



NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333

OREGON HEALTH AUTHORITY

PUBLIC HEALTH DIVISION

FILED: 08/11/2026 11:00 AM

ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Adoption of U.S. Environmental Protection Agency's Revised Dust-Lead Standards by Reference

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2026 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later.

If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT:

Ryan Barker

503-953-5432

publichealth.rules@odhsoha.oregon.gov

800 NE Oregon St. Suite 640

Portland, OR 97232

Filed By:

Public Health Division

Rules Coordinator

NEED FOR THE RULE(S):

As a U.S. Environmental Protection Agency (EPA)-authorized program, the Oregon Health Authority's (OHA's) Lead-Based Paint Program must demonstrate that its standards are at least as protective as EPA's standards in a report submitted under 40 Code of Federal Regulations (CFR) 745.324(h) no later than two years after the effective date of the new requirements (which according to EPA is January 11, 2027). If OHA does not implement the rule changes, EPA could withdraw Oregon's authorization and implement the rule changes at the federal level.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- 40 CFR Part 745 <https://www.ecfr.gov/current/title-40/part-745>
- 89 FR 89416 <https://www.federalregister.gov/d/2024-25070/page-89416>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with

environmental justice concerns. Children living in households with an annual income below the poverty line, as well as racial minorities, are expected to see benefits from these rule changes according to EPA's analysis. EPA also believes that the rule change could inadvertently limit the availability of federally assisted affordable housing, increase housing costs for low-income families with reduced access to assisted housing, or potentially increase dust lead levels in HUD-regulated housing. (See <https://www.federalregister.gov/d/2024-25070/p-412>). OHA agrees with EPA's analysis. While data on age of housing by householder's race is limited, low rates of homeownership by Oregon's non-white population means these families are limited to available housing that could be older and less maintained. Reducing dust-lead standards is expected to reduce the environmental burden associated with older housing stock. With respect to EPA's belief that this rule change could inadvertently limit availability of federally assisted housing, according to data from the US Department of Housing and Urban Development (HUD), Oregon's minority populations living in subsidized housing is much lower than the US average. Any impact on minority populations would be lower in Oregon than the national average.

FISCAL AND ECONOMIC IMPACT:

Affected businesses and agencies should expect some increases in staff time, supplies and lab costs, recordkeeping, and administrative activities. Please see below under "Cost of Compliance Effect on Small Business" for details. The fiscal and economic impact to OHA's Lead-Based Paint Program is minimal since it already provides compliance assistance to ensure its regulated community is following the rules under Oregon Administrative Rule (OAR) chapter 333, divisions 067, 069, and 070 (and, by reference, 40 CFR 745).

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) EPA estimates impacts on certain public housing authorities and state and local governments to cover the costs of additional lead hazard reduction activities, cleaning, and dust-lead testing to ensure public housing units are in compliance with the U.S. Department of Housing and Urban Development's (HUD's) Lead-Safe Housing Rule. As stated above, the impact to OHA's Lead-Based Paint Program is minimal since it already provides compliance assistance to ensure its regulated community is following the rules under Oregon Administrative Rule (OAR) chapter 333, divisions 067, 069, and 070 (and, by reference, 40 CFR 745). There is no anticipated cost of compliance on other state agencies since they do not regulate dust-lead levels or need to comply with EPA's levels. We do not have data on housing stock owned or funded by housing authorities that might require more remediation actions or continued cleaning based on the new EPA dust-lead levels and therefore, it is not possible to estimate this impact. The reduced dust-lead standards might also require local public health authorities that perform dust-lead sampling during childhood lead poisoning investigations to include more lead-hazard reduction recommendations in reports to affected families, which, in turn, could initiate more lead hazard reduction actions by the affected households. There is minimal expected impact on the public since risk assessments and lead abatements in privately-owned housing are not common.

(2)(a) Estimating the number of small businesses and industries subject to the rule is challenging since the rule only impacts residential and child-occupied (<6 years of age) properties built prior to 1978. Businesses that work only on properties built after 1977 are not impacted, while those that work on both ages of properties will have some impacts. EPA estimates that 85% to 86% of small businesses will have cost impacts less than 1% of revenues, 12% to 13% will have impacts between 1% and 3%, and 2% will have impacts greater than 3% of revenues. These small entities include landlords, owners and operators of child-occupied facilities, residential remodelers, abatement firms, and real estate agents and brokers.

(b) The reduction in dust-lead standards means that additional cleaning or recommended hazard controls could increase the time it takes risk assessors to write reports, and increase administrative activities for abatement firms to be in compliance with the rules. Realtors might see additional costs related to disclosure of lead reports under the HUD/EPA Real Estate Disclosure Rule.

(c) The reduction in dust-lead standards means that additional cleaning or recommended hazard controls could increase equipment, supplies, labor, and administrative costs related to additional lead hazard reduction activities, cleaning, and dust-lead testing during lead abatement or interim controls of lead-based paint hazards.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Since the rules must be implemented to align with EPA's CFRs, small businesses in Oregon were not involved in the development of this rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Since OHA is required to align its rules with EPA's CFRs no later than January 11, 2027, there is no agency discretion in rules interpretation, therefore a rules advisory committee was unnecessary. If OHA fails to align its rules with EPA's CFRs, EPA may withdraw Oregon's authorization to regulate lead-based paint in Oregon.

RULES PROPOSED:

333-067-0100, 333-067-0110, 333-069-0100, 333-069-0110, 333-070-0200

AMEND: 333-067-0100

RULE SUMMARY: Amend OAR 333-067-0100: Definition for lead-based paint hazard for dust is revised to align with new U.S. Environmental Protection Agency (EPA) standards

CHANGES TO RULE:

333-067-0100

Definitions

(1) For the purposes of OAR 333-067-0100 to 333-067-0120, unless otherwise defined therein, the words and phrases used in these rules have the same meanings as given to them in 40 Code of Federal Regulations (CFR) 745 Subparts D, E and L, revised as of July 1, 2025.¶

(2) In addition to the definitions from section (1), the following definitions apply to OAR 333-067-0100 to 333-067-0120 unless the context indicates otherwise:¶

(a) "Authority" means the Oregon Health Authority.¶

(b) "Hazard controls" means interim controls as defined in 40 CFR 745.83.¶

(c) "Lead-based paint hazard" has the meaning given in 40 CFR 745.63 and also includes the following:¶

(A) Bare or covered soil on the property of target housing or a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ppm) in a play area or an average of 1,200 parts per million in the rest of the yard based on soil samples;¶

~~(B) Surface dust in target housing or a child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 10 mg/ft² on floors or 100 mg/ft² on interior windowsills based on any one single surface wipe sample;¶~~

~~(C) Paint chips or other debris on the property of target housing or a child-occupied facility that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight;¶~~

~~(DC) Any circumstances that otherwise satisfies the definition of a lead-based paint hazard where the x-ray fluorescence (XRF) results are inconclusive. Inconclusive XRF results demonstrate the presence of lead-based paint.¶~~

(d) "Third party" means a person or entity who performs a renovation, as defined in OAR 333-070-0200, or a lead-based paint activity, as defined in OAR 333-069-0100, on behalf of another person or entity.

Statutory/Other Authority: ORS 431A.355, ORS 413.042, ORS 431A.365

Statutes/Other Implemented: ORS 431A.355, ORS 431A.363, ORS 431A.365

RULE SUMMARY: Amend OAR 333-067-0110: Instances where "clearance" is stated is revised to new U.S. Environmental Protection Agency (EPA) nomenclature

CHANGES TO RULE:

333-067-0110

Required Remediation of Lead-Based Paint Hazards; Identification of a Third Party; Stop-Work Order

(1) The ~~Authority~~ Oregon Health Authority (Authority) may issue an order described in section (2) of this rule to:¶

(a) A person who has violated ORS 431A.358 or a rule adopted under ORS 431A.355; or¶

(b) A property owner, or agent of the property owner, who knowingly contracted with a person who was not certified under ORS 431A.355 to perform lead-based paint activities or renovation when certification was required under ORS 431A.358.¶

(2) An order issued by the Authority under this rule may require the recipient of the order to, within the timeframe set in the order:¶

(a) Obtain a risk assessment in accordance with ORS 431A.355, 431A.358, OAR chapter 333, division 69, and OAR 333-067-0105.¶

(b) Abate or control any lead-based paint hazards identified by the risk assessment.¶

(A) All lead-based paint abatement and hazard control services must be performed in accordance with ORS 431A.355 and 431A.358 and rules adopted under ORS 431A.355 and 431A.358.¶

(B) All lead-based paint abatement or hazard control services performed under this rule must ~~achieve clearance, as defined in OAR chapter 333, division 69~~ reduce dust-lead levels to below the action levels, as defined in 40 CFR 745.223 "Action levels" and 40 CFR 745.227(e)(8)(viii), and meet the following requirements:¶

(i) ~~The clearance examination~~ Post-abatement or hazard control testing must be performed by a person who is independent of the property owner and any individual or firm that performed the work that violated ORS 431A.355, 431A.358, or rules adopted there under;¶

(ii) ~~The clearance examination~~ Post-abatement testing must include composite soil sampling if soil abatement was performed; and¶

(iii) The recipient of an order under subsection (2)(b) of this rule must send a copy of the ~~clearance~~ post-abatement or hazard control testing report to the Authority no more than 10 days after the ~~clearance examination~~ testing has been completed.¶

(3) Upon issuance of the order described in section (2) of this rule, warning signs must be posted and remain posted at each entry to a work area; or, at each main and secondary entryway to the residence or child-occupied facility; or, for exterior work, where it is easily read 20 feet from the edge of the worksite. Signs may be removed when ~~clearance is achieved~~ post-abatement or hazard control testing has reduced dust-lead levels below the action levels as described in paragraph (2)(b)(B) of this rule or, soil-lead levels below the levels as defined in 40 CFR 745.65(c) or, if no lead-based paint hazards are identified in the assessment, upon submission of the assessment to the Authority.¶

(4) If a person described in section (1) of this rule fails to comply with an order described in section (2) of this rule within the timeframe set in the order, the Authority may contract with a certified firm to obtain a lead-based paint risk assessment and abate or control any lead-based paint hazards that are identified by the risk assessment.¶

(5) In addition to any civil penalty action, the Authority may impose on a person who fails to timely comply with an order described in section (2) of this rule, costs in an amount sufficient to cover any expenses incurred by the Authority in obtaining a risk assessment and abating or controlling any lead-based paint hazards that are identified by the risk assessment.¶

(6) Upon request by the Authority, a person for whom a third party performs lead-based paint activities or renovation, or who compensates a third party to perform lead-based paint activities or renovation, shall identify any third party that performed lead-based paint activities or renovation.¶

(7) A person who fails to identify a third party as described in section (6) of this rule is liable jointly and severally for any violations by the third party of ORS 431A.358 or a rule adopted under ORS 431A.355.¶

(8) If the Authority has reason to believe that a person is engaging in an act or practice that violates ORS 431A.358 or a rule adopted under ORS 431A.355, the Authority may issue a stop work order requiring all lead-based paint activities or renovation to which the person is connected to stop immediately.¶

(a) The stop work order shall be in writing and shall be served on the owner of the property, to the owner's agent, or to the person doing, overseeing, or responsible for the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and may include conditions under which the cited work will be permitted to resume.¶

(b) It is a violation of these rules to continue work in violation of a stop work order or to otherwise violate a stop work order. Any person who continues any work after a stop work order is served, except work performed in

accordance with the conditions in the stop work order, shall be subject to penalties prescribed in these rules.¶¶
(c) To request a hearing, a written request for a hearing on the propriety of the stop work order must be received by the Authority within 10 calendar days of the date on which the order was served. The Authority shall grant a hearing as soon as practicable after receipt of the hearing request and shall conduct the hearing as provided for contested cases under ORS chapter 183.

Statutory/Other Authority: ORS 413.042, ORS 431A.355, ORS 431A.365

Statutes/Other Implemented: ORS 431A.355, ORS 431A.363, ORS 431A.365

AMEND: 333-069-0100

RULE SUMMARY: Amend OAR 333-069-0100: Federal regulations adopted by reference must point to most recent version of the Code of Federal Regulations (CFR), revised on July 1, 2025

CHANGES TO RULE:

333-069-0100

Federal Regulations Adopted by Reference ¶¶

(1) The Oregon Health Authority (Authority) is authorized to administer the lead-based paint activities program under ORS 431A.355 and 40 Code of Federal Regulations (CFR) 745.324. The Authority's rules must be no less stringent than the U.S. Environmental Protection Agency's (EPA's) rules in 40 CFR 745 Subparts D and L.¶¶

(2) The Authority adopts by reference 40 CFR 745, Subpart D - Lead-Based Paint Hazards, and Subpart L - Lead-Based Paint Activities, revised as of July 1, 2024~~15~~5, except as described in section (3) of this rule and except for:¶¶

(a) 40 CFR Part 745.225(g) and (h);¶¶

(b) 40 CFR 745.235;¶¶

(c) 40 CFR 745.237; and¶¶

(d) 40 CFR 745.239.¶¶

(3) Notwithstanding 40 CFR 745 Subpart D and L:¶¶

(a) All fees are as established in OAR 333-069-0120;¶¶

(b) All certification, recertification, accreditation and reaccreditation periods are as established in OAR 333-069-0120;¶¶

(c) Notices required to be sent to EPA under 40 CFR 745.225(c)(13)(vi) and (14)(iii) must be sent to the Authority at 800 NE Oregon Street, Suite 640, Portland, OR 97232 or to leadprogram@odhsoha.oregon.gov; and¶¶

(d) Where "Administrator" or "EPA" appears in 40 CFR Part 745, "OHA" or "Authority" is substituted, unless the context suggests otherwise.

Statutory/Other Authority: ORS 431A.355

Statutes/Other Implemented: ORS 431A.355, 431A.358

RULE SUMMARY: Amend OAR 333-069-0110: Instances where "clearance" is stated is revised to new U.S. Environmental Protection Agency (EPA) nomenclature

CHANGES TO RULE:

333-069-0110

Violations; Schedule of Penalties ¶¶

(1) The ~~Authority~~Oregon Health Authority (Authority) may assess civil penalties, or deny, suspend or revoke any accreditation or certification applied for or issued under these rules for any of the following violations:¶¶

(a) Level one violations:¶¶

(A) Offering to perform or performing lead-based paint activities without Authority certification and Oregon Construction Contractors Board (CCB) licensing, unless specifically exempted by these rules.¶¶

(B) ~~Clearance examination~~Post-abatement testing inconsistencies including, but not limited to, the following:¶¶

(i) Failure to conduct ~~clearance examination~~post-abatement testing;¶¶

(ii) Allowing rehabilitation before ~~clearance~~dust-lead levels ~~have been achieved~~reduced below the action levels; or¶¶

(iii) Allowing rehabilitation when lead hazard levels exceed the standard;¶¶

(C) The collection of samples as described in these rules by a non-certified individual or firm;¶¶

(D) Obtaining certification via fraud or duplication of certification documents;¶¶

(E) Conducting lead-based paint activities with a revoked, suspended or expired certification;¶¶

(F) Employing uncertified individuals to conduct lead-based paint activities;¶¶

(G) Failure to comply with a consent agreement or an administrative order;¶¶

(H) Falsification of results of lead-hazard sampling;¶¶

(I) Removing paint from target housing or child-occupied facilities without proper certification from the Authority; or¶¶

(J) Use of prohibited abatement methods.¶¶

(b) Level two violations:¶¶

(A) Failure to comply with prescribed work practice standards;¶¶

(B) Improper collection or handling of samples or sampling information collected for an inspection, risk assessment, ~~clearance~~post-abatement test, or lead-hazard screen;¶¶

(C) Failure to use a National Lead Laboratory Accreditation Program laboratory for analysis of samples referred to in paragraph (1)(b)(B) of this rule;¶¶

(D) Incomplete, missing or late reports;¶¶

(E) Failure to provide notice of abatement, or notice given in a manner that obstructs proper oversight;¶¶

(F) Failure to provide client with report of lead-based paint activity in a timely manner, as specified for in these rules;¶¶

(G) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required; or¶¶

(H) Performance by a certified individual of lead-based paint activity outside of the scope of that individual's certification.¶¶

(c) Level three violations:¶¶

(A) Conducting lead-based paint activities without a valid certification badge;¶¶

(B) Conducting lead-based paint abatement without an occupant protection plan.¶¶

(2) If the Authority finds a violation of these rules that is not categorized in accordance with section (1) of this rule, the Authority, in its discretion, will determine what level the violation is depending on its severity and the extent to which the violation poses a risk to the public's health.¶¶

(3) Penalties will be assessed according to the following schedule:¶¶

(a) Level one violations:¶¶

(A) First offense: notice of noncompliance and a civil penalty of up to \$1,000.¶¶

(B) Second offense: notice of noncompliance, a civil penalty of up to \$3,000 and suspension of certification for up to 90 days.¶¶

(C) Third offense: notice of noncompliance, a civil penalty of up to \$5000 and either suspension of certification for up to 180 days or revocation of certification.¶¶

(b) Level two violations:¶¶

(A) First offense: notice of noncompliance and a civil penalty of up to \$500.¶¶

(B) Second offense: notice of noncompliance and a civil penalty of up to \$2,000.¶¶

(C) Third offense: notice of noncompliance, a civil penalty of up to \$5,000 and suspension of certification for up to 30 days.¶¶

(c) Level three violations:¶¶

(A) First offense: warning letter.¶¶

(B) Second offense: notice of noncompliance.¶¶

(C) Third offense: notice of noncompliance and a civil penalty of up to \$100.¶¶

(4) The civil penalties in section (3) of this rule are per day per violation, not to exceed \$5,000 for each violation.¶¶

(5) The Authority may revoke, suspend, or refuse to issue or reissue the certification of any individual or firm who fails to pay a civil penalty that has become due and payable.¶¶

(6) Notices of non-compliance, civil penalties, suspensions or revocations will be issued in accordance with ORS chapter 183.

Statutory/Other Authority: ORS 431A.355, 701.992

Statutes/Other Implemented: ORS 431A.355, 701.992

AMEND: 333-070-0200

RULE SUMMARY: Amend OAR 333-070-0200: Federal regulations adopted by reference must point to most recent version of the Code of Federal Regulations (CFR), revised on July 1, 2025

CHANGES TO RULE:

333-070-0200

Federal Regulations Adopted by Reference ¶¶

(1) The Oregon Health Authority (Authority) is authorized to administer the lead-based paint activities program under ORS 431A.355 and 40 Code of Federal Regulations (CFR) 745.324. The Authority's rules must be no less stringent than the U.S. Environmental Protection Agency's (EPA's) rules in 40 CFR 745 Subparts D, E and L.¶¶

(2) The Authority adopts by reference 40 CFR 745, Subpart D - Lead-Based Paint Hazards, Subpart E - Residential Property Renovation and Subpart L - Lead-Based Paint Activities, revised as of July 1, 2024~~4~~5, except as described in section (3) of this rule and except for:¶¶

(a) 40 CFR Part 745.87;¶¶

(b) 745.91; and¶¶

(c) 745.225(g) and (h).¶¶

(3) Notwithstanding 40 CFR 745 Subparts D, E and L:¶¶

(a) All fees are as established in OAR 333-070-0220;¶¶

(b) All certification, recertification, accreditation and reaccreditation periods are as established in OAR 333-070-0220;¶¶

(c) Notices required to be sent to EPA under 40 CFR 745.225(c)(13)(vi) and (14)(iii) must be sent to the Authority at 800 NE Oregon Street, Suite 640, Portland, OR 97232 or leadprogram@odhsoha.oregon.gov; and¶¶

(d) Where "Administrator" or "EPA" appears in 40 CFR Part 745, "OHA" or "Authority" is substituted, unless the context suggests otherwise.

Statutory/Other Authority: ORS 431A.355

Statutes/Other Implemented: ORS 431A.355, 431A.358