

Kansas Department of Health and Environment

Division of Health

Bureau of Environmental Health

September 17, 2009

Economic Impact Statement

Pursuant to the K.S.A. 77- 416

PROPOSED NEW AND AMENDED REGULATIONS:

Article 72. Residential Childhood Lead Poisoning Prevention Program

New

K.A.R. 28-72-1a	Definitions.
K.A.R. 28-72-1c	Definitions.
K.A.R. 28-72-1d	Definitions.
K.A.R. 28-72-1e	Definitions.
K.A.R. 28-72-1g	Definitions.
K.A.R. 28-72-1h	Definitions.
K.A.R. 28-72-1i	Definitions.
K.A.R. 28-72-1k	Definitions.
K.A.R. 28-72-1l	Definitions.
K.A.R. 28-72-1m	Definitions.
K.A.R. 28-72-1n	Definitions.
K.A.R. 28-72-1o	Definitions.
K.A.R. 28-72-1p	Definitions.
K.A.R. 28-72-1r	Definitions.
K.A.R. 28-72-1s	Definitions.
K.A.R. 28-72-1t	Definitions.
K.A.R. 28-72-1v	Definitions.
K.A.R. 28-72-1x	Definitions.
K.A.R. 28-72-6a	Requirements for Elevated Blood Lead Level Investigator.
K.A.R. 28-72-7a	Requirements for certification in Lead Safe Work Practices.
K.A.R. 28-72-10a	Requirements for licensing Renovation Firms.

Amended

K.A.R. 28-72-2	General requirements for accreditation, licensure, and certification adoption by reference.
K.A.R. 28-72-3	Fees.
K.A.R. 28-72-4	Training provider accreditation.
K.A.R. 28-72-4a	Curriculum requirements for training providers.
K.A.R. 28-72-4c	Training provider accreditation refresher training.
K.A.R. 28-72-5	Requirements for certification of lead inspectors.
K.A.R. 28-72-6	Requirements for certification of risk assessors.
K.A.R. 28-72-7	Requirements for certification of lead abatement workers.
K.A.R. 28-72-8	Requirements for certification of lead abatement supervisors.
K.A.R. 28-72-9	Requirements for certification of project designers.
K.A.R. 28-72-10	Requirements for licensing Lead Activity Firms.
K.A.R. 28-72-11	Requirements for renewal of lead occupation certificates.
K.A.R. 28-72-12	Requirements for renewal of lead occupation certificates after expiration.
K.A.R. 28-72-13	Work practice standards - general.
K.A.R. 28-72-14	Work practice standards - inspection.
K.A.R. 28-72-15	Work practice standards – lead hazard screen.
K.A.R. 28-72-16	Work practice standards – risk assessment.
K.A.R. 28-72-17	Work practice standards – EBL investigation risk assessments.
K.A.R. 28-72-18	Work practice standards – lead abatement.
K.A.R. 28-72-18a	Work practice standards – lead abatement replacement.
K.A.R. 28-72-18b	Work practice standards – lead abatement enclosure.
K.A.R. 28-72-18c	Work practice standards – lead abatement encapsulation.
K.A.R. 28-72-18d	Work practice standards – lead abatement removal.
K.A.R. 28-72-18e	Work practice standards – post abatement clearance.
K.A.R. 28-72-19	Work practice standards – collection of lab samples.
K.A.R. 28-72-20	Work practice standards – composite dust sampling.
K.A.R. 28-72-21	Work practice standards – quarterly reporting.
K.A.R. 28-72-22	Enforcement.
K.A.R. 28-72-51	Definitions.
K.A.R. 28-72-52	Applicability
K.A.R. 28-72-53	Information distribution requirements.

Revocations:

- K.A.R. 28-72-01
- K.A.R. 28-72-4b

Executive Summary of Proposed New and Amended Regulations

The Kansas Department of Health and Environment (KDHE) is proposing to adopt new regulations K.A.R. 28-72-1a, 28-72-1c, 28-72-1d, 28-72-1e, 28-72-1g, 28-72-1h, 28-72-1i, 28-72-1k, 28-72-1l, 28-72-1m, 28-72-1n, 28-72-1o, 28-72-1p, 28-72-1r, 28-72-1s, 28-72-1t, 28-72-1v, 28-72-1x, 28-72-6a, 28-72-7a and 28-72-10a, amend regulations 28-72-2, 28-72-3, 28-72-4, 28-72-4a, 28-72-4c, 28-72-5, 28-72-6, 28-72-7, 28-72-8, 28-72-9, 28-72-10, 28-72-11, 28-72-12, 28-72-13, 28-72-14, 28-72-15, 28-72-16, 28-72-17, 28-72-18, 28-72-18a, 28-72-18b, 28-72-18c, 28-72-18d, 28-72-18e, 28-72-19, 28-72-20, 28-72-21, 28-72-22, 28-72-51, 28-72-52 and 28-72-53 and revoke K.A.R. 28-72-01 and 28-72-4b.

In 2006 the U.S. Environmental Protection Agency (EPA) announced and published new regulations in 40 CFR 745 *et seq.* which, when made effective, would substantially affect the administration of the Kansas Childhood Residential Lead Poisoning Prevention Act. KDHE convened a regulatory review workgroup comprised of private contractors, public health officials and training providers, all of whom have direct interactions with lead-based paint regulations and activities in Kansas. The committee met on several occasions and proposed changes that would allow KDHE to administer the revised EPA regulations in Kansas.

Significant changes are proposed in response to the promulgation of the new federal regulations. These changes deal with adopting by reference the new 40 CFR 745 regulations and excepting out any federal regulation that would directly conflict with existing State statute or regulation or cause a conflict of interest. The proposed regulations deal with preventing lead poisoning through worker training and certification, contractor licensing, contractor disclosure to property owners and residents/occupants and the necessary post work independent verification of proper work practice compliance.

Additional revisions are proposed to existing regulations that will accommodate changes which have occurred in the lead hazard remediation industry since the original regulation promulgation in 2000. The revisions include clarification of the not for profit status, allowing use of electronic submissions for data, elimination of reciprocity by agreement in favor of case by case credentialing for out of state certificate applicants, establishing that credentialing examinations be passed with a score of 80% correct or higher, disallowing the use of heat guns as an acceptable lead-based paint methodology, redefining the allowable wind speed for which exterior lead-based paint abatement work must cease, defining the credentialing process for Elevated Blood Lead Level Investigators, the lowering of specific fees, a methodology for insuring that the homes of lead poisoned children are remediated when lead-based paint in rental housing is determined to be the primary cause of poisoning, clarifying reporting dates for lead activity firms, providing consumer access to personal protection and lead specific safety information when purchasing do-it-yourself materials for painting and renovation projects. Numerous administrative and grammatical edits appear throughout the regulations to clarify meaning and meet current state regulatory review standards. An itemized regulation review follows:

K.A.R. 28-72-1a through 28-721x: Definitions.

These proposed new regulations allow for the alphabetical listing of defined terms in the regulations which may be easily and quickly located by the user. These definitions replace the definitions found in K.A.R. 28-72-1 which is being repealed.

K.A.R. 28-72-2: General requirements for accreditation, licensure, and certification adoption by reference.

This proposed regulation includes changes that allow for out of state lead occupation certificate holders to apply for certification in Kansas based upon successful application as defined. This regulation also allows for the adoption by reference of 40 CFR 745.80 through 745.90 allowing KDHE to administer the EPA Renovation, Repair and Painting Rule with excepted provisions that conflict with current state regulation.

K.A.R. 28-72-3: Fees.

Changes to the fee structure reduce the amount that training providers must pay during accreditation and reaccreditation, establishes a zero dollar fee for local health departments who are certified by KDHE to perform Elevated Blood Lead (EBL) environmental investigations, eliminates fees for reciprocity, establishes fees for renovator certification and recertification at fifty dollars (\$50.00) and twenty five dollars (\$25.00) respectively, establishes the fees for licensing and license renewal of renovation firms at two hundred (\$200.00) and one hundred dollars (\$100.00) respectively. All the fees within this matrix are less than those charged by the EPA for similar activities as required by K.S.A 65-1, 202(c).

K.A.R. 28-72-4: Training Provider accreditation.

Proposed changes include the addition of lead safe work practices training as an accredited course, and specify the requirement of proof for a not for profit fee exemption. Additionally, changes will allow for the payment of fees to KDHE to be paid electronically if so desired by the applicant and clarify that the proper method of requesting a hearing is through the office of administrative hearings. The role of the training manager is clarified, as is the role of principal and guest instructors. The education and experience requirements for members of the training staff are clarified.

K.A.R. 28-72-4a: Curriculum Requirements.

This proposed change specifies that trainers must include a regulatory review of K.A.R. 28-72-2 and 28-72-51 through 28-72-54 which detail contractor work practices and disclosure requirements when dealing with lead-based paint in target housing during all training classes.

K.A.R. 28-72 4c: Training provider accreditation refresher training.

Changes in this regulation are similar to those in 28-72-4.

K.A.R. 28-72-5: Requirements for certification of lead inspectors.

The changes in this regulation include the removal of the “mailing” requirement for application, the addition of providing proof of EPA equivalent training, expanding the methods of payment of fees, removal of reciprocity application procedures, removal of the submission of a passport photo requirement, amends the requirement for passing scores on subject matter examinations, streamlines the regulatory language to not restate statutory language and clarifies the correct state entity to contact if requesting an administrative hearing.

K.A.R. 28-72-6: Requirements for certification of risk assessors.

The changes in this regulation are identical to the changes in 28-72-5 but applied to the different certification classification.

K.A.R. 28-72-6a: Requirements for certification of elevated blood lead level investigator.

This proposed new regulation creates the classification of EBL investigator and defines the requirements and process for certification.

K.A.R. 28-72-7: Requirements for certification of lead abatement workers.

The changes in this regulation are identical to the changes in 28-72-5 but applied to the different certification classification.

K.A.R. 28-72-7a: Requirements for certification in Lead Safe Work Practices.

This proposed new regulation creates the classification of certified renovator and defines the requirements and process for certification. This classification is new and will allow KDHE to track and verify training and compliance with work practice standards established through the adoption of 40 CFR 745.80 through 745.90.

K.A.R. 28-72-8: Requirements for certification of lead abatement supervisors.

K.A.R. 28-72-9: Requirements for certification of project designers.

Both regulations have proposed changes that mirror those made to 28-72-5.

K.A.R. 28-72-10: Requirements for licensing Lead Activity Firms.

The changes in this regulation include the removal of the “mailing” requirement for applications, clarifies the requirement of proof of good standing from the Secretary of State, clarifies the proof required to claim not for profit status, removes language restating statute and clarifies the correct entity to contact if requesting an administrative hearing.

K.A.R. 28-72-10a: Requirements for licensing Renovation Firms.

This proposed new regulation establishes the licensing process, requirements and responsibilities for firms seeking to perform renovation, repair or painting work on target housing in Kansas.

K.A.R. 28-72-11: Requirements for renewal of lead occupation certificates.

K.A.R. 28-72-12: Requirements for renewal of lead occupation certificates after expiration.

The proposed changes in both of these regulations mirror the changes in 28-72-5 but additionally add new certification classifications (renovator and EBL investigator).

K.A.R. 28-72-13: Work practice standards – general.

The proposed changes in this regulation clarify and update to current referenced federally published guidance documents.

K.A.R. 28-72-14: Work practice standards – inspection.

The minor amendments to this regulation clarify who may perform this function and how it must be accomplished.

K.A.R. 28-72-15: Work practice standards – lead hazard screen.

The amendments to this regulation clarify who may perform this function and how it must be accomplished, and eliminates the use of composite dust samplings.

K.A.R. 28-72-16: Work practice standards – risk assessment.

Minor amendments to this regulation eliminate the use of composite dust samplings and correct grammatical errors.

K.A.R. 28-72-17: Work practice standards – EBL investigation risk assessments.

The amendments to this regulation define specific processes that must be followed when completing an environmental investigation at the residence of a lead poisoned child. It also defines what processes must be followed in a rental property when lead hazards are determined to have been the primary factor in the lead poisoning of a child.

K.A.R. 28-72-18: Work practice standards – lead abatement.

Amendments to this regulation remove the mailing requirement for notices, expand the methodology for submitting payments, establish the requirement to provide KDHE a copy of a post abatement clearance report, reduce the time for notification and payment of fees relative to an emergency abatement project from 5 days to 2 days, define the area around electrical outlets to be within 12 inches, prohibit the use of heat guns for removing lead-based paint during

abatement, prohibits the use of hydro blasting as an abatement technique and correct several small grammatical errors in language.

K.A.R. 28-72-18a: Work practice standards – lead abatement replacement.

Minor amendments to this regulation provide clearer meaning as to who may be inside a regulated abatement work area and define the use of polyethylene sheeting.

K.A.R. 28-72-18b: Work practice standards – lead abatement enclosure.

Minor amendments to this regulation provide clearer meaning as to who may be inside a regulated abatement work area, define use of polyethylene sheeting, defines the process for permanently marking a surface that is coated with lead-based coatings prior to enclosure and correct several grammatical errors.

K.A.R. 28-72-18c: Work practice standards – lead abatement encapsulation.

Amendments to this regulation provide clearer definition of the encapsulation process, define who may be inside a regulated abatement work area, define the use of polyethylene sheeting and correct several grammatical errors.

K.A.R. 28-72-18d: Work practice standards – lead abatement removal.

Amendments to this regulation provide clearer definition of the soil abatement process, align the state lead threshold for lead in soils to match the requirement in K.A.R. 28-72-18e(f)2, define permanently covered soils and who may be inside a regulated abatement work area, define the use of polyethylene sheeting, increase the wind speed threshold from 10 mph to 15 mph and correct several grammatical errors.

K.A.R. 28-72-18e: Work practice standards – post abatement clearance procedures.

Amendments to this regulation provide the inclusion of clearance procedures if required following lead hazard control, clarify that horizontal surfaces are walking surfaces, include KDHE as a recipient for post abatement clearance reports and corrects grammatical errors.

K.A.R. 28-72-19: Work practice standards – collection of lab samples.

Amendments to this regulation clarify who may perform this activity and correct grammar.

K.A.R. 28-72-20: Work practice standards – composite dust sampling.

This amendment prohibits the use of composite dust samples.

K.A.R. 28-72-21: Work practice standards – quarterly reporting.

The amendments to this regulation define the quarterly reporting responsibilities of Lead Activity Firms to KDHE.

K.A.R. 28-72-22: Enforcement.

These amendments align the regulatory language with statutory authority and clarify language.

K.A.R. 28-72-51: Definitions.

The amendments in this regulation clarify meaning and eliminate restated definitions that are defined in statute or adopted by reference.

K.A.R. 28-72-52: Applicability.

The amendments in this regulation change the De minimus level for work practice compliance on non-federally funded housing renovation from two square feet to six square feet and clarify language.

K.A.R. 28-72-53: Information distribution requirements.

Amendments to this regulation clarify the type of property covered by the regulation, establish the requirement to post a lead poisoning prevention poster in commercial establishments that offer paint or paint removal supplies extolling the public health risks associated with improperly working with lead-based paints and provide consumers free information for their protection.

Are these regulations mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?

Yes,

The entire body of these regulations is promulgated as part of the agreement between the State of Kansas, Department of Health and Environment and the U.S. Environmental Protection Agency. The agreement authorizes KDHE to administer portions of 40 CFR Part 745 *et seq.*, authorized by the Title X of the 1992 Housing and Community Development Act. KDHE receives annually renewable funding from EPA to perform the mandated activities. If KDHE were to choose to not administer the program, the state would lose annual funding of more than \$350,000 and place at risk other grant funds from the CDC and HUD that total more than \$1,500,000 annually.

Do the proposed regulations exceed the requirements of applicable federal law?

Yes,

KDHE did not author new regulations exceeding the requirements of federal law; however it should be noted that by excepting out specific provisions of new EPA regulations to meet or comply with current Kansas law, the amended Kansas Administrative Regulations are more restrictive than the EPA regulations in some areas.

For example, EPA allows for individuals to be trained by an EPA accredited training provider and then allows the trainee to train other workers in lead safe work practices for the

equivalent of an 8 hour course. This creates a serious concern that proper training would be provided and creates a conflict of interest.

Additionally, EPA regulations allow for non-qualified individuals to perform lead based paint testing which is a direct violation of the Kansas regulations and allows for further conflicts of interest to occur when a contractor performs renovations and self certifies that no lead hazards were created when lead in amounts not able to be seen visually are the cause of lead poisoning in children. The regulations as presented remove conflicts and are necessary for the protection of public health and safety in Kansas.

Finally, it should be noted that EPA has received a legal challenge at the national level alleging that the current EPA rules are too lax and requesting that the loopholes in the EPA version of the regulations be removed. EPA is crafting a settlement agreement requiring the amendment of their published regulations. If approved changes being requested will result in the EPA having regulations similar to the Kansas Administrative Regulations.

Description of Costs:

a. Cost to the agency:

All expenses required to administer these regulation is borne through a renewable grant from EPA and through fees collected for services. There are no state general funds involved in the functioning of the KDHE program charged with administering these regulations.

b. Cost to persons who will bear the costs and those who will be affected, (i.e., private citizens and consumers of the products or services) and are subject to the proposed rules and regulations or the enforcement:

K.A.R. 28-72-2: General requirements for accreditation, licensure, and certification adoption by reference.

The ultimate cost for the regulatory changes will be borne by the consumers who hire professional services of contractors, renovators or painters. It is estimated that for an average exterior painting of a single family residence constructed prior to 1978 the extra cost for employing lead safe work practices, complying with the regulations as proposed and protecting public health, would be \$350. For an average renovation such as replacing 3 windows or remodeling a bathroom the additional cost for using lead safe work practices and safeguarding the health of families and workers would be \$350. This figure represents the cost of labor, materials, the proration of licensing expenses and the costs associated with proper post work clearance testing performed by licensed firms. (It should be noted that the extra work required to safeguard against creating a lead hazard during work will result in less clean up time and expense for contractors when a job is complete and that smaller jobs would require less expense than larger projects).

K.A.R. 28-72-3: Fees.

KDHE is proposing a fee structure to administer the provisions of the newly required regulations that is less costly than the EPA requirements and keeps Kansas fiscal resources in Kansas to help Kansas families. This will also benefit industry, as the fees proposed by KDHE are less than EPA fees.

K.A.R 28-72-7a & 28-72-10a: Renovator Certification and Licensing Renovation Firms.

These regulations create two additional classifications to the existing lead-based paint handling professions. Companies wishing to engage in regulated activities must be licensed as Renovation Firms; workers who actually perform the work must be certified as Renovators.

The cost to become a Renovation Firm is \$200 initially and is renewable bi-annually at a cost of \$100; on average the fee cost to be a Renovation Firm in Kansas will be \$50 per year. This cost is expected to become part of the cost of doing business and amortized into job bids by contract ring firms.

EPA will charge \$300 initially and \$300 every 5 years. EPA will also assess Lead Activity Firms and additional \$300 fee even though they have already been credentialed from more stringently regulated lead-based paint abatement activities, these extra fees will not be charged in Kansas.

Individuals who seek certification will be required to complete the requisite training and apply for certification as a Renovator with KDHE. The cost for the certification is \$50 initially and \$25 upon bi-annual renewal. These costs will be borne by workers as professional credentialing expense.

The cost for the accredited training will vary. The current market rate is \$125 - \$150 per student, as the demand increases and more training providers enter the market it is expected that the cost for the training will drop. It is not the intent of the KDHE that contractor firms bear the cost of individual employee/workforce training. They are free to enter into those agreements with employees if they so choose or offer the training as a benefit but the regulation does not require the contractor firms to bear this expense.

K.A.R. 28-72-17: Work practice standards – EBL investigation risk assessments.

The amendment proposes that rental property owners bear the burden of providing lead-safe housing should a child be poisoned due to lead hazard exposure in the home. The cost of mitigation, which is referred to as a lead hazard control activity, of a typical single family residence is generally less than \$1000 per unit, and is comprised mainly of cleaning up lead-based paint hazards and safely repainting surfaces where deteriorated lead-based paint has been found and is accessible to children. This expense is part of the normal upkeep of a rental property and will not penalize a property owner as they will retain the benefit and utility gained by properly maintaining their assets. The average cost includes post lead hazard control testing to

insure the work was performed properly and that no further lead hazard threat to the occupants remain.

K.A.R. 28-72-53: Information distribution requirements.

This amendment includes a provision which would require that commercial establishments make available for public consumption lead-based safety information for do-it-yourself individuals. There is no discernable cost for this requirement as KDHE will have the required posters and booklets available for the establishments upon their request and the poster and information will also be available for printing via the KDHE web site. EPA and CDC grant funding allows the KDHE to provide these materials as part of the ongoing lead poisoning prevention activities within Kansas.

c. Costs to other governmental agencies or units:

EPA regulations extend to schools in this proposed regulatory amendment. KDHE will partner with the school districts in the state to ensure that planning occurs to implement the proper safeguards concerning lead-based paint disturbance and to limit the costs of compliance with the new regulations.

d. A detailed statement of the data and methodology used to estimate the costs used in the statement.

KDHE has administered the Childhood Lead Poisoning Prevention program since 2000. During the past 9 years KDHE has worked closely with the contracting/regulated community and has directly administered 2 grants totaling \$6,000,000 from the US Department of Housing and Urban Development (HUD) for lead abatement and lead hazard remediation activities in Kansas City, Kansas. KDHE records detail the expenses associated with making over 600 homes lead-safe at an average cost of \$7,500 per unit. These properties had lead abatement occur which is very expensive but uses similar work preparation, dust and debris containment and clean up as will be required when employing the new requirements in the regulations. Many of the items that will be used are common such as polyethylene sheeting, painters tape, plastic spray bottles, rags, buckets and plastic bags. Records indicate that during abatement projects contractors expend on average \$100 on these items. Additionally, contractors will purchase a High Efficiency Particulate Air (HEPA) filtering vacuum cleaner used to collect lead dust during cleaning the cost of these machines varies but on average is less than \$1000 and have an extended lifetime.

The cost of \$350 per job is determined by the average of \$100 for materials, \$200 for clearance testing including sampling by local licensed firms that provide this service, and \$50 for any additional labor or equipment amortization. All of these expenses are deductible as a cost of business to contractors under current tax laws.

Description of any less costly or less intrusive methods that were considered by the agency for the purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations.

KDHE worked closely with representatives from the contracting industries, training industries, lead activity firms local public health agencies to develop the proposed amendments. These regulations address KDHE's concerns regarding protection of the public health and safety while insuring that KDHE partners with industry to accomplish the goal of eliminating lead poisoning. This is able to be accomplished in a manner that will not hinder the competitive nature of business in Kansas.

Consultation with League of Kansas Municipalities, Kansas Association of Counties and the Kansas Association of School Boards.

The department does not anticipate that the proposed regulations will have any significant financial impact on these organizations. However, letters with copies of the draft regulations and economic impact statement have been mailed to the League of Kansas Municipalities, Kansas Association of Counties and the Kansas Association of School Boards, pursuant to KSA 77-416 on September 24, 2009.