

Dust-Lead Hazard Standards (DLHS) and Dust-Lead Clearance Levels (DLCL) Reconsideration Rulemaking

Executive Order 13132:

Federalism/ Unfunded Mandates Reform Act

Consultation Meeting

November 10, 2022



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Reasons for Today's Consultation

- To provide information to intergovernmental officials' representative national organizations (RNOs) about the development of a regulation concerning the identification of dangerous levels of lead in dust (*i.e.*, dust-lead hazard standards, or DLHS) and the allowable amount of lead in dust on a surface following the completion of an abatement activity (*i.e.*, dust-lead clearance levels, or DLCL).
- To answer questions from and provide an opportunity for intergovernmental association representatives to offer pre-proposal input on this rulemaking.



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BACKGROUND



EPA Lead Terminology

Refer to 40 CFR 745.223 and 40 CFR 745.63 for more detail

- **Lead-based paint activities:** Inspections, risk assessments, and abatements in target housing and child-occupied facilities.
- **Lead-based paint hazards:** Conditions that cause exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.
- **Target housing:** Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.
 - In 2017, Public Law 115–31 amended the definition of target housing.
- **Child-occupied facility:** A building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours, and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours.



Statutory Authority

- Toxic Substances Control Act Title IV required establishment of lead-based paint hazard standards and provided certain regulatory authority to EPA:
 - **TSCA § 401:** Defines lead-based paint (LBP) hazards and abatement
 - LBP hazards are conditions that cause “exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint ... that would result in adverse human health effects” (15 U.S.C. 2681(10)).
 - Abatements are defined as, “measures designed to permanently eliminate lead-based paint hazards,” including “post[-]abatement clearance testing activities” (15 U.S.C. 2681(1)).
 - **TSCA § 403:** Directs EPA to identify dangerous levels of lead
 - **TSCA § 402:** Directs EPA to regulate lead-based paint activities
 - These regulations must “tak[e] into account reliability, effectiveness, and safety” (15 U.S.C. 2682(a)(1)).



Authorized Programs

Pursuant to TSCA Section 404 and 40 CFR part 745, Subpart Q:

- States, territories, and federally recognized tribes can become authorized to administer their own lead-based paint activities programs (*i.e.*, inspections, risk assessments, and abatements in target housing and child-occupied facilities).
 - These programs must be as least as protective of human health and the environment as EPA's program and provide adequate enforcement.
 - States, territories or tribes must demonstrate that their programs meet any new requirements imposed by this rulemaking, **no later than two years after the effective date**.
- EPA administers the lead-based paint activities program only where states, territories or tribes are not authorized by EPA to operate their own.
 - EPA administers the program in the following states: AK, AZ, FL, ID, MT, NV, NM, NY, SC, SD and WY. EPA also administers the program in the territories of American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands, as well as most Tribal Lands.
 - All other states, four tribes, Puerto Rico and Washington, DC have EPA-authorized programs (typically run through health departments, environmental departments, etc.).



Potentially Impacted Entities

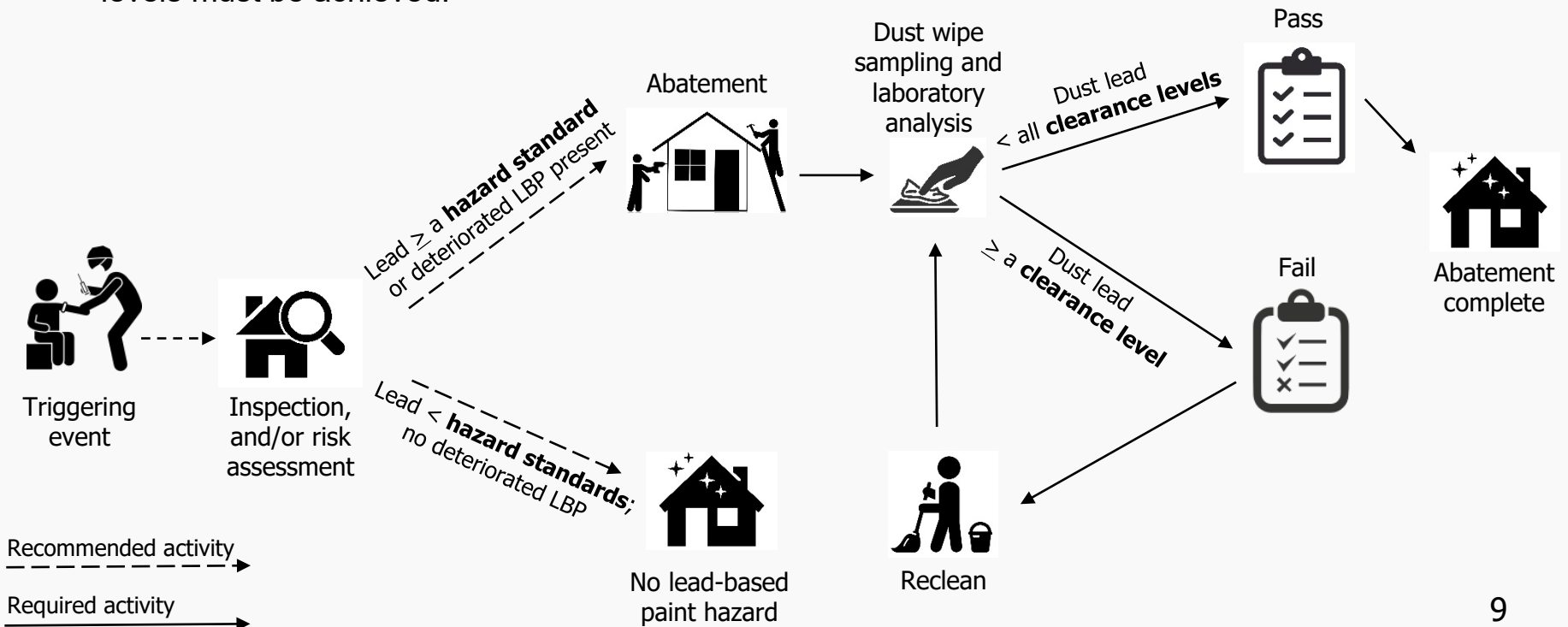
1. States, territories or federally recognized tribes with authorized programs (including the health, environmental, or other departments that run these lead-based paint activities programs) could be impacted by this upcoming rulemaking.
 - These entities will need to incorporate any final changes resulting from this rulemaking into their programs within two years of the effective date of this rule.
2. Public housing authorities in states, territories or tribes that have authorized programs or are run by EPA. Public housing authorities can be subject to EPA's Lead-Based Paint Activities Rule and HUD's Lead Safe Housing Rule.
 - Note that public housing authorities can be funded in part by state or local governments.
3. Any locally run housing program, such as at the city level, that must comply with the EPA or EPA authorized state requirements.

Additionally, the requirements of this rule will apply to both target housing and child-occupied facilities.

Overview of Current DLCL and DLHS

(applies to both target housing and child-occupied facilities)

- **Dust-Lead Hazards Standards** = Identify conditions that would result in adverse human health effects.
- **Dust-Lead Clearance Levels** = Indicate the amount of lead in dust on a surface following the completion of an abatement activity, taking into consideration non-health factors (i.e., reliability, effectiveness, and safety). To achieve clearance when dust sampling is required, values below these levels must be achieved.





Regulatory History

	2001 Lead-Based Paint Hazards Rule		2019 Rule	2021 Rule	2024 Reconsideration Rule	
$\mu\text{g}/\text{ft}^2$	DLHS	DLCL	DLHS	DLCL	DLHS	DLCL
Floors	40	40	10	10	?	?
Sills	250	250	100	100	?	?
Troughs	no standard	400	no standard	400	no standard	?

August 2019

- Lawsuit filed by public health advocates in the Ninth Circuit Court of Appeals sought judicial review of the 2019 final rule.

May 2021

- The court remanded EPA's 2019 rule, stating that the DLHS were not lowered to “a level sufficient to protect health as Congress directed, because EPA has looked to factors in addition to health.”



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REGULATORY APPROACHES



DLHS Approach

- The statute requires EPA to identify the DLHS by rule at dust-lead levels that would result in adverse human health effects.
- In 2021, the Ninth Circuit held that EPA’s 2019 rule identifying DLHS inappropriately considered non-health factors (e.g., feasibility) and that EPA must reconsider the DLHS *using only health factors*.
- This reconsideration must set the DLHS based only on health factors.
- **Potential approaches for consideration:**
 1. Greater Than Zero (a non-numeric value)
 2. Numeric Value (based on health modeling)
 3. Post-1977 Background (*i.e.*, mean dust-lead level across post-1977 housing)
- The court also affirmed that EPA could consider non-health factors such as, “reliability, effectiveness, and safety” when setting the DLCL.



1) DLHS - Greater Than Zero

- **Key Message:** The greater than zero approach (known as GTZ) would establish a non-numeric DLHS, which would be any reportable level identified by an accredited lead laboratory.
 - There is no evidence of a threshold for lead exposure below which there are no harmful effects on cognition.
 - GTZ applies a precautionary approach and is supported by the modeling results, which show that the lower a child's exposure is to dust-lead, the less change they will have in blood lead or IQ levels.
 - In applying the GTZ approach, the "action level" for laboratories and for recommended action such as abatement would become the DLCL (rather than the DLHS).
 - This non-numeric DLHS would be partnered with a higher DLCL.
 - For this approach, the DLHS for floors and window sills would not be the same as the DLCL for floors and window sills (*i.e.*, the DLHS and DLCL would be decoupled), which is different than the historical approach wherein the levels have mirrored each other.
- This would allow residents to know there is dust-lead present and that lead from dust can pose health hazards.



2) DLHS – Numeric Value

- **Key Message:** This approach would establish a numeric DLHS.
 - There is no evidence of a threshold for lead exposure below which there are no harmful effects on cognition.
 - Therefore, it is challenging to establish a “cut point” or level of exposure from the IQ and blood lead level modeling data that “would result in adverse health effects.”
 - The DLHS and DLCL may or may not be decoupled for this approach.



3) DLHS - Post-1977 Background

- **Key Message:** This approach would establish the DLHS as the national post-1977 background levels of dust-lead ($0.2 \mu\text{g}/\text{ft}^2$ for floors and $0.8 \mu\text{g}/\text{ft}^2$ for window sills).
 - This approach would base identification of DLHS in target housing (pre-1978), on dust-lead levels in housing built after lead-based paint was banned.
 - This approach would address the disparities in the dust-lead levels that children in target housing may be exposed to and the corresponding disparate health risks.
 - This DLHS would be (1) a very low numeric value and (2) decoupled from the DLCL.



DLCL Approach

- Clearance levels indicate the amount of lead in dust on a surface following the completion of an abatement activity. To achieve clearance when dust sampling is required, values below the DLCL must be achieved.
- EPA is considering the following when revising the DLCL:
 - What percentage of jobs are able to clear to that level.
 - If there are any other examples (at the state or local level) of a specific lower DLCL already being used and enforced.
 - Laboratory capabilities and capacity (e.g., the ability of laboratories to provide test results for lower dust-lead levels).
- Note: Similar to the DLHS, the modeling shows the lower a child's exposure is to dust-lead, the less change they will have in blood lead or IQ levels.



Cost Information

- This rule is expected to generate incremental costs for lead hazard reduction activities (abatement or interim controls) in housing or child-occupied facilities, and/or for additional cleaning and dust-lead testing to attain clearance.
- Because public housing is affected by this rulemaking, EPA expects that some of these costs will accrue to public housing authorities. HUD currently estimates that there are 970,000 public housing units in use.
 - Depending on the regulatory approach, EPA estimates that 33,000 to 150,000 housing units per year (3 – 15% of public housing units) would incur additional costs due to the rule.
 - The average additional cost for an affected housing unit is \$700 to \$2,900 (depending on the regulatory approach) for additional cleaning, dust-lead testing, and other lead hazard reduction activities.
- Lead hazard reduction and dust-lead testing activities are eligible for payment from HUD funds. However, EPA has insufficient data to assess what amount of incremental costs to public housing authorities from this rulemaking are actually covered by HUD funds.



Preliminary Costs & Benefits Information

- These values are preliminary estimates and are subject to change.

Approach	Estimated Costs to Public Housing Authorities (\$ million)	% of Costs Covered by Federal Funding	Approx. Benefits (\$ million) (3% Discount)	Approx. Benefits (\$ million) (7% Discount)
GTZ	\$23 - \$143	???	\$31 - \$151	\$7 - \$33
Numeric Value	\$129	???	\$69 - \$93	\$15 - \$20
Post-1977 Background	\$95 - \$200	???	\$36 - \$178	\$8 - \$38

- The costs and monetized benefits shown above consider both revisions to the DLHS and the DLCL.
- Preliminary benefit estimates shown above are only for avoided IQ loss in young children who are residents of public housing.
- EPA policy is to use both a 3% and 7% discount rate.
- Although EPA must decide on the DLHS using only health factors, EPA presents these estimates for your consideration.



Definition of Target Housing

- Within this rulemaking, EPA is also proposing an amendment to the lead program's regulations in 40 CFR 745.103 and 40 CFR 745.223:
 - Updating the definition of target housing to mirror a statutory change from 2017, which includes 0-bedroom dwellings with young children, and making resulting conforming changes throughout the regulatory text (*i.e.*, 40 CFR 745.223 and 40 CFR 745.227).



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DISCUSSION / NEXT STEPS



Key Messages

- A 2021 Ninth Circuit Court Opinion held that the Agency must revise the DLHS considering only health factors and confirmed that the DLCL can consider “reliability, effectiveness, and safety.”
- As a result, the DLHS will likely be considerably lower than they have been historically, because no evidence exists of a threshold for lead exposure below which there are no harmful effects on cognition.
- It is likely that the DLHS will be decoupled from the DLCL.
- A non-numeric DLHS is being considered (the greater than zero or GTZ approach), which would inform tenants that dust-lead is present, but action would only be recommended when levels are at or above the DLCL.
- These changes could trigger substantial impacts on the regulated community, including public housing authorities (see slide 18 for specific cost information).



Discussion

- EPA believes this rulemaking could potentially have both operational and financial impacts.
- How do the regulatory approaches presented for DLHS and DLCL create direct or indirect costs for states or localities? Are there any specific impacts to public housing authorities?
 - If so, are there ways to mitigate those impacts and/or costs? Are there any key considerations the Agency is overlooking?
- What share of funding for additional lead hazard reduction activities in public housing are provided by state and local governments, as opposed to federal (e.g., HUD) or other funding sources?



Discussion Continued

- Would a potentially more stringent proposed rule impact entities' inclination to relinquish their authorized programs back to EPA? Conversely, would more entities be inclined to seek delegated program authority from EPA under a revised, potentially more stringent rule?
- Although EPA must be responsive to the Ninth Circuit Court's direction, what would make the rule easier to implement and comply with?
- Do any entities have examples/data (other than NYC) where the DLHS and DLCL are lower than the current federal values (10 $\mu\text{g}/\text{ft}^2$ for floors, 100 $\mu\text{g}/\text{ft}^2$ for window sills, and 400 $\mu\text{g}/\text{ft}^2$ for clearance levels for troughs)?
- Do any entities have examples of local rental or real estate dust-lead hazard regulations that cite EPA's DLHS by name or statute? Any specific cross-references that would be impacted by the revisions taking place in this rulemaking?
 - While the Agency is aware of several, EPA does not have a complete list.



Next Steps

- EPA requests any written comments or recommendations within 60 days following today's meeting (*i.e.*, January 10, 2023).
- Please email any comments to Brisse.Claire@epa.gov and cc Hanson.Andrew@epa.gov.
- EPA anticipates publishing the proposed rule for public comment in spring 2023 and promulgating a final rule by fall 2024.



Additional Information

- 2019 DLHS Rule: <https://www.federalregister.gov/d/2019-14024>
- 2021 DLCL Rule: <https://www.federalregister.gov/d/2020-28565>
- Reconsideration Rule Spring 2022 Regulatory Agenda: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=2070-AK91>
- LBP Activities Program: <https://www.epa.gov/lead/lead-based-paint-abatement-and-evaluation-program-overview>
- DLHS/DLCL Reconsideration Rulemaking POC: Claire Brisse (Brisse.Claire@epa.gov, 202-564-9004)