

National Center for **HEALTHY HOUSING**

Comments on EPA Proposed Rule: *Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels*

EPA-HQ-OPPT-2023-0231

From: The National Center for Healthy Housing

2 October 2023

Submitted via: <http://www.regulations.gov>

To Whom It May Concern:

Thank you for the opportunity to comment on this proposed rule.

The mission of the National Center for Healthy Housing (NCHH) is to secure healthy homes for all. NCHH is a national technical and scientific nonprofit organization dedicated to developing and promoting practical measures to protect children from residential environmental hazards, including lead poisoning, while preserving affordable housing. NCHH develops scientifically valid and practical strategies to make homes safe from hazards, to alert low-income families about housing-related health risks, and to help them protect their children. We were responsible for conducting several of the studies referenced in EPA's proposed rule and supporting technical documents, and we congratulate EPA for carefully considering the issue of how best to protect our nation's children from preventable lead exposure.

The Children's Environmental Health Network, Environmental Defense Fund, and Women for a Healthy Environment also support these comments submitted by NCHH.

Background

Lead's damaging impact has been recognized for over a century and has been widely studied for decades. Although the U.S. has made progress in reducing children's exposure to lead, even very low levels can have life-altering consequences, including damage to the neurological, circulatory, musculoskeletal, endocrine, and reproductive systems. Children are particularly susceptible to these toxic effects and especially to the neurological consequences of lead exposure, like impaired memory, diminished executive function, decreased IQ, attention deficits, conduct disorders, fine motor delays, and more. Research has documented that elevated lead levels at a young age can predict effects in primary, middle, and high school that include impaired reading skills, reduced vocabulary, lower class standing, greater absenteeism, higher dropout rates, and the probability that they will be classified as needing additional school services for learning issues and behavior. This in turn creates challenges that last into adulthood and cost individuals, families, and society billions of dollars in lost productivity and public spending on special education, juvenile justice, and

other social services. Any child can be affected by lead; but in the U.S., the risk is not equally shared. Due to historic and ongoing racist housing policies, Black children are more likely to be exposed to and harmed by lead, and lead in dust is a leading contributor to this persistent environmental injustice.

Summary of the proposed rule

In this proposed rule, the Environmental Protection Agency (EPA) suggested changing the dust lead hazard standard (DLHS) and dust lead clearance level (DLCL) for lead dust on floors, windowsills, and window troughs. These changes would define any reportable level of lead dust as a hazard and significantly lower the amount of lead dust allowed after remediation efforts.

The current dust lead hazard standard for floors is 10 µg/ft². The DLHS for windowsills is 100 µg/ft². There is no separate hazard standard for window troughs. The current dust lead clearance level is 10 µg/ft² for floors, 100 µg/ft² for windowsills, and 400 µg/ft² for window troughs.¹ EPA is proposing to reduce the dust lead hazard standard for floors and sills to any reportable level greater than zero (GTZ). Per EPA's proposal, this is not a numeric value. It is set at *greater than zero*, using the reportable level for an individual laboratory, defined as the lowest level at which laboratories can reliably report results. Under the proposed rule, labs must have the ability to detect dust lead levels at 50% of the DLCL that is adopted but would be required to report at the lowest level that they can reliably report results.

EPA has proposed two different scenarios for the dust lead clearance level. Their primary option proposes to reduce the dust lead clearance level from 10 µg/ft² to 3 µg/ft² for floors, from 100 µg/ft² to 20 µg/ft² for windowsills, and from 400 µg/ft² to 25 µg/ft² for window troughs. These are the lowest post-abatement dust lead levels that the agency believes are feasible. However, they have also asked for comment on an alternative DLCL option. The alternative DLCL that EPA is proposing is to reduce the dust lead clearance level from 10 µg/ft² to 5 µg/ft² for floors, from 100 µg/ft² to 40 µg/ft² for windowsills, and from 400 µg/ft² to 100 µg/ft² for window troughs. Finally, EPA has also asked for comment on the possibility of a phased approach of starting with the alternative DLCL and then lowering it to the primary DLCL at a future specified date.

EPA has also proposed a change to the sampling method such that any single sample exceeding the DLHS would be considered a hazard (as opposed to the current practice of using the weighted arithmetic mean loading for all single-surface or composite samples).

Under the proposed rule, EPA has also proposed to decouple the DLHS and DLCL by redefining the term "abatement" so that action is not required at the dust lead hazard standard level but is required when dust lead loadings are at or above the clearance level. In effect, the clearance level, or DLCL, would become like an action level. EPA also notes that this is intended to avoid a cyclical pattern where an abatement successfully passes clearance, but an abatement is still recommended.

¹ U.S. Environmental Agency. (2023, September 7). Hazard standards and clearance levels for lead in paint, dust and soil (TSCA sections 402 and 403). Retrieved from <https://www.epa.gov/lead/hazard-standards-and-clearance-levels-lead-paint-dust-and-soil-tsca-sections-402-and-403>

NCHH supports EPA's proposed rule with suggested modifications

Strong, health-protective standards are a critical aspect of reducing childhood lead poisoning. Additionally, the practicality of implementing the standards must be considered since compliance (and beyond that, encouraging and expanding action to identify and control lead hazards) is paramount to protecting children and avoiding unintended consequences that could derail efforts to prioritize children at greatest risk. EPA's proposal thoughtfully addresses many concerns to help ensure smooth and effective implementation.

NCHH supports EPA's proposed rule and believes that with a few modifications, EPA can adopt a final version that will achieve the goal of protecting as many children as possible from preventable exposure to lead. As such, NCHH urges EPA to consider the following in adopting a final version of this rule, which will be critical for successful implementation:

- **EPA should adopt the alternative DLCL of 5 $\mu\text{g}/\text{ft}^2$ dust-lead for floors, 40 $\mu\text{g}/\text{ft}^2$ dust-lead for windowsills, and 100 $\mu\text{g}/\text{ft}^2$ for window troughs and plan to phase in the primary DLCL (3 $\mu\text{g}/\text{ft}^2$ dust-lead for floors, 20 $\mu\text{g}/\text{ft}^2$ dust-lead for windowsills, and 25 $\mu\text{g}/\text{ft}^2$ for window troughs) over a period of years.** We urge EPA to review comments from and engage with other stakeholders in determining the exact timeframe for this phase-in that will allow the field to build necessary capacity to meet these lower thresholds while still articulating a clear vision for reducing children's lead exposure as close to zero as possible over time.
- **EPA should consider revising the terminology for both the DLHS and DLCL** to be consistent with their intended use under the proposed rule and reduce confusion for both practitioners and affected families and property owners. NCHH suggests "lead dust disclosure level" in place of DLHS and "dust lead action level" or "lead dust action level" in place of the DLCL.
- **EPA should adopt the extended implementation timeframe suggested in the proposed rule** to allow inspectors, contractors, and labs adequate time to build capacity and protocols to implement these changes successfully, achieve EPA's intended impact, and minimize unintended consequences.
- **EPA should update their assumptions about potential costs and benefits** associated with the proposed rule to reflect additional information not considered in the original analysis.
- **EPA and other federal partners should explore what is needed not only to achieve the proposed clearance levels but to sustain them.**
- **EPA should consider equity implications of the GTZ approach** given the variation in lab reporting capabilities.
- **EPA should work with federal partners to ensure adequate funding and a robust workforce** to help states, communities, and property owners in complying with the final rule and remediating identified sources of lead.
- **EPA should consider additional opportunities to work with federal partners to bring the proposed rule into alignment with other federal programs.**
- **EPA should also consider implications for other policies** not addressed by the analysis presented in the proposed rule.

Each of these considerations is discussed in greater detail below and are essential to address in order to achieve EPA's intended impact of protecting as many kids as possible from as much lead exposure as possible.

Adopt the alternative DLCL and phase in the primary DLCL

EPA should adopt the alternative DLCL of 5 µg/ft² dust-lead for floors, 40 µg/ft² dust-lead for windowsills, and 100 µg/ft² for window troughs and plan to phase in the primary DLCL (3 µg/ft² dust-lead for floors, 20 µg/ft² dust-lead for windowsills, and 25 µg/ft² for window troughs) over a period of years.

In 2020, NCHH urged EPA to consider additional rulemaking to lower clearance and hazard levels and cited evidence that 5 µg/ft² for interior floors and 50 µg/ft².^{2, 3} Since then, additional evidence has emerged, including the experience of New York City that EPA cites in the proposed rule, to support lowering the DLCL to the alternative values of 5/40/100 µg/ft².⁴

EPA is likely to receive comments from stakeholders citing concerns about the ability of contractors to meet these clearance thresholds, and predictions about the chilling impact that will have on the contractor workforce and disruption to families. Notably similar concerns have been raised in response to previous changes to the clearance level, but temporary spikes in clearance failures following a change in the standard tend to decline over time. When HUD changed the clearance level on floors to 100 µg/ft² for floors, they found that HUD Lead Hazard Control contractors initially failed 20% of clearance tests, yet we know this is a very achievable standard.⁵ NCHH believes that challenges associated with meeting the clearance threshold are likely to be more significant if EPA elects to adopt the primary DLCL and that adopting the alternate DLCL, as recommended in these comments, should help mitigate these concerns.

The clearance level should not be based on *initial* contractor failure rates. The Evaluation of the HUD Lead Hazard Control Grant Program from 1994 to 1999 also found that clearance failure rates were statistically significantly related to the number of dwellings a contractor had completed.⁵ In other words, clearance failures declined with experience. This is also consistent with the reported experience of New York City in implementing the alternative DLCL.⁴

NCHH's concern with immediately implementing the primary DLCL is not only that it may exacerbate these challenges but also that there may be a threshold at which background levels of lead dust may make implementation untenable in communities with higher levels of dust lead, primarily those with a legacy of lead-painted homes, lead from vehicular traffic, and lead from industrial sources, which have much higher levels of lead on their streets and sidewalks. EPA must consider the impacts of this community dust-lead.

² Comment submitted by Amanda Reddy, Executive Director, National Center for Healthy Housing. (2020, August 26). Retrieved from the U.S. Environmental Protection Agency website: <https://www.regulations.gov/comment/EPA-HQ-OPPT-2020-0063-0376>

³ Braun, J. M., Hornung, R., Chen, A., Dietrich, K. N., Jacobs, D. E., Jones, R., Khoury, J. C., Liddy-Hicks, S., Morgan, S., Vanderbeek, S. B., Xu, Y., Kimberly Yolton, & Lanphear, B. P. (2018, October). Effect of residential lead-hazard interventions on childhood blood lead concentrations and neurobehavioral outcomes: A randomized clinical trial. *JAMA Pediatrics*, 172(10), 934-942. Retrieved from <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2696978>

⁴ Addressed on page 50463 of the proposed rule and substantiated by further NCHH correspondence with the New York City Department of Health and Mental Hygiene.

⁵ National Center for Healthy Housing & University of Cincinnati Department of Environmental Health. (2004, May 1). *Evaluation of the HUD lead-based paint hazard control grant program: Final report*. Columbia, MD: National Center for Healthy Housing. Retrieved from http://nchh.org/resource-library/report_evaluation-of-the-hud-lead-based-paint-hazard-control-grant-program_final-report.pdf

Although EPA's Technical Documentation reports that the average background level of lead in post-1978 homes is 0.2 µg/ft² on floors and 0.8 µg/ft² on windowsills, this is not a constant across all communities.⁶ A 2007 study by researchers at NCHH found that the geometric mean exterior sidewalk dust lead loadings in neighborhoods in Milwaukee and New York City were 75.5 and 43.2 µg/ft², respectively.⁷ In Milwaukee, the exterior porch dust lead loading was 93.9 µg/ft². Interior floor and windowsill dust lead loadings in neighboring homes were significantly related to exterior and porch dust lead loadings (i.e., when exterior and porch levels were high, so were the indoor levels of dust lead on floors and windowsills). A study in Rochester, NY, in 2012-13 found that at baseline, porch dust lead levels averaged 68 µg/ft² and 56% of porches had a dust lead loading of 40 µg/ft² or greater.⁸ year after lead hazard control, 35% of porches continued to exceed 40 µg/ft². At the time, there were not yet clearance requirements in place for porches in Rochester or in the HUD Lead Hazard Control Grant Program, and there continue to be no porch dust lead standards in most communities. Recent work by Laidlaw, Mielke, and Filippelli argues that the airborne deposition of lead dust is largely influenced by the resuspension of legacy lead in soil from community soil.⁹

These points are raised not to argue against lowering the DLCL but to emphasize that if actions are not taken to address lead in community soils and dust, property owners and residents will not be able to maintain interior dust lead levels below the proposed standards. Federal action must be taken both to assess and address the disparate community sources of dust lead.

Lowering the threshold to the alternative DLCL (5/40/100 µg/ft²) now and phasing in the primary DLCL (3/20/25 µg/ft²) over time serves to:

- Increase protection of children immediately *and* create a concrete timeline for increasing protection over time that is not contingent on additional rulemaking, and;
- Minimize unintended consequences by allowing the field (labs, inspectors, contractors, and others) to build needed capacity to achieve lower clearance levels reliably and effectively, especially given concerns about background community levels noted above.

Revise terminology to reduce confusion and increase clarity about the intent and purpose of the DLHS and DLCL

Under EPA's proposed rule, continued use of the terminology of "hazard standard" is inconsistent with the agency's evidence-based statement that there is no safe level of lead exposure. With EPA's proposed GTZ

⁶ Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels. 88 Fed. Reg. 50444 (Aug. 1, 2023). Retrieved from <https://www.federalregister.gov/documents/2023/08/01/2023-15073/reconsideration-of-the-dust-lead-hazard-standards-and-dust-lead-post-abatement-clearance-levels#p-220>

⁷ Dixon, S., Wilson, J., & Galke, W. (2007, November). Friction and impact surfaces: Are they lead-based paint hazards? *Journal of Occupational and Environmental Hygiene*, 4(11), 855-863. Retrieved from https://www.researchgate.net/publication/5957201_Friction_and_Impact_Surfaces_Are_They_Lead-Based_Paint_Hazards

⁸ Wilson, J., Dixon, S. L., Jacobs, D. E., Akoto, J., Korfmacher, K. S., Breyse, J. (2015, February). An investigation into porch dust lead levels. *Environmental Research*, 137, 129-135. Retrieved from <http://www.ncbi.nlm.nih.gov/pubmed/25531817>

⁹ Laidlaw, M. A. S., Mielke, H. W., & Filippelli, G. M. (2023, July). Assessing unequal airborne exposure to lead associated with race in the USA. *Geohealth*, 7(7): e2023GH000829. Retrieved from <https://agupubs.onlinelibrary.wiley.com/doi/10.1029/2023GH000829>

approach, a negative result is not equivalent to a finding that there is no lead present in the environment (and logically, no hazard), but retaining the terminology of “hazard standard” may inadvertently and falsely convey this idea to families and property owners.

Retaining the terminology may also be challenging for practitioners for at least two reasons. First, the practical application of the DLHS and DLCL under EPA’s proposed rule is a radical departure from how these two standards have been used historically. Revising the terminology may make this shift more transparent and ease adoption for practitioners in the field.

Second, some practitioners have raised concern about the fact that a home could pass clearance under the proposed rule but still legally have lead hazards (a challenge EPA notes on page 50450 of the proposed rule). This would not only create challenges with communications but could raise concerns about liability and the ability of contractors to obtain and retain insurance. Revising the terminology will more clearly communicate to both families and practitioners the intent of disclosing the presence of detectable or reportable lead and should help to mitigate many of these obstacles.

NCHH recommends that the agency consider the term “lead dust disclosure level” as an alternative to the DLHS as it is consistent with the intended application under the proposed rule. This terminology also has the advantage of aligning with disclosure requirements, where the proposed DLHS is likely to have the greatest impact on the number of homes affected.

For similar reasons, we also recommend that the agency adopt the term “dust lead action level” in place of DLCL. Under the proposed rule, the DLCL will no longer be used only for clearance activities but also to identify homes that should be prioritized for lead remediation activities. “Action level” more accurately conveys this dual purpose and is consistent with terminology used to describe other sources of lead and other environmental hazards (e.g., lead in drinking water, toxic elements in food [including lead], radon in homes).^{10, 11, 12}

Taken together, these revised terms would help to avoid situations such as when post-clearance levels were below the DLCL, but families were still told they had hazards. The term “disclosure level” could help explain to families with post-clearance levels above the proposed DLHS and below the DLCL that lead still exists in their environment but that the levels are below the threshold prioritized for action. This terminology provides families with the most complete information and choice of how and when to act or seek assistance. It will also help reduce confusion with how the DLHS has been historically used and increase consistency with terminology across sources of exposure.

EPA may further reinforce the message that there is no safe level of lead by adding strong and clear language to inspection and clearance reports that a finding in which no samples were above the GTZ does

¹⁰ U.S. Environmental Protection Agency. (2023, March 16). What do you mean when you say the action level has been exceeded for a drinking water system? Retrieved from [https://www.epa.gov/lead/what-do-you-mean-when-you-say-action-level-has-been-exceeded-drinking-water-system#:~:text=To%20check%20if%20corrosion%20control,%2FL%20\(15%20ppb\)](https://www.epa.gov/lead/what-do-you-mean-when-you-say-action-level-has-been-exceeded-drinking-water-system#:~:text=To%20check%20if%20corrosion%20control,%2FL%20(15%20ppb))

¹¹ U.S. Food and Drug Administration. (2023, August 10). Closer to Zero: Reducing childhood exposure to contaminants from foods. Retrieved from <https://www.fda.gov/food/environmental-contaminants-food/closer-zero-reducing-childhood-exposure-contaminants-foods>

¹² U.S. Environmental Protection Agency. (2023, July 6). What is EPA's action level for radon and what does it mean? Retrieved from <https://www.epa.gov/radon/what-epas-action-level-radon-and-what-does-it-mean#>

not guarantee that there is no lead in the environment (from dust or other sources) and that there is no safe level of lead exposure.

Adopt the extended implementation timeframe recommended in the proposed rule

On page 50469 of the proposed rule, EPA proposed that the rule go into effect 60 days after publication of the final rulemaking in the *Federal Register*; they also proposed an extended compliance date to occur one year after that. NCHH supports this extended compliance date and believes a one-year period is reasonable if the alternative DLCL is adopted. If EPA elects to adopt the primary DLCL, NCHH recommends a longer period (two years or more) to ensure that labs, inspectors, contractors, and state and local programs have adequate time to build the capacity to meet those more stringent requirements.

Update assumptions about potential costs and benefits

The Economic Analysis states that the benefits were calculated based on average dust lead levels in a home.¹³ Specifically, the Analysis states (pp. 6-12): “The R-SHEDS-IEUBK mechanistic model used a weighted housing unit-wide average dust-lead loading that combines floor and sill dust-lead loadings calculated by assigning a 96% weight to the floor dust-lead loading and a 4% weight to the sill dust-lead loading. The blood lead level estimates from the R-SHEDS-IEUBK mechanistic model were then used to estimate benefits associated with average dust-lead loadings.” However, the rule states that the action level will be determined by any single dust lead value in a home (i.e., the maximum dust lead value for each surface type tested). This is a change from the current hazard standard, which is based on the average dust lead loading for each surface type tested. If the economic analysis is based on the average dust lead loading, what is the justification for changing the method for determining when action is needed?

EPA should specify the number and location of dust lead tests.¹⁴ The Economic Analysis states that it assumes that samples from the bedroom, kitchen, common living area, a miscellaneous room, plus the entryway are “representative of the loading levels across the entire unit.” The Economic Analysis also used findings by Lanphear (1996) to assess event probabilities. Lanphear tested the floors in the kitchen, bedroom, living area, and entryway.

The Economic Analysis recognizes that entryway floor dust lead levels are substantially higher than levels in other rooms. If a single elevated sample at a home will trigger disclosure and action, then the decision to test or not test the entryway could have a major effect. In a recent study of a state risk assessment program, NCHH found that just 28% of homes had the entryway floor sampled, even though it was a recommended location.¹⁵ The Economic Analysis appears to have only considered testing three rooms

¹³ Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels. 88 Fed. Reg. 50444 (Aug. 1, 2023). Retrieved from <https://www.federalregister.gov/documents/2023/08/01/2023-15073/reconsideration-of-the-dust-lead-hazard-standards-and-dust-lead-post-abatement-clearance-levels#p-220>

¹⁴ Historically, EPA has referenced HUD guidelines, and we encourage both agencies to continue this alignment.

¹⁵ Wilson, J., Dixon, S. L., Wisinski, C., Speidel, C., Breyse, J., Jacobson, M., Crisci, S., & Jacobs, D. E. (2022, June 30). Pathways and sources of lead exposure: Michigan Children’s Lead Determination (The MI CHILD study). *Environmental Response*, 215(Pt 2): 114204. Retrieved from <https://pubmed.ncbi.nlm.nih.gov/36075478/>

(bedroom, kitchen, and living room) in its analysis (p. B-8), which raises questions about whether testing of the entryway and the impact of that testing were considered in the costs.

The Economic Analysis should also be updated to correct the assumption about the reaccumulation of dust described in the section below about sustaining clearance levels.

The federal government should explore what is needed not only to achieve the proposed clearance levels but to sustain them

Sustaining lower dust-lead levels is paramount to EPA's intent to protect children from lead exposure (and key to the benefits it estimates from the proposed rule change). [NCHH's HUD-funded research](#) suggests that additional work is needed to establish best practices for sustaining lower dust-lead levels post-clearance.¹⁶ One study examined homes that were treated by lead professionals and cleared at levels of 5 $\mu\text{g}/\text{ft}^2$ on floors and 50 $\mu\text{g}/\text{ft}^2$ on windowsills. Prior to treatment, nine homes had mean floor dust lead levels of 10 $\mu\text{g}/\text{ft}^2$ or higher and an additional 16 homes had baseline floor dust lead levels of 5-9 $\mu\text{g}/\text{ft}^2$. All successfully cleared at 5 $\mu\text{g}/\text{ft}^2$ after treatment.

Approximately 14 months later, five of the nine homes that were at or above 5 $\mu\text{g}/\text{ft}^2$ at baseline¹⁷ were above 5 $\mu\text{g}/\text{ft}^2$, while four of the 16 homes that were between 5-9 $\mu\text{g}/\text{ft}^2$ were above 5 $\mu\text{g}/\text{ft}^2$. Thirty-six percent (36%) of homes could not sustain a clearance level of 5 $\mu\text{g}/\text{ft}^2$ for 16 months. Of the nine homes that were above 5 $\mu\text{g}/\text{ft}^2$ during post-work testing, eight had their windows replaced and one had windows repaired. Of particular interest, at homes with a baseline floor dust lead level of 5 $\mu\text{g}/\text{ft}^2$ or greater, floor dust lead loadings in homes that were professionally treated for lead were not significantly different 14 months later than homes in which residents received education but no lead treatments.

The outcomes on windowsills were similar. Forty-five (45) homes had a mean baseline windowsill dust lead level of 50 $\mu\text{g}/\text{ft}^2$ or higher and all cleared. Approximately 14 months later, 15 of the 45 (33%) had a windowsill dust lead level of 50 $\mu\text{g}/\text{ft}^2$ or greater. Ten (10) of the 15 homes had windows replaced, three had windows repaired/repainted, and two had lesser treatments. The type of lead treatment and cost of treatment were not significantly related to the likelihood of maintaining windowsill dust lead below 50 $\mu\text{g}/\text{ft}^2$. Older homes (pre-1930) and homes with higher play area soil lead levels (geometric mean: 261 ppb) were significantly more likely to fail to maintain windowsill levels below 50 $\mu\text{g}/\text{ft}^2$.

If a federal program or a property owner is to invest over \$10,000 in a home to achieve lower clearance levels as was done in this study, then there needs to be additional research into how long these treatments will last and what factors influence sustainability. This uncertainty about how long treatments will last is another reason to take a phased approach to adopting lower clearance levels. The Economic Analysis states that a key uncertainty is that reaccumulation of dust lead post-intervention (pp. 10-13). In the absence of data at low levels, the Economic Analysis applied the default assumption that dust lead does not reaccumulate and children will be exposed to the dust lead levels at clearance. EPA and HUD should test this assumption before lowering the dust lead values to 3/20/25 $\mu\text{g}/\text{ft}^2$.

¹⁶ National Center for Healthy Housing. (2022, April 28). Analysis of Benefits of Abatement Techniques and Effectiveness in the HOME Study (ABATE HOME). Retrieved from <https://nchh.org/research/abate-home/>

¹⁷ Based on a single composite sample.

EPA should consider equity implications of the GTZ approach given the variation in lab reporting capabilities

Under the proposed GTZ approach, the determination of whether a home with low levels of lead is above or below the DLHS will be determined in part by the lab analyzing the samples and what their reporting limit is. This could have potential consequences for disclosure and equity that EPA should consider.

Work with federal partners to ensure adequate funding and a robust contractor workforce

While outside the scope of proposed rulemaking, NCHH urges EPA to work with other federal partners and Congress to ensure that there is adequate funding and workforce infrastructure to support the goal of the proposed rule and avoid unintentional harm. In many communities, and in low-income, Black, Brown, and Indigenous communities in particular, the largest threat to children from lead is not a less protective standard but a lack of access to testing and resources to remediate identified sources of lead exposure before kids are exposed and harmed. Even in communities that have resources for lead remediation, access is limited by unnecessarily burdensome eligibility criteria and contractor shortages.

Without addressing these obstacles, the proposed rule could exacerbate challenges in some communities, inadvertently discourage testing, and reduce the availability of lead remediation contractors. In communities that proactively require testing of homes and childcare facilities, the proposed rule could create a burden on low- and moderate-income property owners, including many home-based childcare providers who are a vital safety net for low and moderate-income families seeking affordable and accessible childcare.

The childcare workforce plays a critical role in communities by providing education and skills development for children while supporting working parents. Childcare providers are also small business operators, and it is essential that the implementation of the final rule considers the impact on this sector. In 2019, more than two million childcare workers, nearly all women (92%), were employed in childcare programs across the country, with a median hourly pay well below the federal poverty rate for a family of four. More than half of childcare workers are enrolled in at least one main public benefit program—compared to 21% of the U.S. population, despite 60% of the childcare workforce working full time. The childcare workforce is also more diverse than the country's overall population. Almost one in five workers in the early childhood field identify as immigrants. About 15% of the early childhood workforce is Black (compared to 13% of the population). Identifying and remediating lead hazards in a home-based childcare has the potential to protect an entire classroom full of children—but not if the burden means that they can't afford to continue to offer their services.

Acknowledging these challenges need not deter final rulemaking but should inspire urgent action. The extended compliance timeframe proposed by EPA should be adopted and then used by the federal government to put additional resources and supports in place to mitigate these challenges. For instance, the HUD grant program could be reformed to provide formula funding or block grants, create eligibility by neighborhood or ZIP code (to reduce the burden on individual households), and be funded at a level to create access to resources for any community with a documented need.

Consider other opportunities to align federal programs and guidance

NCHH believes that it will be easier for HUD to promulgate guidance consistent with the final rule if EPA adopts the alternate DLCL and revised terminology as suggested above. If EPA adopts the primary DLCL first and does not consider revisions to terminology, there is a strong possibility that HUD will consider alternative guidance for their grant programs. This would create unnecessary confusion in the field and for property owners and families.

Considering these implementation needs is in line with EPA’s goal of protecting as many children as possible from as much lead as possible. We urge EPA to work directly with HUD in finalizing the proposed rule to ensure as much alignment between federal programs as possible.

Further, there may be additional opportunities for EPA to align with federal programs and increase protection of children in future rulemaking. Specifically, in future rulemaking, NCHH urges EPA to establish a dust lead action level for porches.

The evidence of the need for a porch standard has been demonstrated. Wilson et al. found that baseline geometric mean porch floor dust lead loading was almost four times more than baseline interior floor dust lead. Immediate post-work lead dust levels on porches declined 55% after porch floor replacement and 53% after porch floor paint stabilization, both of which were statistically significant. When no porch floor work was conducted but lead hazard control was conducted elsewhere, immediate post-work dust lead on porches increased 97%. At one year, porch lead dust continued to decline for porch replacement (77% below baseline) and paint stabilization (72% below baseline), but where no porch floor work was done, geometric mean porch dust lead was not significantly different than baseline.¹⁸ NCHH recommends this evidence be considered in future EPA rulemaking.

Assuming the agency adopts revised terminology to describe the DLHS and DLCL as recommended here, we also urge EPA to make similar updates as part of future rulemaking governing lead in paint and soil (e.g., use of the terms “disclosure level” and “action level” in place of “hazard standard” and “clearance level”).

EPA should also consider implications for other policies not addressed by the analysis presented in the proposed rule

EPA should also consider implications for other policies not addressed by the analysis presented in the proposed rule. For example, what is the potential impact of the GTZ DLHS in states or municipalities that require foster homes to be free of lead hazards to receive placements? Will the proposed DLHS significantly decrease the number of available homes for children in need of foster care, and can EPA offer guidance on how to mitigate that impact? This is an additional argument for revising the terminology as described above, and NCHH urges EPA to consider these potential implications in estimating the costs and benefits of the proposed rule.

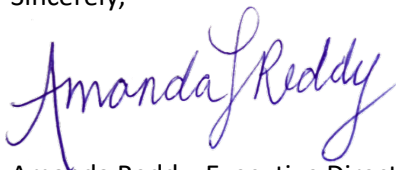
¹⁸ Wilson, J., Dixon, S. L., Jacobs, D. E., Akoto, J., Korfmacher, K. S., Breyse, J. (2015, February). An investigation into porch dust lead levels. *Environmental Research*, 137, 129-135. Retrieved from <http://www.ncbi.nlm.nih.gov/pubmed/25531817>

NCHH also notes that although lead in paint, soil, dust, and other sources are subject to separate, independent rulemaking, residents are not exposed to sources independently, and the relationships between sources may become increasingly important at these lower, more protective thresholds.

Thank you for the opportunity to comment on this new proposed rule. We believe that our recommended changes are within EPA's authority and could be adopted by EPA without additional public comment. As such, we urge EPA to issue a final rule that maximizes the benefits to children, promotes consistency between federal programs, minimizes potential unintended consequences, incentivizes innovation, commits to an iterative approach of getting levels of lead in children's homes (and blood) closer to zero over time, and centers equity and the voices of impacted children and families.

Please feel free to contact us if we can provide further information.

Sincerely,



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About the National Center for Healthy Housing

The mission of the National Center for Healthy Housing (NCHH) is to secure healthy homes for all. NCHH is a national technical and scientific nonprofit organization dedicated to developing and promoting practical measures to protect children from residential environmental hazards, including lead poisoning while preserving affordable housing. NCHH develops scientifically valid and practical strategies to make homes safe from hazards, to alert low-income families about housing-related health risks, and to help them protect their children.

About the Children's Environmental Health Network

Children's Environmental Health Network (CEHN) is a national multidisciplinary nonprofit organization whose mission is to protect the developing child from environmental health hazards and promote a

healthier environment. CEHN has been working at the national level for over 30 years on policy, education, and supporting pediatric research vital to children's environmental health. CEHN has partnered with local and national advocacy organizations, local, state, and federal government agencies, and has worked with a wide range of stakeholders including parents, youth, legislators, researchers, physicians, nurses, and clergy. CEHN's Eco-Healthy Child Care® program, the sole effort working nationally for over 12 years, partners with childcare professionals to eliminate or reduce environmental health hazards found in early childhood learning environments.

About the Environmental Defense Fund

The Environmental Defense Fund (EDF) is an international nonprofit environmental organization dedicated to using science, economics, and law to build a vital Earth—for everyone. EDF's Healthy Communities program strives to make air, water, food, and household products safer through cutting-edge research, wide-ranging partnerships, and a focus on strengthening laws and policies that protect health.

About Women for a Healthy Environment

Women for a Healthy Environment (WHE) is a nonprofit organization with offices in Pittsburgh, PA, and Philadelphia, PA. WHE educates individuals about environmental exposures to public health, provides action steps communities can take to mitigate those risks, and advocates for solutions that create a better tomorrow for all. Through community programming, technical assistance, coalition-building, and advocacy, WHE focuses on creating healthy environments in four key program areas: homes, schools, early learning centers, and health policy. Since 2009, WHE has educated over 35,000 individuals and supported over 300 schools and early learning centers. WHE co-founded the Lead Safe Allegheny coalition and manages the *Get the Lead Out, Pittsburgh* public awareness campaign. WHE was instrumental in the passage of the Pittsburgh Lead Safety law. At the core of WHE's work is creating healthy places for children to live, learn, grow, and thrive, with a focus on prioritizing its work in environmental justice communities.