

Publications

USEPA Proposes Major Expansion of Lead Paint-Related Regulation and Lowers Key Standards

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On July 12, 2023, USEPA released a Pre-Publication Notice of proposed changes to its rules governing lead paint dust. The proposed rule changes are significant and would impact certain buildings (single-family residential, multifamily, childcare centers, etc.) built before 1978.

The rule would expand the categories of regulated properties, when lead abatement is required, and when disclosures in sales/leases are mandated. The proposed rule significantly lowers the amount of lead that can be present after the completion of a lead abatement. Moreover, the lower standard will cause more properties to be subject to lead abatement actions.

The EPA seeks to lower the dust-lead hazard standards (“DLHS”) from 10 µg/ft² for floors and 100 µg/ft² for window sills to “any reportable level,” which is any level “greater than zero.” This proposed standard is based on the USEPA’s finding that “there is no safe level of lead.” The DLHS is used to determine whether lead dust is present during a risk assessment or a lead hazard screen in childcare facilities and homes built before 1978.

Additionally, the USEPA proposes to change the dust-lead clearance levels (DLCL), which are values used to determine when required lead dust abatement work can be considered complete.

Location Tested

Current DLCL

Proposed DLCL

Floors

10 µg/ft²

3 µg/ft²

Window Sills

100 $\mu\text{g}/\text{ft}^2$

20 $\mu\text{g}/\text{ft}^2$

Window Troughs

400 $\mu\text{g}/\text{ft}^2$

25 $\mu\text{g}/\text{ft}^2$

Under the proposed rule, recommendations for action would apply when lead dust is at or above the DLCL. The proposed DLHS would also require any regulated entity to disclose any reportable level of lead. The disclosure duty would apply even after a property had completed lead abatement in compliance with the DLCL.

Entities that may be affected include:

- Those engaged in real estate, including, owners, lessors, residents, and managers (NAICS code 531)
- Those engaged in construction, including, single-family housing construction, multifamily housing construction, and residential remodelers (NAICS code 236)
- Those engaged in specialty trade contractors, including, plumbing, heating and air conditioning, painting, electrical work, carpentry, drywall, insulation, glass, and tile. (NAICS code 238)
- Those engaged in engineering services (NAICS code 541330)
- Testing laboratories (NAICS code 541380)
- Child day care services (NAICS code 624410)
- Elementary and secondary schools (NAICS code 611110).

As of July 19, 2023, the proposed rule has not been officially published with the Federal Register. Once published, comments must be received 60 days after the official publication and comments on information collection provisions should be received 30 days after publication. The Pre-Publication Notice with the full proposed rule change can be found [here](#).

If you have questions or concerns about the proposed changes to the lead paint-related rules, please do not hesitate to reach out to Kristin Watt, Kristin Woeste, or your Vorys lawyer.