



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Dear Intergovernmental Association Colleague:

I would like to invite you to consult and exchange information with the U.S. Environmental Protection Agency about potential regulatory approaches under consideration for a forthcoming proposed rule addressing the EPA's dust-lead hazard standards and the dust-lead post-abatement clearance levels. The EPA is developing this proposed rulemaking under sections 401, 402, 403, 404, and 406 of the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, as amended by Title X of the Housing and Community Development Act of 1992 (also known as "Title X") (Pub. L. 102-550).

The dust-lead hazard standards support the EPA's lead-based paint activities program under Title X by providing the basis for risk assessors to determine whether dust-lead hazards are present, and apply to target housing (*i.e.*, most pre-1978 housing) and child-occupied facilities (pre-1978 non-residential properties where children 6 years of age or under spend a significant amount of time such as daycare centers and kindergartens). The options under consideration in this rulemaking are expected to affect housing units receiving federal assistance under the U.S. Department of Housing and Urban Development's Lead Safe Housing Rule and housing units with a child with a blood lead level above a federal or state blood lead threshold. In keeping with the Unfunded Mandates Reform Act and Executive Order 13132, entitled "Federalism," the agency is inviting your input on the potential regulatory approaches and how those approaches may affect state and local governments.

On July 9, 2019, the EPA promulgated a final rule to tighten the hazard standards from 40 micrograms of lead per square foot to 10 micrograms of lead per square foot for floors, and from 250 micrograms of lead per square foot to 100 micrograms of lead per square foot for window sills. The EPA's dust-lead clearance levels indicate the amount of lead in dust on a surface following the completion of an abatement activity. On January 6, 2021, the EPA promulgated a final rule to lower the clearance levels from 40 micrograms of lead per square foot to 10 micrograms of lead per square foot for floors, and from 250 micrograms of lead per square foot to 100 micrograms of lead per square foot for window sills. To pass clearance when dust sampling is required, values below these levels must be achieved.

On May 14, 2021, the U.S. Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 final rule that established stricter dust-lead hazard standards and directed the EPA to reconsider that rule in conjunction with a reconsideration of the 2021 final rule that established lower dust-lead clearance levels. The U.S. Court of Appeals instructed the EPA to consider only health factors when setting the hazard standards and affirmed that the agency could consider non-health factors (*i.e.*, reliability, effectiveness, and safety) when setting the clearance levels. This reconsideration rulemaking could impact individuals or firms who conduct lead-based paint activities, any operator of an accredited lead-based paint activities training program, and entities such as public housing authorities that conduct rehabilitations or maintenance activities in most pre-1978 housing that is covered by a federal housing assistance program, among others.

The EPA has determined that this rulemaking may have federalism implications under Executive Order 13132 as public housing authorities could experience substantial direct compliance costs that state or local governments may offset as a result of additional changes to the dust-lead hazard standards and clearance levels. Options being considered for the proposed rule could also result in a significant intergovernmental mandate under the Unfunded Mandates Reform Act. The agency is eager to exchange information with you about the ways in which this rulemaking may affect state and local governments.

Accordingly, the EPA would like to invite you to a virtual meeting on November 10, 2022, 1:00 p.m. – 2:30 p.m. ET via web conference. The following national intergovernmental associations are invited to participate in the briefing to consult and exchange information about this rulemaking: the National Governors’ Association, the National Conference of State Legislatures, U.S. Conference of Mayors, the National League of Cities, the Council of State Governments, the International City/County Management Association, the National Association of Counties, the National Association of Towns and Townships, the County Executives of America, and the Environmental Council of the States. Additionally, the agency is inviting professional organizations that represent or have state and local government members, such as the Public Housing Authorities Directors Association, and the Council of Large Public Housing Authorities, the Association of State and Territorial Health Officials, the American Public Works Association, and other groups to participate in the meeting. During the meeting, the agency will present background information on the rulemaking and will answer questions you may have. You and your organization’s members will also have an opportunity to provide input to the agency during the meeting and may provide written input to the EPA within 60 days after the meeting, by January 10, 2023.

I hope you can join us to learn more about the issues and our rulemaking considerations. Please RSVP via the attached electronic scheduler to Andrew Hanson in the EPA’s Office of Congressional and Intergovernmental Relations. If you have questions regarding the rule, you may contact Claire Brisse of the Office of Pollution Prevention and Toxics at brisse.claire@epa.gov or 202-564-9004.

Sincerely,

Brian Symmes
Acting Director
Existing Chemicals Risk Management Division