

# **Dust-Lead Hazard Standards and Dust-Lead Clearance Levels Reconsideration**

**Proposed Rule**

**Public Webinar**

**August 23, 2023**



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## Purpose/Overview

- To inform the public and the regulated community about the recent proposal for the dust-lead hazard standards (DLHS) and dust-lead clearance levels (DLCL) reconsideration rulemaking and to provide an opportunity for stakeholders to comment.
- This rule protects children's health by reducing lead related IQ loss and other health impacts by minimizing dust-lead exposure.
- EPA revised the DLHS and DLCL in 2019 and 2021. However, in accordance with the May 2021 U.S. Court of Appeals for the Ninth Circuit Opinion, EPA proposed revisions to the DLHS and DLCL.



# Rulemaking Summary

- EPA estimates that lowering the DLHS and DLCL further protects children from lead-based paint dust hazards.
- In this rulemaking, EPA proposed greater than zero (GTZ) codified as “any reportable level” for the DLHS with a DLCL of 3/20/25  $\mu\text{g}/\text{ft}^2$  for floors/sills/troughs.
  - Within the proposal EPA is requesting comment on two other approaches to revising the DLHS and an alternative DLCL of 5/40/100  $\mu\text{g}/\text{ft}^2$ .
- EPA also proposed changes to several other amendments, such as the regulatory definition of abatement **so that the recommendation for action applies when dust-lead loadings are at or above the DLCL, rather than at or above the DLHS**, as has been the case historically.



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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 and this rulemaking proposes changes to appropriately conform the language in EPA’s regulations. Amendments have also been proposed to modify the definition of child-occupied facilities (see below)
- **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.

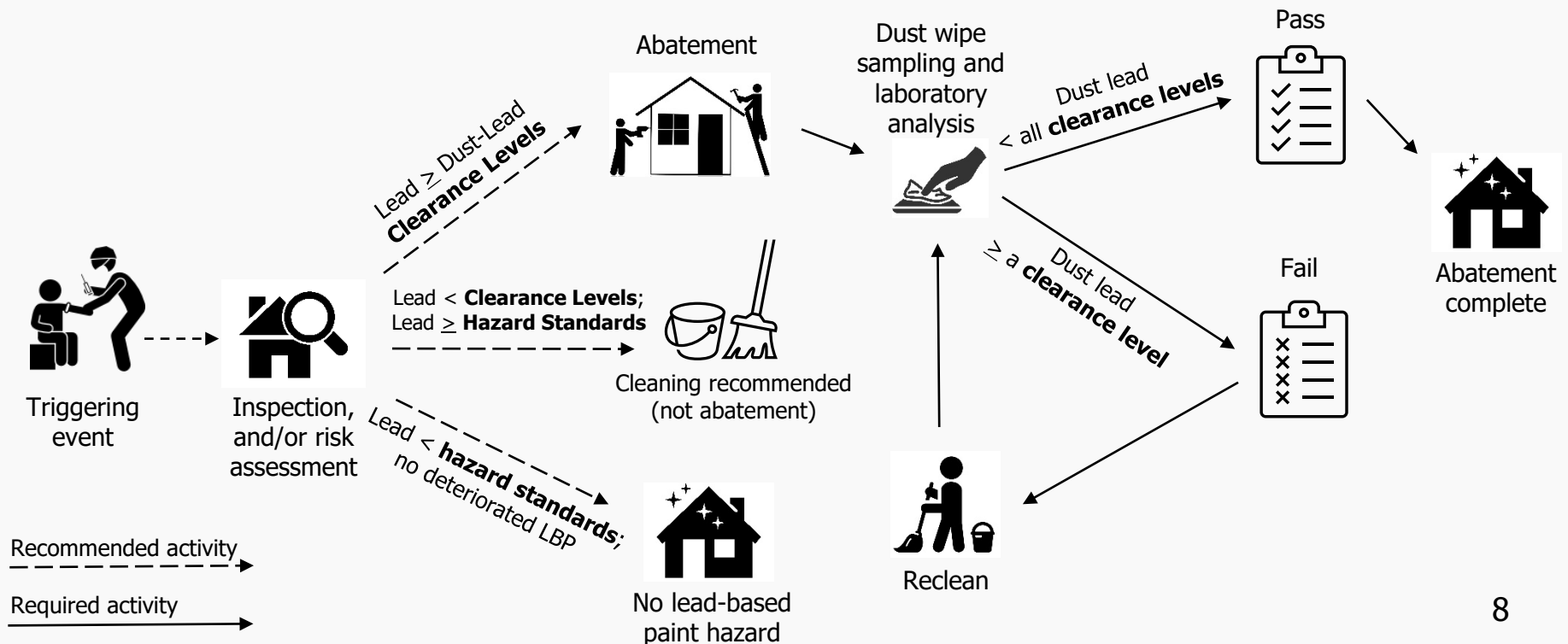


# Statutory Authority

- 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 § 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)).
  - **TSCA § 403:** Directs EPA to identify dangerous levels of lead

# Proposed Use of the DLHS and DLCL in EPA's Lead-Based Paint Activities Program

- **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

µg/ft <sup>2</sup>	2001 Lead-Based Paint Hazards Rule		2019 Rule	2021 Rule	2023 Proposed Rule	
	DLHS	DLCL	DLHS	DLCL	DLHS	DLCL
Floors	40	40	10	10	Any level greater than zero reported by an EPA-recognized laboratory	3
Sills	250	250	100	100		20
Troughs	no standard	400	no standard	400	no standard	25

## 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.”
- The court also affirmed that EPA could consider other factors (*i.e.*, reliability, effectiveness, and safety) when setting the DLCL.



# 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 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.
3. Any locally run LBP activities program, such as at the city level, that must comply with the EPA or EPA authorized state requirements.
4. All lead-based paint professionals, especially certified risk assessors and firms that perform abatements.
5. Laboratories certified by EPA's National Lead Laboratory Accreditation Program (NLLAP).

Note that this is not an all-inclusive list of potentially impacted entities and the requirements of this rule will apply to both target housing and child-occupied facilities. See the [Federal Register Notice](#) for more detailed information.



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# REGULATORY APPROACHES



# Approach to Revising the DLHS

- 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*.
- Thus, any reconsideration of the DLHS must be based only on health factors.
- **Potential approaches that were considered:**
  1. Greater Than Zero (a non-numeric or non-static value)
  2. Numeric Standard (based on health modeling only)
  3. Post-1977 Background (*i.e.*, mean dust-lead level across post-1977 housing)



# Approach to Revising the DLHS Cont.

- The GTZ approach 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 is a more protective 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.
  - This non-numeric 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.
  - If finalized as proposed, the "action level" for laboratories and for recommendations such as abatement would become the DLCL (rather than the DLHS).
- This would allow residents to know there is dust-lead present and that lead from dust can pose health hazards.



# Approach to the Alternative DLHS

- For more information on the other two approaches to revising the DLHS that are under consideration (numeric standard or post-1977 background), see Unit IV.A.2 in the [Federal Register Notice](#).
- The numeric standard approach would require establishing a “cut point” or level of exposure from the IQ and blood lead level modeling data that “would result in adverse health effects.”
- The post-1977 background approach would establish the DLHS as the national post-1977 background levels of dust-lead (which are estimated to be 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 address the disparities in the dust-lead levels that children in target housing may be exposed to and the corresponding disparate health risks.



# Approach to Revising the DLCL

- 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 proposing a DLCL of 3/20/25  $\mu\text{g}/\text{ft}^2$  for floors, window sills and troughs. The proposal discusses and takes comment on an alternative DLCL of 5/40/100  $\mu\text{g}/\text{ft}^2$  for floors, window sills and troughs.
- EPA considered the following when reconsidering 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).





# Revising the Definition of Abatement

- EPA has proposed to amend the definition of abatement in EPA's LBP activities regulations ([40 CFR 745.223](#)) and thus modify the trigger for when EPA recommends an abatement (which would apply when dust-lead loadings are at or above the **DLCL**, rather than at or above the DLHS, as has been the case historically).
  - Otherwise, EPA would be recommending an abatement if dust-lead levels are between the DLHS and the DLCL, even though such an abatement would only need to pass clearance below the DLCL.
- Note owners of properties covered by the LBP Activities Rule are not compelled by EPA to evaluate their properties for the presence of dust-lead hazards or to take action (such as an abatement) if dust-lead hazards are identified at or above the DLCL, although HUD and some state or local governments may require action.



# Revising the Abatement Report

- After the completion of an abatement, a report is required to be developed and the certified firm (or individual) must provide a copy to the individual or entity who contracted for its services ([40 CFR 745.227\(i\)](#))
- EPA proposed to add specific language into each abatement report, when dust-lead levels fall between the DLHS and the DLCL.
- The language refers the public to a useful reference titled “*Protect Your Family From Lead in Your Home*” and acknowledges that LBP hazards (particularly dust-lead hazards) could remain after an abatement.
- The goal of including this language in an abatement report is to ensure that occupants are provided information and tools available to them to minimize dust-lead hazards and take actions to protect themselves from exposure even after the abatement is complete.



## Economic Costs & Benefits Take Aways

- 528,000 to 655,000 housing units per year are estimated to have dust-lead level testing that indicates loadings between the current and proposed DLHS and DLCL.
- Total cost of proposed rule: \$536 million to \$784 million/yr.
- The rule would reduce the lead exposures of 250,000 to 500,000 children under age six per year.
- Quantified benefits (from higher lifetime earnings due to avoided neurocognitive effects) are approximately \$1 billion to nearly \$4.7 billion per year.



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# **OTHER AMENDMENTS**



# Target Housing Revisions

- The definition of target housing defines which housing is subject to EPA's LBP rules (both for LBP activities and the renovation, repair, and painting (RRP) programs).
- In 2017, Congress amended the definition of target housing to include 0-bedroom dwellings where children under 6 are expected to live (see red text below). 15 U.S.C. § 2681(17).
  - Term "target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities **or any 0-bedroom dwelling** (unless any child who is less than 6 years of age resides or is expected to reside in such housing). ~~for the elderly or persons with disabilities) or any 0-bedroom dwelling.~~ . . .
- EPA has proposed to amend the regulatory definitions of target housing to conform with the 2017 statutory change and adjust the age range to "less than 6 years" along with any other necessary edits throughout the LBP activities regulatory text.
- These changes would establish consistency throughout the program.



# Definition of Child-Occupied Facility (COF) and Living Areas

- EPA proposed to revise the definition of COF in [40 CFR 745.223](#) and related regulatory language in [40 CFR 745.227](#) to children “under 6 years of age”.
- This was proposed in order to establish consistency throughout the LBP regulations and simpler for the regulated community (i.e., making “under 6 years of age” ubiquitous).



# Electronic Submissions

- EPA proposed requiring submissions for application payments, applications, and notices to be done electronically via EPA's Central Data Exchange (CDX).
- In 2016, the U.S. Treasury Department changed their process so that paper checks would no longer be allowed for payment of fees associated with RRP or abatement programs.
- Overall, these revisions will reduce administrative costs, conform to the 2016 U.S. Treasury Department process and provide further clarification and uniformity to the application process.
- Note EPA proposed several other amendments to the lead program regulations (see Unit IV.F in the [Federal Register Notice](#)) for the complete list and more information.



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# **NEXT STEPS**





# Public Comment Period

- The proposal is currently in its public comment period, which lasts for 60-days and ends on **October 2, 2023**.
- Submit any written comments on [www.regulations.gov](http://www.regulations.gov).
- Docket ID: [EPA-HQ-OPPT-2023-0231](https://www.regulations.gov/docket/EPA-HQ-OPPT-2023-0231).
- Unit VII of the [Federal Register Notice](#) has more information on what type of information EPA is particularly interested in receiving.



# Specific Requests for Public Comment

- EPA is requesting comment on the entire proposed rulemaking.
- Requests for comment on the DLHS include:
  - Feedback on any information or data for a level of dust-lead exposure that would not result in adverse health effects.
  - Any information on how much exposure in terms of BLL or change in IQ decrement would be the most scientifically appropriate to compare to the modeled results or as a rationale to set the DLHS (including the appropriate threshold of probability of exceedance for a child from the sub-population of interest).
- Reminder that EPA can only consider health effects from dust-lead exposure when revising the DLHS.



# Specific Requests for Public Comment Cont.

- Request for comment on the DLCL include:
  - NLLAP-recognized laboratories' ability to test to these clearance levels, especially given that, if finalized as proposed, the quantitation limit would be 50% of the DLCL (*i.e.*, 1.5/10/12.5  $\mu\text{g}/\text{ft}^2$ ) for laboratories that remain in NLLAP.
  - Whether LBP professionals can clean/achieve clearance at these levels (proposed DLCL or the alternative).
  - Whether there is any data or information on whether window sills and window troughs should have the same clearance values, and why or why not.
  - Whether another DLCL combination (for floors, window sills and window troughs) besides the primary and alternative options considered is appropriate given the statutory criteria of reliability, effectiveness, and safety.
- Reminder that EPA must consider the criteria of reliability, effectiveness, and safety (which includes non-health factors) when revising the DLCL.



# Specific Requests for Public Comment Cont.

- Comments on the methods, models and data used in the EA and the TSD.
  - In particular, the EA's use of the lifetime IQ concentration-response function to calculate IQ loss for ages for young children, particularly at low exposure levels.
  - Additionally, EPA solicits comment and peer reviewed information on evidence relevant to quantifying and monetizing the incremental contribution of blood lead concentrations to other health and/or behavioral endpoints, including adult cardiovascular mortality.
- The potential impacts to the non-federally-assisted rental housing market.
- Information and data on the potential economic and health impacts to current residents and landlords of housing that is subsidized by HUD or USDA.
- Impacts on NLLAP labs including analysis turnaround times, lab costs and the possible loss of NLLAP-recognized labs due to the rule.
- Information on COFs to inform the EA including data on the number and cost of abatements partnered with recent dust-lead loading results, how many children under six were present in the COF at the time, etc.
- See Unit VII of the [Federal Register Notice](#) for a complete list of requests for comment.



## Additional Information

- Learn more about the DLHS and DLCL on [EPA's website](#) and read the [press release](#).
- 2023 DLHS/DLCL Reconsideration Proposal:  
<https://www.federalregister.gov/d/2023-15073>
  - The final rule is estimated to publish in **fall 2024**, with a proposed effective date of 1-year after publication.
  - DLHS/DLCL Reconsideration Rulemaking POC:  
Claire Brisse ([Brisse.Claire@epa.gov](mailto:Brisse.Claire@epa.gov))
- EPA is hosting a Lead-Based Paint Technical Workshop (focused on the definition of lead-based paint) on **November 1, and 2, 2023**.
  - If interested in attending, EPA welcomes you to register [online](#).



# Public Comment Opportunity