

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of the Environment  
(DLS Control No. 20-024)**

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## **Overview and Legal and Fiscal Impact**

These regulations expand and update a number of provisions related to sampling, testing, reporting, investigating, and abating lead hazards. Among other things, the regulations (1) establish procedures for conducting environmental investigations as required by Chapter 341 of 2019; (2) update requirements for blood lead reporting by laboratories and health care providers; and (3) establish more stringent standards for lead content in dust for the purposes of post-abatement clearance testing and satisfying the risk reduction and modified risk reduction standards.

The regulations present no legal issues of concern.

There is no material fiscal impact on State or local agencies.

## **Regulations of COMAR Affected**

### **Department of the Environment:**

Occupational, Industrial, and Residential Hazards: Blood Lead Reporting:  
COMAR 26.02.01.01 through .05

Procedures for Abating Lead Containing Substances from Buildings:  
COMAR 26.02.07.02 and .12

Lead: Accreditation and Training for Lead Paint Abatement Services:  
COMAR 26.16.01.02

Reduction of Lead Risk in Housing: COMAR 26.16.02.02, .02-1, and .05

Procedures for Performing Lead Abatement Services:  
COMAR 26.16.05.01 through .03, .10, and .12

Environmental Investigations: COMAR 26.16.08.01 through .08

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## **Legal Analysis**

### **Background**

Chapter 341 of 2019 redefined elevated blood lead level (EBL) to mean (1) a quantity of lead in blood that exceeds the blood lead reference level as determined by the Centers for Disease Control and Prevention (CDC) on or after October 1, 2019, or (2) beginning one-year after the date that CDC revises the blood lead reference level until one-year after a subsequent revision, the

revised blood lead reference level determined by CDC. Chapter 341 also required the Department of the Environment, by July 1, 2020, to adopt regulations for conducting environmental investigations to determine lead hazards for (1) children younger than age six with EBLs greater than or equal to the reference level and (2) pregnant women with EBLs greater than or equal to the reference level. Finally, Chapter 341 modified statutory provisions regarding when an affected property owner is required to satisfy the modified risk reduction standard. The regulations implement Chapter 341.

The federal dust lead hazard standards (DLHS) under 40 CFR part 745 are incorporated by reference into the department's risk assessment regulations, and are used during risk assessments to identify the presence of dust lead hazards in target housing (certain pre-1978 residential properties) or in a child occupied facility. Effective January 6, 2020, new federal DLHS were established for floors and interior window sills. These standards are 10 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) on floors and 100  $\mu\text{g}/\text{ft}^2$  on window sills. The department's regulations automatically adopted the DLHS for the purposes of a risk assessment. These regulations adopt the lead dust levels of the federal DLHS for floors and window sills and establish a standard of 100  $\mu\text{g}/\text{ft}^2$  for window wells for the purposes of abatement, satisfying the risk reduction standards, and identifying dust-lead hazards during an environmental investigation. However, the federal clearance levels for abatement under 40 CFR part 745 have not yet been updated. The federal clearance levels for lead dust for compliance after an abatement are 40  $\mu\text{g}/\text{ft}^2$  for floors, 250  $\mu\text{g}/\text{ft}^2$  for interior window sills, and 400  $\mu\text{g}/\text{ft}^2$  for window troughs (or window wells). The Department advises that the U.S. Environmental Protection Agency has initiated a separate rulemaking to lower the federal clearance levels to be consistent with the federal DLHS.

## **Summary of Regulations**

The regulations alter existing requirements and create new requirements and procedures for the sampling, testing, abatement, and reporting of lead hazards, as discussed below.

### *Blood Lead Level Test Reporting*

The regulations make a number of changes to the requirements to report blood lead level test results for children age 18 or younger. The regulations expand the information that must be reported by laboratories, health care providers, or any other facility that draws a blood specimen for a child age 18 or younger for a blood level test. The regulations also make amendments to reporting requirements to reflect the new definition of EBL established under Chapter 341, and replace references to "20 micrograms/deciliter" with "reference level." The regulations expand and alter the procedural requirements related to the receipt of a blood specimen that does not include all required information, and establish new reporting procedures for reporting blood level test results that are missing required information. The regulations update the time frames within which the department must report blood lead level tests results to the local health department in the jurisdiction in which the child resides and the Maryland Department of Health.

### *Standards for the Lead Content in Dust*

The regulations define “quantitation limit” as the minimum quantity or level of lead that can reliably be measured or quantified to a specified degree of accuracy and precision. The regulations also reduce the level of dust that must be present to meet the definition of “lead-contaminated dust” from 40 µg/ ft<sup>2</sup> on floors, 250 µg/ ft<sup>2</sup> on window sills, and 400 µg/ ft<sup>2</sup> on window wells to 10 µg/ft<sup>2</sup> on floors and 100 µg/ ft<sup>2</sup> on window sills and wells. This is the standard used for the purposes of abatement and clearance inspections for abatement projects, satisfying the risk reduction standards, and identifying dust-lead hazards during an environmental investigation.

The regulations also update and add several related incorporations by reference including (1) updating the U.S. Department of Housing and Urban Development Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing from the June 1995 edition to the July 2012 edition; (2) updating the Standard Practice for Collection of Settled Dust Samples using Wipe Sampling Methods for Subsequent Determination from a 2016 edition to a 2020 edition; and (3) adding the Standard Specification for Wipe Sampling Materials for Lead in Surface Dust 2016 edition.

### *Environmental Investigations*

The regulations establish standards for environmental investigations performed by an department-accredited lead paint risk assessor to identify one or more lead hazards for a child or pregnant woman diagnosed with EBL. The regulations (1) define a number of related terms; (2) incorporate several related documents by reference; (3) establish protocols for the department and local health departments to schedule an environmental investigation; (4) establish protocols and technical standards for environmental investigations; and (5) set requirements for environmental investigation reports;

### **Legal Issues**

The regulations present no legal issues of concern.

The Joint Committee on Executive, Legislative, and Administrative Review may also wish to note that the department indicates that the dust-lead level standards for the clearance of abatement products under the regulations are more restrictive or stringent than a corresponding federal standard applicable to this subject area under the Code of Federal Regulations §745.227(e)(8)(viii). However, as mentioned above, the standards established under the regulations align with the federal DLHS used for risk assessments.

### **Statutory Authority and Legislative Intent**

The department cites §§ 1-404, 6-303 through 6-305, 6-801 through 6-852, 6-1001 through 6-1005, and 7-206 through 7-208 of the Environment Article as authority for the regulations. More specifically, § 1-404 gives the Secretary of the Environment broad authority to adopt regulations to carry out the provisions of law that are within the Secretary’s jurisdiction, and requires the Secretary to review the regulations of the department. Section 6-303 requires the department to

adopt regulations to (1) govern specified blood lead level test result reporting requirements for laboratories; and (2) provide for the reporting of information by the department to local health departments and the Maryland Department of Health. Section 6-305 requires the department to adopt regulations for conducting environmental investigations to determine lead hazards for specified at risk individuals. The required regulations must be consistent with or more stringent than the relevant federal guidelines. Section 6-816 requires the department to establish procedures and standards for lead-contaminated dust testing by regulation. Section 6-818 requires any person performing lead-contaminated dust testing or conducting lead inspections to be accredited by the department and establishes related reporting requirements. Section 6-1001 authorizes the department to set standards, by regulation, for the definition of a “lead containing substance” for the purposes of abatement so long as the standards are consistent with an applicable federal definition. Finally, § 6-1003 requires the department to adopt regulations to carry out the subtitle, which governs individuals who provide lead paint abatement services and lead paint inspections. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

### **Technical Corrections and Special Notes**

In response to suggestions from the Department of Legislative Services, staff for the department agree to correct several typos that incorrectly reference 40 CFR §745.277(e)(8)(viii) instead of 40 CFR §745.227(e)(8)(viii).

### **Fiscal Analysis**

There is no material fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The regulations have three primary components: (1) updating blood-lead test reporting requirements; (2) establishing more stringent standards for dust-lead levels for the purposes of post-abatement clearance testing and meeting the risk reduction and modified risk reduction standards; and (3) establishing procedures for environmental investigations. MDE advises that the regulations do not materially affect State or local governments. The Department of Legislative Services concurs, as discussed below.

MDE advises that the proposed changes to blood-lead reporting requirements do not have an impact on costs to administer the Childhood Lead Registry database, which is how these reports are tracked and received. MDE further notes that the laboratory it uses to analyze dust samples already has the capacity to measure the dust-lead levels required under the regulations, so there is no material fiscal impact from the more stringent dust-lead level standards established under the regulations.

MDE notes that in part, the regulations implement Chapter 341 of 2019 (House Bill 1233), and although the implementation of that Act has a fiscal impact, the impact was already accounted

for in the fiscal and policy note for House Bill 1233. The Department of Legislative Services notes that the fiscal and policy note for House Bill 1233 estimated that general/special fund expenditures would increase by approximately \$762,600 in fiscal 2020, and by at least \$1 million annually thereafter, for staff and supplies to conduct environmental investigations and to handle significantly greater caseloads as a result of lowering the EBL reference level. The portion of the regulations that implement Chapter 341 has no material fiscal impact beyond that estimated in the fiscal and policy note for House Bill 1233.

The fiscal and policy note for House Bill 1233 also indicated that expenditures could increase significantly for locally owned housing entities to comply with the modified risk reduction standard due to the bill's lower EBL reference level beginning in fiscal 2021. However, the timing for when an affected property owner must meet the standard was also modified by hinging the requirement on both the notice regarding EBLs and on the results of an environmental investigation. Thus, the fiscal and policy note indicated that some local housing authorities could benefit.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

### **Agency Estimate of Projected Small Business Impact**

MDE advises that the regulations have minimal or no economic impact on small businesses in the State. Specifically, MDE advises that the regulations are not anticipated to have a meaningful impact on small businesses because most of the impacts were already accounted for in the fiscal and policy note for House Bill 1233. The fiscal and policy note for House Bill 1233 estimated the potential for increased costs for small business rental property owners to meet the lower EBL threshold, but also noted that some affected property owners may benefit from the changes to the timing for when an affected property owner must meet the standard. Finally, the fiscal and policy note also noted the potential benefit for small business contractors engaged in the inspection, abatement, or renovation of properties with lead paint.

MDE further advises that, based on a study conducted when the U.S. Environmental Protection Agency was developing the new, lower federal dust-lead hazard standards, it is anticipated that most properties will meet the lower standards adopted under the regulations without the need for additional work or retesting. Thus, MDE does not expect any significant additional costs for property owners from the changes to the dust-lead level standards under the regulations. Based on the information provided by MDE, the Department of Legislative Services concurs.

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