

# STATE OF KANSAS

## Department of Health and Environment

### Notice of Hearing on Proposed Amendments of Administrative Regulation

The Kansas Department of Health and Environment (KDHE), Division of Health, Bureau of Environmental Health, will conduct a public hearing on December 3, 2009, at 10:00 a.m., in Room 530 of the Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed 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 and amendments to 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 the revocation of K.A.R. 28-72-1 and 28-72-4b relating to Childhood Lead Poisoning Prevention. The adoptions, amendments and revocations being proposed by KDHE will allow for the continued protection of public health and defend Kansas families against environmental poisoning from lead-based paint hazards.

A summary of the proposed regulations and the estimated economic impact follows:

#### Summary of Regulations:

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

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 U.S. Environmental Protection Agency (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 (\$100.00) dollars 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 nonprofit fee exemption. Additionally, changes allow fees to KDHE to be paid electronically by the applicant and clarify that the proper method of requesting a hearing is with 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 K.A.R. 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 K.A.R. 28-72-4.

K.A.R. 28-72-5: Requirements for certification of lead inspectors. The changes in this regulation remove the “mailing” requirement for application, add providing proof of EPA equivalent training, expand the methods of payment of fees, remove reciprocity application procedures, remove the submission of a passport photo requirement, amend the requirement for passing scores on subject matter examinations, streamline the regulatory language to not restate statutory language and clarify that a hearing is requested with the office of administrative hearings.

K.A.R. 28-72-6: Requirements for certification of risk assessors. The changes in this regulation are identical to the changes in K.A.R. 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 K.A.R. 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 K.A.R. 28-72-5.

K.A.R. 28-72-10: Requirements for licensing lead activity firms. The changes in this regulation remove the “mailing” requirement for applications, clarify the requirement of proof of good standing from the Secretary of State, clarify the proof required to claim nonprofit status, remove language restating statutory language and clarify that a hearing is requested with the office of administrative hearings.

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 K.A.R.28-72-5 but also 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 postabatement 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, prohibit the use of hydro blasting as an abatement technique and correct grammatical errors.

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, define the process for permanently marking a surface that is coated with lead-based coatings prior to enclosure and correct 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 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 grammatical errors.

K.A.R. 28-72-18e: Work practice standards – postabatement 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 postabatement clearance reports and correct 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 errors.

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. 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.

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 and require commercial establishments that offer paint or paint removal supplies to post a lead poisoning prevention poster extolling the public health risks associated with improperly working with lead-based paints and provide consumers free information for their protection.

#### Economic Impact:

Cost to the agency: There is no additional cost to the agency. Any costs associated with program administration are funded through federal grants and program fees.

Cost to individuals, licensees and certificate holders: The ultimate cost for the regulatory changes will be borne by the consumers who hire professional services of contractors, renovators or painters. It is anticipated that renovation firm license fees will be passed on pro rata to consumers as a cost of doing business. Individuals becoming certified will be subject to a fifty dollar (\$50.00) fee for initial certification and will be required to renew bi-annually at a rate of twenty-five dollars (\$25.00). Individuals will also be subject to professional education requirements and will pay for the training in the private market. The current average cost for the training is one hundred twenty-five dollars (\$125.00). It is estimated that the costs to individual consumers attributed to

complying with the regulations as proposed for the protection of public health would average three hundred fifty dollars (\$350.00) per job.

Costs to other governmental agencies or units: There is no known additional cost.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Thomas Langer, Kansas Department of Health and Environment, Bureau of Environmental Health, 1000 SW Jackson, Suite 330, Topeka, Kansas 66612, or by fax to (785) 296-5594, or by e-mail to [lead@kdheks.gov](mailto:lead@kdheks.gov). All interested parties will be given a reasonable opportunity to present their views orally on the proposed regulatory action during the hearing. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to 3 minutes.

Copies of the proposed regulations and the corresponding economic impact statement may be obtained from the Kansas Department of Health and Environment, Bureau of Environmental Health, by calling Jason Meinholdt at (785) 296-1274 or [jmeinholdt@kdheks.gov](mailto:jmeinholdt@kdheks.gov) or may be obtained at the KDHE website [www.kshealthyhomes.org/](http://www.kshealthyhomes.org/). Questions pertaining to the proposed regulations should be directed to Thomas Langer at (785) 296-5605 or [lead@kdheks.gov](mailto:lead@kdheks.gov).

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Thomas Langer.

Roderick L. Bremby

Secretary of Health and Environment