

## Unfunded Mandates Reform Act Statement

*Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels; Final Rule; SAN 8524; RIN 2070-AK91*

U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics

Pursuant to the Title II of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531-1538, EPA has determined that the rule, “*Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels; Final Rule*,” contains a Federal mandate that may result in expenditures of \$100 million or more by the private sector in any one year. In addition, EPA public housing authorities may experience costs of \$100 million or more in any one year. EPA has prepared this statement in accordance with section 202(a) of UMRA.

**(1) Authorizing Legislation.** This rulemaking is issued under the authority of sections 401, 402, 403, 404, and 406 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq., as amended by Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or “Title X”) (Pub. L. 102-550) (Ref. 1) and section 237(c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115-31, 131 Stat. 789), as well as sections 1004 and 1018 of Title X (42 U.S.C. 4851b, 4852d), as amended by section 237(b) of Title II of Division K of the Consolidated Appropriations Act, 2017.

**(2) Benefit-Cost Analysis.** EPA has prepared an economic analysis to evaluate, among other things, the benefits and costs of this rule as well as various regulatory options. See “Economic Analysis of the Dust-Lead Hazard Standards and Clearance Levels Reconsideration Final Rule.” This document is available in the public docket for this rule.

The rule is estimated to result in total compliance costs of \$207 million to \$348 million per year. Thus, the annual cost of the rule to the private sector (and State, local, and Tribal governments) in the aggregate exceeds the inflation-adjusted \$100 million UMRA threshold. The total compliance costs include estimated costs of \$27 million for public housing authorities to ensure that their housing units are in compliance with this rule and with the U.S. Department of Housing and Urban Development’s (HUD) Lead-Safe Housing Rule (LSHR). Public housing authorities can be funded in part by state or local governments. The total compliance costs also include estimated costs of \$850,000 to public schools that contain a child-occupied facility.

This rule will reduce exposures to lead, resulting in benefits from avoided adverse health effects. For the subset of health effects where the results were quantified, the estimated annualized benefits are \$1.5 billion to \$10.2 billion per year. There may be additional unquantified benefits due to other avoided health effects.

Net benefits are the difference between benefits and costs. The rule is estimated to result in quantified net benefits of \$1.3 billion to \$9.9 billion per year.

**(A) Federal Financial Assistance.** HUD’s Lead-Based Paint Hazard Reduction grant program assists states, cities, counties/parishes, Native American Tribes or other units of local government in identifying and controlling lead-based paint hazards in eligible privately-owned rental or owner-occupied housing, with the grants targeted towards housing for lower-income families. In 2023, HUD announced that it had \$403,764,572 in funding available for the Lead

Hazard Reduction grant program.<sup>a</sup> HUD provides funds for public housing separately. HUD had \$25 million available for lead paint determination and abatement in public housing in 2022.<sup>b</sup> In some cases, activities that address lead-based paint hazards may be funded as part of other capital improvement projects in public housing. In 2022, HUD had \$7.8 billion in appropriations for the Public Housing Fund.<sup>c</sup>

**(B) Federal Resources.** Given existing needs for lead-hazard control activities, HUD's existing funding is not expected to be sufficient to pay the entirety of the additional costs expected to be incurred as a result of this rulemaking.

### **(3) Costs and Budgetary Impacts.**

**(A) Future Compliance Costs.** The rule is estimated to result in total compliance costs of \$207 million to \$348 million per year.

**(B) Disproportionate Budgetary Effects.** Compliance costs can be expected to vary from state to state, region of the country, and industry to industry, depending on the stock of target housing and child-occupied facilities and the number and type of regulated firms.

**(4) Effect on National Economy.** Guidance issued by the Office of Management and Budget indicates that the economic impact of a regulation on the national economy becomes measurable only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). See Memorandum from Sally Katzen, "Guidance for Implementing Title II of S. 1," March 31, 1995. Given the current GDP, this is equivalent to a cost of \$71 billion to \$141 billion. Therefore, EPA has concluded that this rule is highly unlikely to have any measurable effect on the national economy.

**(5) Prior consultation with affected State, local, and Tribal governments.** EPA invited the following national organizations representing state and local elected officials to a consultation meeting on November 10, 2022: National Governors' Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council of State Governments, International City/County Management Association, National Association of Counties, National Association of Towns and Townships, County Executives of America, and Environmental Council of the States. Additionally, the agency invited professional organizations that represent or have state and local government members, such as Public Housing Authorities Directors Association, Council of Large Public Housing Authorities, Association of State and Territorial Health Officials, and American Public Works Association to participate in the meeting.

During the consultation meeting, one organization inquired whether cost estimates were included for child-occupied facilities (COFs). EPA responded that the costs to COFs were not included in its analysis. (Costs to COFs were subsequently added to the analysis.) Additionally, two organizations expressed concerns about having adequate funding for public housing authorities to meet their basic needs, such as electricity, and the inability to be proactive about issues such as lead, due to those same financial concerns. Following the consultation meeting, EPA received a written comment from one organization (a non-profit organization whose members consist of over seventy large public housing authorities). The organization highlighted that a large portion of public housing properties are dated, resulting in many families and children who are living in dated housing units. The organization explained

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<sup>a</sup> Lead Hazard Reduction Grant Program - Update and Reissue, FR-6600-N-13, Reissued Feb 15, 2023, U.S. Department of Housing and Urban Development.

<sup>b</sup> FY 2023 Congressional Justification, Public And Indian Housing, Public Housing Fund, U.S. Department of Housing and Urban Development.

<sup>c</sup> FY 2023 Congressional Justification, Public And Indian Housing, Public Housing Fund, U.S. Department of Housing and Urban Development.

that public housing authorities have unmet financial needs and strongly encouraged the Agency to consider costs when revising the dust-lead clearance levels. The commenter expressed concerns that lower dust-lead clearance levels could result in laboratories needing to switch to different testing technology to test samples; which in turn could require sampling a larger surface area, and could increase laboratory turnaround times and costs. EPA notes that according to a 2021 opinion by the Ninth Circuit Court of Appeals reviewing EPA’s 2019 dust-lead hazard standards rule, the Agency cannot take into account non-health factors, such as costs, when revising the dust-lead hazard standards. However, the Agency can consider non-health factors when revising the dust-lead clearance levels. The final rule sets clearance levels (referred to going forward as dust-lead action levels) that are higher than those that EPA proposed.

**(6) Small Government Agency Plan.** This rule does not contain a significant Federal intergovernmental mandate as described by § 203 of UMRA, because it contains no regulatory requirements that exceed the inflation-adjusted cost significance threshold or uniquely affect small governments.

**(7) Least Burdensome Option Selected or Explanation Required.** Under section 205 of UMRA, before promulgating a rule for which a written statement is required, EPA must identify and consider a reasonable number of regulatory alternatives. From those alternatives, EPA must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule’s objectives, unless the Administrator publishes with the final rule an explanation why the least costly, most cost-effective, or least burdensome method was not adopted; or the provisions of section 205 are inconsistent with applicable law.

EPA’s economic analysis for the final rule analyzed several regulatory alternatives for the dust-lead reportable level (DLRL) and the dust-lead action level (DLAL). The total cost of each option is shown in Table 1. Table 2 shows total gains in IQ points due to each option and the number of cases of premature cardiovascular disease mortality (CVM) and attention deficit hyperactivity disorder (ADHD) avoided. And Table 3 shows the relative cost-effectiveness of each option for these endpoints.

<b>Option</b>	<b>Reportable Level on Floors/Sills (µg/ft<sup>2</sup>)</b>	<b>Action Level on Floors/Sills/Troughs (µg/ft<sup>2</sup>)</b>	<b>Minimum Estimated Cost</b>	<b>Maximum Estimated Cost</b>
1 (Final Rule)	Any Reportable Level	5/40/100	\$207	\$348
2 (Proposed Rule)	Any Reportable Level	3/20/25	\$785	\$1,104
3	Any Reportable Level	5/40/40	\$293	\$456
4	Any Reportable Level	10/100/400	\$56	\$56
5	3/30	3/30/40	\$621	\$911

The range in costs reflects two scenarios for the number of abatements triggered by a child's blood-lead level. One scenario assumes that the decision is related to whether a child’s blood-lead is found to exceed the CDC’s current blood lead reference value of 3.5 µg/dL. The other scenario assumes that the decision is related to whether the child’s blood-lead level is found to exceed a level set by their state.

Option	Reportable Level on Floors/Sills ( $\mu\text{g}/\text{ft}^2$ )	Action Level on Floors/Sills/Troughs ( $\mu\text{g}/\text{ft}^2$ )	Total IQ Points Gained		CVM Cases Avoided		ADHD Cases Avoided	
			Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1 (Final Rule)	ARL	5/40/100	16,199	70,368	69	804	704	1,458
2	ARL	3/20/25	22,801	94,900	95	1,120	974	2,021
3	ARL	5/40/40	16,199	70,368	69	804	704	1,458
4	ARL	10/100/400	595	3,210	38	344	167	167
5	3/30/2024	3/30/40	20,082	87,690	72	887	822	1,799

ARL = Any Reportable Level; CVM = Cardiovascular Mortality; ADHD = Attention Deficit Hyperactivity Disorder.  
For each option, the range in the results reflects the two scenarios for the number of events triggered by a child's blood-lead level. For IQ points, the range also reflects different models used to relate blood lead levels to IQ changes. For CVM, the range also reflects both different models used to relate blood lead levels to CVM and different assumptions about soil intake levels.

Option	Reportable Level on Floors/Sills ( $\mu\text{g}/\text{ft}^2$ )	Action Level on Floors/Sills/Troughs ( $\mu\text{g}/\text{ft}^2$ )	Cost per Lost IQ Point Avoided		Cost per CVM Case Avoided		Cost per ADHD Case Avoided	
			Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1 (Final Rule)	ARL	5/40/100	\$4,945	\$12,779	\$432,836	\$3,000,000	\$238,683	\$294,034
2	ARL	3/20/25	\$11,633	\$34,428	\$985,714	\$8,263,158	\$546,264	\$805,955
3	ARL	5/40/40	\$6,480	\$18,088	\$567,164	\$4,246,377	\$312,757	\$416,193
4	ARL	10/100/400	\$17,444	\$94,171	\$162,791	\$1,473,684	\$335,329	\$335,329
5	3/30	3/30/40	\$10,389	\$30,923	\$1,027,057	\$8,625,000	\$506,392	\$755,474

ARL = Any Reportable Level; CVM = Cardiovascular Mortality; ADHD = Attention Deficit Hyperactivity Disorder.  
For each option, the range in the results reflects the two scenarios for the number of events triggered by a child's blood-lead level. For IQ points, the range also reflects different models used to relate blood lead levels to IQ changes. For CVM, the range also reflects both different models used to relate blood lead levels to CVM and different assumptions about soil intake levels.  
Note that the number of dollars per IQ point or case of ADHD or CVM are overstated because it is not possible to apportion the costs of the rule to individual endpoints. Therefore, the total costs of the rule are used in the cost-effectiveness calculation for each health endpoint.

As shown in Table 1, Option 4 (which has a DLRL of any reportable level and DLAL of 10  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$ , and 400  $\mu\text{g}/\text{ft}^2$  for floors, window sills and window troughs, respectively) would have lower estimated costs (\$56 million per year) than the option selected for the final rule (\$207 million to \$348 million per year). As shown in Table 3, Option 4 would be more cost-effective than the final rule in terms of the cost per case of premature cardiovascular mortality avoided (\$162,791 to \$1,473,684 per case avoided for Option 4 compared to \$432,836 to \$3,000,000 for the final rule).<sup>d</sup> However, the final rule is the most cost-effective option analyzed for both the cost per lost IQ point avoided and the cost per ADHD case avoided. Thus, the final rule is the most cost-effective option analyzed using two of the three metrics.

<sup>d</sup> The number of dollars per IQ point or case of ADHD or CVM in Table 2 are overstated because it is not possible to apportion the costs of the rule to individual endpoints. Therefore, the total costs of the rule are used in the cost-effectiveness calculation for each health endpoint. However, the general relationships between the options shown in Table 3 are still meaningful (e.g., Option 2 has a cost per lost IQ point avoided that is more than twice that of the final rule).

Option 4 is the more cost-effective than Option 1 for CVM because of the mix of residents in the affected housing types. The economic analysis for the rule considers the effects of the options on two types of housing: those subject to the HUD LSHR, and those with a child with a blood lead level greater than a federal or state blood lead reference value (referred to as blood-lead level triggered (BLLT) units). BLLT units by definition have at least one child in the household, so options that reduce lead exposures in BLLT units have estimated IQ and ADHD benefits. Not all LSHR units have children in the household, so there is a higher proportion of adults in those units on average. Option 4 only affects LSHR units<sup>e</sup>, so it affects a higher proportion of adults and a lower proportion of children compared to Option 1. As a result, Option 4 has more CVM cases avoided per dollar of compliance cost and fewer IQ gains and ADHD cases avoided per dollar of compliance cost compared to Option 1.

While Option 4 is the least costly option analyzed and the most cost-effective option using one of the three metrics, it does not achieve the rule's objectives. Compared with Option 4, the final rule represents a reduction of 50% or more in the allowable level of dust-lead loadings following the completion of an abatement. As a result, the final rule would be beneficial to maintaining lower blood-lead levels and protecting against associated negative health outcomes such as decreased IQ. For example, the modeling in EPA's Technical Support Document (TSD) for this rule shows that young children in pre-1978 housing exposed to dust-lead loadings of 5  $\mu\text{g}/\text{ft}^2$  for floors and 40  $\mu\text{g}/\text{ft}^2$  for window sills would have an estimated 13.9% probability of exceeding a total blood-lead level of 3.5  $\mu\text{g}/\text{dL}$  (the Centers for Disease Control and Prevention's blood-lead reference value (BLRV)). This is significantly lower than the 18.0% probability of exceedance of the BLRV when exposed to DLAL of 10  $\mu\text{g}/\text{ft}^2$  for floors and 100  $\mu\text{g}/\text{ft}^2$  on window sills.

When considering dust-lead exposure only, young children in pre-1978 housing exposed to DLAL of 5  $\mu\text{g}/\text{ft}^2$ , 40  $\mu\text{g}/\text{ft}^2$ , and 100  $\mu\text{g}/\text{ft}^2$  would have a 22.4% probability of exceeding 2 points of IQ loss. This is considerably less than the 37.9% chance of exceeding 2 points of IQ loss for children exposed to DLAL levels of 10  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$ , and 400  $\mu\text{g}/\text{ft}^2$ . Overall, the TSD modeling indicates that the 5  $\mu\text{g}/\text{ft}^2$ , 40  $\mu\text{g}/\text{ft}^2$ , and 100  $\mu\text{g}/\text{ft}^2$  DLAL represents a substantial reduction in risk compared with DLAL of 10  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$ , and 400  $\mu\text{g}/\text{ft}^2$ .

As a result, the final rule avoids far more IQ loss and cases of CVM and ADHS than does Option 4. The final rule is estimated to avoid the loss of 16,199 to 70,368 IQ points per year, compared to only 595 to 3,210 IQ points per year for Option 4. The final rule also avoids 69 to 804 CVM cases and 704 to 1,458 ADHD cases per year, compared to 38 to 344 CVM cases and 167 ADHD cases under Option 4.

EPA has high confidence that the DLAL in the final rule (5  $\mu\text{g}/\text{ft}^2$ , 40  $\mu\text{g}/\text{ft}^2$ , and 100  $\mu\text{g}/\text{ft}^2$  for floors, window sills, and window troughs, respectively) are achievable. EPA's analysis of the Department of Housing and Urban Development's Lead Hazard Control Clearance Survey data indicates that 72% of samples showed dust-lead levels at or below 5  $\mu\text{g}/\text{ft}^2$  for floors, 88% were at or below 40  $\mu\text{g}/\text{ft}^2$  for window sills, and 93% were at or below 100  $\mu\text{g}/\text{ft}^2$  for window troughs. And since the respondents to HUD's survey were only required to achieve clearance below the dust-lead clearance levels that were in effect at that time (which were 40  $\mu\text{g}/\text{ft}^2$  for floors, 250  $\mu\text{g}/\text{ft}^2$  window sills, and 400  $\mu\text{g}/\text{ft}^2$  for window troughs), the percentage of samples achieving these clearance may be even higher today (due to the 2021 rule revising the clearance levels to 10  $\mu\text{g}/\text{ft}^2$  for floors and 100  $\mu\text{g}/\text{ft}^2$  for window sills.) Furthermore, New York City lowered its standards for floors, window sills and window wells (*i.e.*, troughs) to 5  $\mu\text{g}/\text{ft}^2$ , 40  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$ , respectively, in 2021. According to the New York City Department of Health and Mental Hygiene, the regulated community was able to adjust and comply with the new lower standards.

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<sup>e</sup> The analysis assumes that the dust-lead trigger for lead hazard reduction activities is the action level for BLLT units, but the reportable level for LSHR units. Since Option 4 does not change the action level from the baseline, only LSHR units are estimated to be affected.

Therefore, EPA has concluded that the final rule option better achieves the statutory objectives of reliability, effectiveness and safety than does the alternative option of 10  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$ , and 400  $\mu\text{g}/\text{ft}^2$  for floors, window sills and troughs.