Federal Register, Review of Dust-Lead Post Abatement Clearance Levels, (https://www.federalregister.gov/d/2020-28565)

⁴ [Blood Lead Levels in Children | Lead | CDC \(www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm\)](http://www.cdc.gov/nceh/lead/prevention/blood-lead-levels.htm)

Fortunately, lead exposure and poisoning can be limited or prevented altogether. MDH's residential lead abatement program works to prevent lead exposure and the adverse health effects caused by elevated blood lead levels (EBLL) in children, up to the age of 72 months, and in pregnant women. Activities include providing primary prevention lead education materials, promoting primary prevention swab team services, providing lead cleanup equipment and material grants as funding allows, monitoring regulated lead work, developing and maintaining lead-safe practices in cooperation with the Commissioner of Administration, conducting lead risk assessments for the purposes of secondary prevention, and licensing lead firms and professionals.

The EPA updated the DHLS and DLCL standards to ensure a greater degree of protection against childhood lead exposure. The DLHS and DLCL are central and critical measurements used in any lead prevention and abatement program. Medical and scientific knowledge of lead exposure has evolved over the last 20 years and we now know that lead poses risks, particularly to children, at lower blood levels than previously understood.

Public participation and stakeholder involvement

A Request for Comments (Request) was published in the State Register on March 29, 2021. The Request and the draft rule language were posted on the residential lead abatement program's webpage.⁵ An electronic form for submitting comments also was included on the webpage. The department assembled an advisory committee to work with MDH on this revision. A meeting was held on June 2, 2021 via WebEx platform. Members of the committee are listed below.

Ali Ibrahim Bahar, PhD-(Public Health)
Katrina DeVore, Dakota County
Nick Erickson, Housing First MN
Jacob Frahm, Intertek
Melisa Illies, Hennepin County
Michael Jensen, Hennepin County
Joseph Jurusik, Hennepin County
Zak Klehr, MN Department of Economic Development
Natasha Kukowski, MN Department of Economic Development
John Lynch, Intertek
Greg Myers, Midwest Environmental Consulting, LLC
Jasen Nelson, Government of British Columbia
Jen Odegard, Dakota County
Jeffrey Preuss, Lakes Country Service Cooperative
EmilyRose Dailey-Robinson, CARE
Bob Rogalla, Lake States Environmental, Ltd.
Shannon Rohr, City of Bloomington
Daniel Schmidt, Ramsey County
Lisa Smestad, City of Minneapolis
Matt Spellman, MN Realtors Association
Jason Thorn, Thorn Real Estate Group
Alexander Vollmer, City of Minneapolis

⁵ <https://www.health.state.mn.us/communities/environment/lead/rules/abate/index.html>

Additional Notice

Minn. Stat. § 14.14 requires that in addition to its required notices, “each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.”

The department will comply with these statutory requirements governing additional notification as detailed in this section. As described in the above *Public participation and stakeholder involvement* section, the department has made reasonable efforts to notify and involve the public and stakeholders in the rule process, including holding various meetings and publishing the Request. The department’s plan to notify additional parties is as follows:

- 1) Hold a public meeting before the rule is proposed to provide stakeholders with information on the proposed rule and how to submit comments.
- 2) Publish its Notice of Intent to Adopt Rules Without a Hearing on the proposed rule amendments on the department’s rulemaking webpage at:
<https://www.health.state.mn.us/communities/environment/lead/rules/abate/index.html>.
- 3) Provide specific notice to the stakeholders listed below. The department will send an electronic notice with a hyperlink to electronic copies of the Notice of Intent to Adopt Rules Without a Hearing on the proposed rule amendments, SONAR, and proposed rule to the following entities at least 33 days before the Notice is published in the State Register. In instances where an email address was not available or could not be obtained, the department will send a copy of the Notice via U.S. mail.
 - The department’s GovDelivery list for its asbestos and lead program stakeholders with more than 3,000 subscribers including builders, contractors, lead abatement professionals, training providers, and other interested stakeholders.
 - Local Public Health Association and all local public health departments and community health boards in the state;
 - The department’s list of 182 lead contractors and consultants;⁶
 - Local units of government and related professional associations including the Association of Metropolitan Municipalities, Association of Minnesota Counties, City of Minneapolis, City of Saint Paul, Coalition of Greater Minnesota Cities, Hennepin County, Ramsey County, League of Minnesota Cities, Minnesota Association of Small Cities, and Minnesota Association of Townships;
 - Environmental testing laboratories and laboratory accrediting bodies including EMSL Analytical Services, Legend Technical Services, Pace Labs, EPA National Lead Laboratory Accreditation Program, American Industrial Hygiene Association, American Association for Laboratory Accreditation, Perry Johnson Laboratory Accreditation, and Minnesota Department of Health Environmental Laboratory Accreditation Program;
 - Health insurance companies and medical professional associations including Blue Cross and Blue Shield of Minnesota, Health Partners, Medica, Preferred One, Rainbow Health, Sanford

⁶ [MDH EH » Lead Poisoning Prevention: MN Lead Contractors and Consultants \(state.mn.us\)](#)

Health, Stratis Health, UCare, the American Academy of Pediatrics, Minnesota Chapter, Minnesota Hospital Association, Minnesota Medical Association;

- Builders, contractors, realtors, and related professional associations that are known to the department as identified in Attachment A;
- Licensed family child care for Minnesota counties and tribes;⁷
- Minnesota Child Care Association, Minnesota Association of Child Care Professionals, and Minnesota Child Care Provider Information Network;⁸
- Multi-unit property owners/landlords of affected properties including Landlord Association, Minnesota Multi Housing Association, Minnesota Real Estate Investors Association, Minnesota Home Line Organization, Housing Link, and Legal Aid; and
- State agencies including Department of Labor and Industry, Department of Education, Department of Employment and Economic Development, Minnesota Housing, Department of Human Services - Child care center licensing, Department of Human Rights, Metropolitan Council (Metro Housing and Redevelopment Authority).

- 4) Post relevant rulemaking updates and associated documents including the Notice of Intent to Adopt Rules Without a Hearing, SONAR, and proposed rule on the Residential Lead Abatement Rule webpage at <https://www.health.state.mn.us/communities/environment/lead/rules/abate/index.html>.

Pursuant to Minnesota Statutes, section 14.14, subdivision 1a, this Additional Notice Plan, along with the department's regular means of public notice, will provide adequate notice of this rulemaking to parties interested in or regulated by the proposed rule.

Statutory authority

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. In particular, the legislature has mandated that the department "adopt regulated lead work standards and methods for lead in dust in a manner to protect the public health and environment."⁹

Regulatory Analysis

Minnesota Statutes, section 14.131, requires the department to answer a number of questions in this SONAR. In some cases, the response will depend on a specific amendment being proposed and specific detail will be provided. However, for most of the questions, the department's response can be generally applied across all the components of this rulemaking, regardless of the specific amendment proposed.

⁷ [Licensed family child care county and tribal directory / Minnesota Department of Human Services \(mn.gov\)](#)

⁸ The Department of Human Services (DHS) is responsible for licensing and monitoring approximately 10,600 licensed child care centers and for certifying and monitoring license-exempt child care centers that participate in the Child Care Assistance Program (CCAP). Accordingly, MDH is notifying DHS in addition to the above-referenced professional associations in its efforts to indirectly reach these entities to which we lack a direct line of communication.

⁹ Minn. Stat. § 144.9508, subd. 2(d).

A. Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The amendments to the rules will affect lead-based paint activities, accredited training programs, engineering services, lead or dust sampling technicians, other lead abatement professionals who must be certified to conduct lead-based paint activities, or rehabilitations or maintenance activities conducted in properties affected by the residential lead abatement rules (i.e., certain residential properties, schools, child-occupied facilities, and play areas).

Testing laboratories that are recognized by EPA's National Lead Laboratory Accreditation Program will also be affected. Finally, this change will impact tenants, property owners, and managers of residential buildings and dwellings, schools, child-occupied facilities, and certain child play areas.

B. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The agency will incur a small (nominal) cost because of the need to update documents, forms, and the program website. It is expected that the lowering of the DLCL standard will result in repeated clearance examinations for cases involving elevated blood lead level (EBLL) reports. Clearance examinations are required under Minnesota Statutes, 144.9504.

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly or less intrusive methods for achieving the purpose of this rule. Updating the rule so that it is at least as protective as the federal standard is required of state programs that received federal funding.¹⁰ In addition, there may be confusion over what standards apply if the standards in Minnesota Rules differ from the federal regulation.

D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

There are no good alternatives to amending the rule. If the rule is not amended, MDH risks losing federal funding for its residential lead abatement program. With the exceptions of the Cities of Minneapolis and St. Paul and Ramsey County, MDH is responsible for following up on EBLL reports across the state by inspecting homes and determining the source of the lead exposure. In most cases, EBLL reports involve young children and pregnant women.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

No classes of persons will incur any additional costs due to this rule revision. This is because the department will lose its authorization to enforce these federal standards if we do not make this

¹⁰ 40 C.F.R. §745.325(e).

revision.¹¹ If we lose this authorization, regulated parties in Minnesota will still be required to comply with the corresponding federal standard, just as enforced by the EPA instead of MDH.¹²

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

If lead hazards are not cleaned up to the safest level, children (and adults) will continue to suffer significant and preventable health problems, including developmental delays. Increased medical and educational costs will be borne by parents, medical and educational systems, and society, in general, to treat these problems.

As discussed above in response to item E, the department will lose its authorization to enforce EPA's lead standards if it does not to make these revisions. Along with this authorization comes federal funding that the department would also lose.¹³ In 2022, this funding amounts to about \$272,000.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

If these revisions are adopted, there will be no difference between the proposed rule and existing federal regulations. These revisions will render our rule in compliance with federal regulations.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

There is no cumulative effect of this rule since these amendments will bring the rule into conformance with federal regulations.

Environmental Equity and Justice

Health equity is achieved when every person has the opportunity to reach their full health potential. Health inequities cause differences in length and quality of life, rates and severity of disease and disability, access to treatment, and death rates. Childhood lead poisoning and EBLLs have historically been an area of significant inequity.¹⁴

The National Health and Nutrition Examination Survey, administered by the CDC and Centers for Medicaid Services have long known that lead poisoning affects Black, Indigenous, People of Color (BIPOC) and lower income communities more than white and middle- and higher-income areas. EBLLs

¹¹ See 15 U.S.C. § 2684(a) (allowing states whose lead based paint programs are EPA-certified to enforce the state program requirements in lieu of the corresponding federal program); 40 C.F.R. 745.324(b)(2) (requiring states to demonstrate that their authorized programs are at least as protective as section 745, subpart L, which contains the DLHS and DLCL at issue in this rulemaking).

¹² See 15 U.S.C. § 2684(a) and (h) (providing that the federal lead program shall apply in states with no EPA-authorized program).

¹³ See 15 U.S.C. § 2684(g) (authorizing the EPA to make grants to states who develop and carry out EPA authorized lead programs).

¹⁴ [Recommendations for Blood Lead Screening of Medicaid-Eligible Children Aged 1--5 Years: an Updated Approach to Targeting a Group at High Risk \(cdc.gov\)](https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5809a1.htm) (https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5809a1.htm)

are widespread among children, with black and low-income communities disproportionately affected.¹⁵ At low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems.¹⁶

Pre-1978 housing stock in the United States contains more than 3 million tons of lead in the form of lead-based paint, with the vast majority of homes built before 1950 containing substantial amounts of lead-based paint. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is the most common cause of lead poisoning in children. The health and development of children living in as many as 3.8 million homes is endangered by chipping or peeling lead paint or excessive amounts of dust contaminated by lead in their homes. The danger posed by lead-based paint hazards can be reduced by abating lead-based paint or by taking interim measures to prevent paint deterioration and limit children's exposure to lead dust and chips.

Minnesota's lead abatement program has helped to reduce these health inequities. This rule revision will ensure funding for the program by keeping Minnesota in compliance with federal regulations.

Performance-based rules

Minnesota Statutes, section 14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of MDH's regulatory objectives while allowing maximum flexibility to regulated parties and to MDH meeting those objectives.

This rule is performance-based to the extent that it allows flexibility in how regulated parties choose to meet the required DLHS and DLCS. The actual DLCS and DLHS numbers must be rigid to the extent they must meet or exceed federal standards for MDH to retain its authorization to manage its lead abatement program in lieu of the federal program.

Consult with MMB on local government impact.

The agency sent information, including a copy of this SONAR and the proposed rule, to MMB on June 30, 2022. In its August 2, 2022, response, MMB opined that this "rule change would not have a material impact on local units of government." The transmittal letter and MMB's response are attached.

Impact on local government ordinances and rules

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to determine whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation to comply with the rule. MDH has determined that the proposed amendments will not have any effect on local ordinances or regulations.

¹⁵ [Recommendations for Blood Lead Screening of Medicaid-Eligible Children Aged 1--5 Years: an Updated Approach to Targeting a Group at High Risk \(cdc.gov\)](https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5809a1.htm) (https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5809a1.htm)

¹⁶ [Recent Developments in Low-Level Lead Exposure and Intellectual Impairment in Children \(nih.gov\)](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1247191/) (www.ncbi.nlm.nih.gov/pmc/articles/PMC1247191/)

Costs of complying for small business or city

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.”

No small business or city will incur additional costs because of this revision. All lead abatement contractors must comply currently with federal clearance standards which are the more restrictive standards, as compared to Minnesota’s rule.

Rule-by-Rule Analysis

The department is proposing revisions to the dust-lead hazard standards (DLHS) and dust-lead clearance levels (DLCL) in part 4761.2510. The reason for this change is to conform our rule to the newly revised federal standards our rule was adopted to mirror. EPA publishes the federal DLHS and DLCS at 40 C.F.R. 745, Subpart L. Specifically, EPA recently lowered the DLHS and DLCL from 40 micrograms 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 window sills.¹⁷ In turn, the department proposes to make these same revisions at part 4761.2510, subpart 2, items A and B. As described below, the department also proposes to add a new subpart 5 to part 4761.2510, which will ensure that the rule part remains current should EPA again revise these and certain other related limits.

These revisions are needed and reasonable to carry out the legislative mandate that the department “adopt regulated lead work standards and methods for lead in dust in a manner to protect the public health and environment.”¹⁸ The previous limits on dust in floors and window sills were set in 2001 and were based on the inability for then-available science to substantiate health effects in children at blood lead levels below 10 $\mu\text{g}/\text{dl}$.¹⁹ EPA revised its standards for dust in floors and window sills to reduce child lead exposure based on new data indicating that no safe blood lead level exists in children.²⁰ EPA acted on this better understanding of the damage lead causes, especially to children, by reducing dust lead limits. Dust is a significant exposure route for young children due to their mouthing behavior and proximity to the floor.²¹ MDH agrees with EPA’s analysis and determination. Protection of the public health requires reducing the DLHS and DLCL on floors and in window sills to match the revised federal requirements.

This proposed revision is also in keeping with the decades-old shared efforts of the department and the legislature to keep our lead rules and statutes consistent with federal requirements. These efforts are evidenced in Minnesota Laws 1994, chapter 567, section 22, which assigned the department the task of “monitor[ing] federal rules proposed and adopted for lead hazard reduction [and] . . . report to the legislature by January 10, 1995, with a legislative proposal to bring Minnesota law into conformance with the[se] federal requirements” The federal lead hazard reduction requirements at issue are contained at 40 C.F.R 745, subparts L²² and Q²³. Upon the EPA’s adoption of these requirements in 1996,

¹⁷ 84 F.R. 23632; 86 F.R. 983.

¹⁸ Minn. Stat. § 144.9508, subd. 2(d).

¹⁹ 84 F.R. 32633.

²⁰ 84 F.R. 32633; 86 F.R. 984.

²¹ 84 F.R. 32633.

²² Establishes requirements lead-based paint programs must place on regulated parties.

²³ Governs the process and requirements for obtaining and maintaining state lead-based paint program authorization.

the Minnesota legislature revised the Lead Poisoning Prevention Act to adopt federal terminology and lead abatement requirements into Minnesota law.²⁴

In 1994, the legislature also called on the department to “identify and apply for federal grants to subsidize the cost of the current lead abatement training program and to increase the number of certified trainers.”²⁵ The amendments the department now proposes are necessary to maintain our state program’s EPA certification and the federal grant money for our lead abatement training program that comes with it.²⁶ For the aforementioned reasons, the rule amendments are both needed and reasonable.

MDH is also adding a new subpart 5 to part 4761.2510 that will automatically incorporate future revisions to the federal requirements that, as described throughout this SONAR, are already incorporated into that rule part. This addition is meant to ensure that the department maintains its lead program’s federal authorization without running afoul of the 2-year deadline to update state rules upon federal regulatory revisions’ effective dates. The amendment is needed and reasonable on the same grounds as the above-described amendments to subpart 2.

Conclusion

The department has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rule 4761.2510. The department has provided the necessary notifications and documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

The proposed amendments are needed and reasonable.



Jan Malcolm
Commissioner
Minnesota Department of Health

8/5/2022

Date

²⁴ See Minnesota Laws 1998, chapter 407, art. 2, §§ 34-49.

²⁵ Minnesota Laws 1994, chapter 567, section 23.

²⁶ 40 C.F.R. 745.324(b)(2) (requiring states to demonstrate that their authorized programs are at least as protective as section 745, subpart L, which contains both the training program requirements and the DLHS and DLCL at issue in this rulemaking).



Protecting, Maintaining and Improving the Health of All Minnesotans

June 30, 2022

Mr. Thomas Carr
Executive Budget Officer
Minnesota Management and Budget
658 Cedar St., Ste. 400
St. Paul, MN 55155

Re: Proposed Amendments to Rules Governing Residential Lead Abatement, Minnesota Rules, 4761.2510; Revisor's ID Number RD4694; OAH Docket No. 65-9000-38460

Dear Mr. Carr:

Minnesota Statutes, section 14.131, requires that an agency engaged in rulemaking consult with the Commissioner of Minnesota Management and Budget "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

Enclosed for your review are copies of the following documents on the above-referenced rule revisions:

1. May 23, 2022, Revisor's draft of the proposed rule; and
2. June 30, 2022, draft SONAR.

If you or any other representative of the Commissioner of Minnesota Management & Budget has questions about the proposed rule revisions, please email me at josh.skaar@state.mn.us. If necessary, you can also call me at 651-368-0751.

Sincerely,

A handwritten signature in cursive script that reads "Josh Skaar".

Josh Skaar
Attorney and Department Rulemaking
Coordinator
Minnesota Department of Health
PO Box 64975
St. Paul, MN 55164
www.health.state.mn.us



Date: August 2nd, 2022

To: Josh Skaar
Attorney, Legal Unit
Minnesota Department of Health

From: Thomas L. Carr
Executive Budget Officer
Minnesota Management & Budget

Subject: M.S. 14.131 Review of Proposed Amendment to Rules Governing Lead, Minnesota Rules 4761.2510

RE: Standards for Lead

Background

The Minnesota Department of Health (MDH) proposes to amend Minnesota Rules, Chapter 4761, to align Minnesota standards with that of the federal government. Pursuant to Minnesota Statutes 14.131, MDH has requested Minnesota Management and Budget evaluate the proposed amendments for fiscal impact and benefits on units of local government.

Evaluation

On behalf of the Commissioner of Minnesota Management and Budget, I have reviewed the proposed changes and the draft of the SONAR to consult and help evaluate the fiscal impact these changes may have on local governments.

Minnesota statutes 144.9508 requires the commissioner of the department of health to adopt, by rule, methods for lead inspections, lead hazard screens, lead risk assessments, clearance inspections, and environmental surveys of lead in paint, soil, dust, and drinking water, among other responsibilities. The State of Minnesota is an agent of the federal government with respect to the enforcement of standards for lead, according to an agreement with the federal government and Minnesota statutes. Minnesota enforces the rules set by the Code of Federal Regulations, title 40, part 745, subpart L. As an agent of the federal government, we have an obligation to maintain regulations that are as strict as federal regulations.

The changes to subpart 2 of this rule honor the obligation the state has to the federal government, insofar as it links compliance with Rule 4761.2510 with compliance to the more protective standards for detecting lead in paint, dust, or bare soil in Code of Federal Regulations, title 40, part 745, subpart L.

These changes will not have a material impact on any body in Minnesota, regulator or regulated, as all contractors and regulators would be required to operate under the stricter standards by the federal government

if MDH fails to implement them in rule. These changes simply get this rule into compliance with federal regulations during the grace period allowed for such necessary changes.

This rule change would not have a material impact on local units of government. Local municipalities were contacted and did not take issue with this proposed change. These local units of government stated that they had no basis to assume that they or other municipalities would be financially impacted from this proposed change.

Sincerely,
Thomas L. Carr
Executive Budget Officer (MMB)

Cc: Angela Vogt, Executive Budget Coordinator (MMB)

Attachment A

Additional Notice Plan: Builders/Contractors/Realtors/Related Associations

- American Coatings Association
- Arrowhead Builders Association
- Association of Minnesota Building Officials
- Bigelow Homes
- Builders Association of Minnesota and their 13 local affiliated associations):
 - Northern Minnesota Builders Association
 - Headwaters Builders Association
 - Mid-Minnesota Builders Association
 - Minnesota River Builders Association
 - Rochester Area Builders
 - South Central Builders Association
 - Minnesota Metropolitan Contractors Association
 - Central Minnesota Builders Association
 - Vikingland Builders Association
 - West Central Builders Association
- Contractors Association of Minnesota
- George Group North
- Greater Minnesota Housing Association
- Home Builders Association of Fargo-Moorhead
- Housing First Minnesota
- Lake Region Builders Association
- Minnesota Construction Association
- Minnesota Environmental Contractors Association
- Dennis Environmental Operations
- Envirobate (Minneapolis; Rochester)
- Environmental Plant Services
- Mavo Systems
- VCI Environmental, Inc.
- Minnesota Association of Realtors
- Minnesota State Building and Construction Trades
- Minnesota Painting and Wallcovering Employers Association
- Finishing Contractors Association
- Laborers' International Union of North America – MN, ND
- Laborers Training Center
- Renovation firms, residential remodelers, general contractors, individual building trades, handyman services licensed by the Department of Labor and Industry (approximately 19,000)