



The Honorable Michael S. Regan
Environmental Protection Agency
1700 G Street N.W.
Washington, D.C. 20552

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October 2, 2023

Re: Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels

Dear Administrator Regan:

Thank you for the opportunity to comment on the Environmental Protection Agency's (EPA) proposed rule on lead-dust hazard levels in homes and child care facilities. The Center for American Progress (CAP) – an independent, nonpartisan policy institute dedicated to improving the lives of all Americans – is committed to optimizing policies and practices to support the health and wellbeing of our children and communities. The feedback that follows has been developed in service of that mission.

This proposed rule mirrors many of CAP's priorities around mitigating young children's exposure to environmental toxins, and we celebrate the significantly lowered dust-lead hazard standards and dust-lead clearance levels in this rule as part of broader efforts to reduce early childhood exposure to lead, as well as the recognition that there is no safe level of lead exposure for young children. Proactive health standards are critical to protect vulnerable young children, paired with clear guidance and support for implementation of those standards. We also hope to bring attention to the need for:

1. Clear education, information, and support for property owners of child-occupied facilities on implementation of new regulations on lead dust;
2. Explicitly centering racial justice by prioritizing and supporting communities most heavily affected by lead and environmental toxin exposure;
3. Proactive testing as a basis for initiating abatement, rather than relying on children's elevated blood lead levels (BLL) or lead exposure symptoms as a trigger for lead testing;
4. Dedicated funding to support child care providers and owners of child care facilities who must otherwise bear the heavy burden of costs related to lead dust abatement;
5. Expanded funding for lab testing capabilities and a phased-in approach to implementation to support more concerted efforts to clear homes and child care facilities of detectable lead levels.

The early years represent a period of significant and rapid brain and biological development, during which young children are particularly vulnerable to environmental toxins that can have lasting, irreversible consequences for their health and wellbeing. Instituting these new guidelines and incorporating the above recommendations can help set more children on a trajectory for healthy and prosperous adulthoods.

Background

For decades, researchers have urged public health and elected officials to reduce lead and other environmental toxin exposure, noting that any amount of lead can have significant and lasting impacts on children’s development and wellbeing.¹ Lead dust that is prevalent in homes and child care facilities where children eat, play, crawl, and sleep is of particular concern because children may be exposed through multiple routes, including by ingestion, dermal absorption, and inhalation.² Yet lead is also widespread in the environment, especially after decades of use in manufacturing, gasoline, and infrastructure materials, and many children are exposed to lead from multiple simultaneous sources, including from drinking water, food, and their environments. Unfortunately, teeth and bones store lead, where it accumulates over time and can cause significant and irreparable harm to early childhood health and development.³ Long-term impacts may include delays in cognitive development, as well as later learning challenges, reduced test scores,⁴ and diminished IQ.⁵

CAP commends the EPA’s recognition that any detectable lead exposure is dangerous for early childhood health and development. However, effectively reducing early childhood exposure to lead dust and addressing racial and economic disparities in exposure requires a focus on implementation. In the sections below, we highlight several recommendations for the EPA to consider relating to publication and implementation of the final rule:

I. CAP encourages the EPA to require the distribution of clear education and information on both the risks of lead exposure and implications of this proposed rule for property owners of child-occupied facilities.

Comprehensive outreach programs to help educate and connect property and small business owners with critical resources is essential to ensuring general awareness, take-up, accurate reporting about cases and abatements, and the safety and security of those businesses. While awareness about the harms of lead exposure has become more widespread in recent decades, property owners of child occupied facilities need clear, concise information on the risks of early childhood lead exposure and suggested actions for

¹ Dr. Howard Markel, “How a Doctor Discovered U.S. Walls Were Poisonous, PBS NewsHour, March 29, 2023, available at <https://www.pbs.org/newshour/health/how-a-doctor-discovered-us-walls-were-poisonous>

² Muwaffak Al Osman, Fei Yang, and Isaac Yaw Massey, “Exposure Routes and Health Effects of Heavy Metals on Children,” *BioMetals*, 32 (2019): 563-573, available at <https://link.springer.com/article/10.1007/s10534-019-00193-5>

³ World Health Organization, “Lead poisoning,” August 31, 2022, available at <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health>.

⁴ B.P. Lanphear and others, “Cognitive Deficits Associated with Blood Lead Concentrations <10 microg/dL in U.S. Children and Adolescents,” *Public Health Reports*, 115 (6) (2000): 521-529, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1308622/>

⁵ Andrew T. Marshall and others, “Association of Lead-Exposure Risk and Family Income with Childhood Brain Outcomes,” *Nature Medicine*, 26 (1) (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6980739/>

remediation to ensure they understand the dangers of lead and what steps can be taken to reduce exposure. Educational materials should be written at a sixth grade reading level and be available in multiple languages.⁶ Federal plain language guidelines may help ensure brevity and clarity.⁷ The EPA should also conduct targeted outreach to communities and populations where lead exposure risks may be particularly high. Property owners, contractors, and risk assessors also need clear information on the implications of this rule for reporting requirements, and the steps and processes which trigger abatement. If any funding sources exist to help cover the costs associated with testing and abatement activities, or other support for cleanup and removal of lead dust (e.g., as part of EPA’s Emergency Response efforts, particularly when state or local response and funding have been exhausted) that information should also be clearly communicated.

Concerns around the financial impact of similar measures, or misconceptions about whether a given facility is subject to a requirement, has led to, for example, underreporting for a Georgia state water testing program to help mitigate lead contamination in drinking water.⁸ Of more than 2,200 Georgia public schools, only 91 signed up for the program; of the approximately 4,600 center- and home-based child care facilities, only 118 signed up for the program. Many providers, in this case, incorrectly believed that they were not required to participate in the program because their facilities were newer construction or because their water provider conducted safety tests. Though lead dust poses a different threat than leaded service lines, promoting clear and accessible guidance is crucial to ensuring that property owners are aware of the risks of lead exposure for young children, the steps they must take should an abatement be necessary, and providing the resources they need to remain in operation while testing and cleaning measures are taken is critical to ensuring accurate reporting and that the facilities undergo the necessary cleaning.

As part of clarifying the rule, the EPA should also consider changing the terms “dust lead hazard level” and “dust lead clearance level” to *disclosure level* and *action level*, respectively. *Disclosure level* in place of the DLHL would align language with terminology used for other toxins, and would clarify that even after a clearance level is met, lead dust may remain. Property owners and occupants of child-occupied facilities with some detectable level of lead should be clearly informed that any level of lead exposure can be harmful to avoid misconceptions that, following an abatement, no health hazards remain. Updating this terminology may also alleviate some of the concerns expressed by lead assessors who fear changes in insurance coverage or even potential backlash from businesses or homeowners if they “clear” a home or facility that may still contain some detectable level of the toxin. The term *disclosure level* retains a degree of neutrality that does not convey whether there is or is not a hazard, but instead provides a baseline for residents to disclose that there is detectable lead in the home. *Action level* in place of “clearance level” would likewise provide consistency with the broader public health community and clarify that the term refers to the level at which action is triggered, not the level at which exposure is deemed “safe.”

⁶ Adam E. M. Eltorai and others, “Readability of Patient Education Materials on the American Association for Surgery of Trauma Website,” *Archives of Trauma Research* (3) (2014): e18161, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4139691/>.

⁷ Plainlanguage.gov, “Federal plain language guidelines,” available at <https://www.plainlanguage.gov/guidelines/> (last accessed September 2023).

⁸ Ross Williams, “Vast Majority of GA Day Care Centers, Public Schools Skip State Program to Test for Lead in Water,” *News From the States*, July 25, 2023, available at <https://www.newsfromthestates.com/article/vast-majority-ga-day-care-centers-public-schools-skip-state-program-test-lead-water>

II. CAP encourages the EPA to more explicitly center racial and economic equity in its efforts to reduce lead exposure during early childhood by prioritizing the protection of communities most affected by multiple forms of lead exposure.

While the proposed rule acknowledges that exposure to lead dust is an environmental justice issue, more explicit attention is needed on lead exposure as a critical issue with direct racial and socioeconomic inequities and specific actions to address these inequities, especially given the cumulative effects of environmental lead exposure from multiple sources. While public health and policy decisions over the past several years have proven to be effective at reducing population-level early childhood exposure to heavy metals, these efforts have failed to reduce racial and socioeconomic disparities.⁹ Mitigating disparities and environmental equity concerns related to lead exposure requires a targeted focus on and commitment to supporting communities most impacted, as well as clear and comprehensive data tracking early childhood and community-level lead exposure.

Although the Healthy People 2020 objectives for reducing blood lead levels (BLLs) in children have been met for the overall population, significant disparities remain by race/ethnicity and income – non-Hispanic Black children, children living in low-income households, and children who are immigrants or refugees are more likely to live in areas with high risk of lead exposure.¹⁰ Research demonstrates that exposure to lead and other environmental toxins is concentrated disproportionately among lower-income communities, who often occupy older infrastructure and may live in fenceline zones that are closer to hazardous facilities, which also contribute to toxic exposure during a critical developmental period in life.¹¹ Children of color – specifically Black and Hispanic children¹² – are also disproportionately exposed to lead, in part due to the legacy of redlining, racial residential segregation, and barriers to accessing safe and affordable housing.¹³ Exposure to lead and similar toxins in childhood, even in small concentrations, affects cognitive development and can have irreparable effects on cortical volume and surface area, as well as later learning challenges, reduced test scores – such as math, reading, nonverbal reasoning, even measures of short-term memory¹⁴ – and diminished IQ.¹⁵ Persistent disparities that place low-income children at a particularly high risk of lead exposure thus present significant concerns for disparities in long-term health, education, and economic stability.

⁹ The Centers for Disease Control and Prevention, “Healthy People Objectives,” available at <https://www.cdc.gov/nceh/lead/data/healthy-people-objectives.htm> (last accessed September 2023).

¹⁰ Ibid.

¹¹ Aneesh Patnaik and others, “Racial Disparities and Climate Change,” PSCI Princeton, August 15, 2020, available at <https://psci.princeton.edu/tips/2020/8/15/racial-disparities-and-climate-change>

¹² Michelle Tong, Samantha Artiga, and Robin Rudowitz, “Mitigating Childhood Lead Exposure and Disparities: Medicaid and Other Federal Initiatives,” May 20, 2022, available at <https://www.kff.org/racial-equity-and-health-policy/issue-brief/mitigating-childhood-lead-exposure-and-disparities-medicaid-and-other-federal-initiatives/>.

¹³ Environmental Protection Agency, “Biden-Harris Administration Proposes to Strengthen Lead Paint Standards to Protect Against Childhood Lead Exposure,” Press Release, July 12, 2023, available at <https://www.epa.gov/newsreleases/biden-harris-administration-proposes-strengthen-lead-paint-standards-protect-against>

¹⁴ B.P. Lanphear and others, “Cognitive Deficits Associated with Blood Lead Concentrations <10 microg/dL in U.S. Children and Adolescents,” *Public Health Reports*, 115 (6) (2000): 521-529, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1308622/>

¹⁵ Andrew T. Marshall and others, “Association of Lead-Exposure Risk and Family Income with Childhood Brain Outcomes,” *Nature Medicine*, 26 (1) (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6980739/>

The proposed rule discusses research that finds that children living in communities with environmental justice concerns have significantly higher BLLs than other children, but it does not specifically seek to address these disparities in any way and holds that attempts to reduce population-level exposure to lead dust will reduce exposure for disproportionately affected communities.

As part of the Biden administration’s historic commitment and investments to advance environmental justice and its whole-of-government approach to reducing lead exposure through drinking water and lead paint, the EPA should ensure that disadvantaged communities are receiving the benefits of investments to reduce lead exposure. President Biden’s historic Executive Order (EO) on Revitalizing our Nation’s Commitment to Environmental Justice for All declared that, “Restoring and protecting a healthy environment — wherever people live, play, work, learn, grow, and worship — is a matter of justice and a fundamental duty that the Federal Government must uphold on behalf of all people.” The EO directs agencies to identify opportunities through regulations and other measures to advance environmental justice. Consistent with the president’s order, the EPA should collect data to evaluate how the rule addresses the disproportionate impact of lead exposure and how it can advance protection for the most affected communities. It should invest resources in developing targeted, multilingual outreach about the rule to marginalized and underserved communities and tools to support child care providers in these most affected communities in their remediation efforts, including education on the cumulative risk of exposure through lead dust, water, food, and the environment. This may also include helping child care providers find alternative facilities to use temporarily while an abatement takes place. Additionally, the EPA should ensure that lead testing and abatement resources reach the most affected communities, aligning investments in support of Justice40 Initiative goals to direct 40% of the investment benefits to disadvantaged communities, address environmental injustices, and strengthen public health.

III. CAP urges the EPA to more proactively protect children from the harms of lead exposure by requiring testing and removal of lead dust from child-occupied facilities, especially in buildings built prior to 1978 which are more likely to contain lead-based paint.

Despite long-term impacts of lead exposure, short-term symptoms may be difficult to recognize – if symptoms occur at all – and indicate that harmful lead exposure has already occurred.¹⁶ The most reliable way to test for lead exposure or poisoning is through a blood test that reveals elevated blood lead levels (BLL), but not all children are regularly tested for BLL. Children enrolled in Medicaid are required to be tested for lead exposure in toddlerhood: at 12 and 24 months, or between 24-72 months if they have no record of having been previously tested.¹⁷ Some pediatricians may test more regularly if they provide care in regions that are more likely to experience toxic lead exposure, or in states that have developed more rigorous screening guidelines, but there are otherwise no requirements for regular testing.¹⁸ As a result, many families may not know that they are suffering toxic exposure until children begin to express symptoms, which may also be mistaken for other conditions, such as an upset stomach or the flu.¹⁹

¹⁶ KidsHealth, “Lead Poisoning,” available at <https://kidshealth.org/en/parents/lead-poisoning.html>.

¹⁷ Centers for Disease Control and Prevention, “Testing Children for Lead Poisoning,” available at <https://www.cdc.gov/nceh/lead/prevention/testing-children-for-lead-poisoning.htm> (last accessed August 2023)

¹⁸ U.S. Preventive Services Task Force, “Screening for Elevated Blood LEad Levels in Children and Pregnant Women,” *JAMA* 321 (15) (2019): 1502-1509, available at <https://jamanetwork.com/journals/jama/fullarticle/2730621>

¹⁹ Agency for Toxic Substances and Disease Registry, “Clinical Assessment – Signs and Symptoms,” available at https://www.atsdr.cdc.gov/csem/leadtoxicity/signs_and_symptoms.html (last accessed August 2023)

The proposed rule will not proactively protect vulnerable children from lead exposure, which is a serious oversight and missed opportunity with harmful long-term consequences for children, families and communities. It does not compel specific actions or trigger any abatement measures under the Lead-Based Paint (LBP) Activities Rule to address identified hazards, although they may be triggered in cases subject to the Lead-Safe Housing Rule (LSHR) where a dust wipe test has been necessitated, or in cases that a child shows elevated BLL or lead exposure symptoms.²⁰ Thus, if a dwelling or business does not fall under a procedural rule that would necessitate a dust wipe test to comply with the LSHR, no abatement action would be taken until a child showed symptoms of lead poisoning.

With years of established available evidence regarding the impact of lead exposure on child health, it is all the more critical, particularly at a time when the nation faces a shortage of lead poisoning antidotes,²¹ that public health measures aiming to reduce exposure do so in a preventive, rather than remediative, way. In order to more proactively protect children and communities from the risks of lead exposure, we recommend the EPA begin phasing in more universal testing of homes and properties built prior to 1978 to identify facilities and communities where lead exposure is of significant concern. More widespread, mandatory testing (as opposed to optional testing where the costs fall on property owners) may help to initiate lead remediation efforts before children develop lead exposure symptoms while also serving as a data collection measure that can be used to help calculate funding needs to address abatement of identified facilities.

IV. CAP emphasizes the need for dedicated funding to support lead abatement activities mandated by this rule in order to mitigate the economic impact of the rule on home and business owners, particularly those most affected in low-income communities who may not be able to afford the cost of abatement.

While this proposed rule includes important new protections for child health, the EPA should pay special attention to child care providers and take actions to help ease economic burdens that may result from this rule. The rule is estimated to result in annual costs of \$536 million to \$784 million, with landlords, owners, and operators of child-occupied facilities expected to bear those costs. Across the United States, the child care supply is made up of mostly small businesses,²² and in many cases providers operate services for a small number of children in their own homes. Even before the pandemic, a typical child care business in the United States operated with approximately a 1 percent profit margin,²³ and many were failing to make a profit, largely due to the gap that exists between what most families are able to pay and the true cost of providing high-quality care. In many cases, particularly among the home-based child care sector, providers went into personal debt at the start of the COVID-19 pandemic in order to pay their staff

²⁰ Environmental Protection Agency, “Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels,” Proposed Rule, August 1, 2023, available at <https://www.federalregister.gov/d/2023-15073/p-35>

²¹ Paige Twenter, “U.S. Supply of Dimercaprol Sinks,” Becker’s Hospital Review, July 12, 2023, available at <https://www.beckershospitalreview.com/pharmacy/us-supply-of-dimercaprol-sinks.html>

²² Heather Boushey and others, “Care Businesses: A Model That Doesn’t Work for Providers, Workers, or Families,” The White House, April 8, 2022, available at <https://www.whitehouse.gov/cea/written-materials/2022/04/08/care-businesses-a-model-that-doesnt-work-for-providers-workers-or-families/>

²³ U.S. Department of the Treasury, “The Economics of Child Care Supply In the United States” (Department of the Treasury, September 2021), available at <https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf>

or meet operating costs. Without funding to support stricter proposed limits on lead dust levels, many child care providers will struggle or be unable to afford the costs associated with lead testing and abatement.

The EPA estimates that 39,000 small businesses will be directly affected if the proposed rule goes into effect, of which 87 to 91 percent will have cost impacts less than 1 percent of revenues. However, according to the EPA's Economic Impact Analysis, this calculation is based on revenue estimations from 2004 (inflated to 2021 dollars) specific to religiously affiliated Virginia daycare centers, and may not represent the current landscape of child care providers across the country. It also appears that the cost estimation does not take into account the loss of revenue child care providers may incur from closing their doors during abatement activities, a cost which will disproportionately fall on providers serving lower income communities, given older infrastructure.²⁴ Even temporary closure of child care facilities will also impact families who rely on child care arrangements and have few if any alternative options.

We urge the EPA to consider that this cost assessment may be an underestimate of the true costs (monetary and otherwise) that will fall on child care providers. Additionally, even if abatement costs only make up a small percentage of revenue (e.g., less than 3 percent of revenue), providers operating on slim or no profit margin may still struggle to cover these expenses. Although there are programs and resources that can provide financial assistance for lead remediation, they do not adequately address the challenges facing child care providers and are difficult to navigate. Additional economic support to cover these costs will be necessary for ensuring the effectiveness of the EPA's efforts to reduce early childhood exposure to lead dust, whether from EPA or local/state government funds. The EPA should consider working with Congress to propose funding for this effort through its budget proposal process, ensure that information about financial support options is clearly communicated to property owners of child-occupied facilities, and consider including these resources on an online platform alongside education on lead toxicity and remediation steps.

V. CAP encourages dedicated funding for comprehensive testing at lower detectable levels.

The significantly lowered DLCL included in this proposed rule is a step toward reducing early childhood exposure to lead, but without greater lab sensitivity to test wipe samples for low levels of lead dust, this rule will be unable to meet its mandate. We recommend that the EPA consider creating priorities within grant competitions to support labs in more quickly increasing their reliability to test lead dust samples at low levels. Especially if the EPA's long-term goal is to reduce lead dust exposure to close to zero, it will be necessary to ensure laboratories can test at low levels. The EPA may also consider requiring larger surface areas to be wiped for lead dust testing to more accurately test for low levels, as has been previously suggested by Tom Neltner, chemicals policy director for Environmental Defense Fund.²⁵ The EPA has proposed an alternative phased approach which would at first establish a DLCL of 5µg/ft² for floors, 40µg/ft² for window sills, and 100µg/ft² for window troughs, then decreasing to the final DLCL values of 3µg/ft², 20µg/ft², and 25µg/ft² levels within a set period of time (e.g., three years). CAP agrees

²⁴ Marissa Hauptman and others, "Neighborhood disparities and the burden of lead poisoning," *Pediatric Research*, 94 (2023), available at <https://pubmed.ncbi.nlm.nih.gov/36899126/>.

²⁵ Janet Pelley, "New US limit on lead dust not what the doctor ordered," July 1, 2020, available at <https://cen.acs.org/policy/chemical-regulation/New-US-limit-lead-dust/98/i26>.

that a phased approach would increase feasibility of the final rule and allow FAAS laboratories to adapt to the lower testing levels. An additional consideration for establishing more feasible testing levels is that of background contamination, particularly in low-income areas where elevated dust lead levels are likely to be more prevalent. Residents are also more likely than people in higher-income areas to be exposed to lead contamination through other routes that may also appear on screening measures, such as through the soil in or around the home, or through drinking water.

VI. Conclusion

CAP commends the EPA for its proposed rule on lead-dust hazard levels in homes and child care facilities as a critical step in protecting young children from toxic exposure to lead and improving public health. We reiterate the need to ensure that the rule can be feasibly implemented, and recommend simplification and clear education about the rule, prioritization of environmental justice, proactive testing for prevention in addition to lead mitigation, and dedicated funding to support detection and abatement.

If you have any questions about the aforementioned research, analysis, or recommendations, please reach out to Jill Rosenthal, director of public health, at jrosenthal@americanprogress.org, Hailey Gibbs, early childhood policy senior policy analyst, at hgibbs@americanprogress.org, or Madeline Shepherd, director of government affairs, at mshepherd@americanprogress.org.

Sincerely,

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