August 16, 2018

via Federal eRulemaking Portal
John Yowell
National Program Chemicals Division
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Ave. NW
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Re: Comments on Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint, Proposed Rule (July 2, 2018), EPA-HQ-OPPT-2018-0166

Dear Mr. Yowell,

The 73 undersigned individuals and organizations appreciate the opportunity to comment on EPA's above-referenced proposal to revise the lead-based paint hazard standards under the Toxic Substances Control Act ("TSCA"). As the agency knows, lead is a potent neurotoxin that has no known safe level of human exposure and is especially damaging to children. The lead crisis in this country is widespread, and children in communities of color and low-income communities are exposed disproportionately more than other children. EPA's action in this docket to address one of the most common causes of childhood lead exposure in this country is therefore long awaited and much needed. We believe that while the proposal takes an important step toward lowering the current dust-lead hazard standards, it does not go far enough to prevent childhood lead exposure from lead-based paint hazards. We offer our comments below.

Comments

1. EPA Should Simultaneously Revise Clearance Levels for Lead in Household Dust

Although EPA proposes to revise the dust-lead hazard standards, it does not propose to revise the clearance standard for dust-lead—a significant flaw that must be addressed in the final rule. Clearance levels are defined by EPA as "values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity."[1] Currently, EPA's regulations establish clearance levels that are the same as the dust-lead hazard standards: 40 μg/ft^2 for floors, 250 μg/ft^2 for interior window sills, and 400 μg/ft2 for window troughs.[2]

If EPA revises the dust-lead hazard standards without simultaneously revising the clearance levels to at least meet the dust-lead hazard standards, that means risk assessors may find that a home contains a dust-lead hazard—that is, dust containing more lead than the proposed 10 μg/ft^2 on floors and 100 μg/ft^2 on window sills—but abatement of that hazard need

[1] 40 C.F.R. § 745.223.
[2] *See id.* § 745.227(e)(8)(viii); *see* Lead; Identification of Dangerous Levels of Lead, 63 Fed. Reg. 30,302, 30,341 (June 3, 1998).

only lower the lead in dust in that home to 40 μg/ft^2 on floors and 250 μg/ft^2 on window sills. This result makes no sense. It also does little to protect the occupants in that home from levels of lead in dust above the dust-lead hazard standards, which are, by definition, adverse to human health.[3]

We therefore urge EPA to revise the dust-lead clearance levels in this rulemaking to reflect the revised dust-lead hazard standards. To the extent that EPA relies entirely on the 2015 Lead Hazard Control Clearance Survey prepared by the Department of Housing and Urban Development ("HUD") as the basis for assessing the technical achievability of its proposed dust-lead hazard standards,[4] EPA already knows that clearance to the level of the revised dust-lead hazard standards is achievable using existing practices. Therefore, no additional research would be necessary to promulgate clearance standards that mirror the proposed dust-lead hazard standards.

2. EPA Should Revise the Definition of Lead-Based Paint

In the proposed rule, EPA chooses not to revise the definition of lead-based paint because it claims it "lacks sufficient information to conclude that the current definition requires revision or to support any specific proposed change to the definition of [lead-based paint]."[5] We disagree. EPA claims that it cannot revise the definition of lead-based paint at this time because it lacks sufficient information "to establish a statistically valid causal relationship between concentrations of lead in paint (lower than the current definition) and dust-lead loadings which cause lead exposure."[6] This claim contradicts a regulatory scheme that recognizes the hazards of lead-based paint itself, separate and apart from any association between lead-based paint and floor dust.

Under TSCA, the term "lead-based paint hazards" refers to hazard standards for three media: dust lead, soil lead, and lead-based paint.[7] The hazard standards for lead-based paint, referred to as "paint-lead hazard," identifies as hazardous essentially any "deteriorated lead-based paint in any residential building or child-occupied facility."[8] In other words, the agency "has generally designated any amount of deteriorated [lead-based] paint as a lead-based paint lead hazard."[9] This regulatory framework, together with the fact that the Consumer Product Safety Commission ("CPSC") banned, in 1978, paint containing nearly ten times *less* lead than

[3] *See* 15 U.S.C. §§ 2681(10), (11).
[4] *See* Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint, 83 Fed. Reg., 30,889, 30,895 (July 2, 2018).
[5] *Id.* at 30,897.
[6] *Id.*
[7] Lead; Identification of Dangerous Levels of Lead, 66 Fed. Reg. 1206 (Jan. 5, 2001); *see also* 40 C.F.R. § 745.63.
[8] 40 C.F.R. § 745.65(a); *see also id.* § 745.227(h) (same).
[9] 66 Fed. Reg. at 1208.

what EPA considers lead-based paint due to its hazards to human health, calls for EPA to revise its definition of lead-based paint without further ado.[10]

Specifically, the definition should be lowered from the current levels—paint containing "lead equal to or in excess of . . . 0.5 percent by weight"[11]—at least to paint containing lead in excess of 0.06%, the level banned by CPSC as hazardous in 1978. EPA should also consider whether the definition could be lowered even further, to paint containing lead in excess of 0.009%, the level banned by CPSC as of 2009.[12]

3. The Proposed Dust-Lead Hazard Standards Are Too High to Adequately Protect Children's Health

EPA proposes to lower the dust-lead hazard standards from 40 μg/ft^2 and 250 μg/ft^2 to 10 μg/ft^2 and 100 μg/ft^2 on floors and window sills, respectively. Although EPA's lowering of these standards is long overdue and must be completed promptly, in fact, current science and data suggest that lower standards of 5 μg/ft^2 on floors and 40μg/ft^2 on window sills are necessary to protect children's health and are feasible.

When EPA established the current dust-lead hazard standards in 2001, it did so on the basis of the agency's estimate that those standards would result in a *one to five percent probability* of a child developing a blood lead level of 10 μg/dL, the level of concern set by the Centers for Disease Control and Prevention ("CDC") at that time.[13] In a 2009 study published by researchers with the National Center for Healthy Housing and HUD, data collected by CDC shows that at the proposed dust-lead hazard standard of 10 μg/ft^2, there is a *23.8 percent probability* that children will have blood lead levels greater than CDC's current reference level of 5 μg/dL.[14] This is much too high a risk for our children to face.

Slightly more reasonably, at a dust-lead hazard standard of 5 μg/ft^2 for floors, children in pre-1978 housing would have a 14.4% probability of acquiring a blood lead level of 5 μg/dL.[15] New, soon-to-be-published research shows that a dust-lead hazard standard of 5 μg/ft^2 for floors

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[10] Moreover, EPA's contentions about the lack of information on the issue of technological feasibility is belied by information provided by other commenters in the record. *See* Comments of A Community Voice, California Communities Against Toxics, Healthy Homes Collaborative, New Jersey Citizen Action, New York City Coalition to End Lead Poisoning, Sierra Club, United Parents Against Lead National, and WE ACT for Environmental Justice on Proposed Rule, EPA-HQ-OPPT-2018-0166 (Aug. 16, 2018) ("Petitioners' Comments").

[11] 40 C.F.R. §§ 745.103, 745.223.

[12] *See* 16 C.F.R. § 1303.1(a).

[13] 66 Fed. Reg. at 1215.

[14] Sherry L. Dixon et al., *Exposure of U.S. Children to Residential Dust Lead, 1999-2004: II. The Contribution of Lead-Contaminated Dust to Children's Blood Lead Levels*, 117 Envt'l Health Perspectives 468, 473 Tbl. 6 (2009), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661919/pdf/ehp-117-468.pdf.

[15] *Id.*

is entirely achievable, as is a dust lead hazard of 40 μg/ft^2 for window sills.[16] This result is supported by the HUD Lead Hazard Control Clearance Survey on which EPA substantially relies, which suggests that a dust lead hazard standard of 5 μg/ft^2 for floors is achievable 72 percent of the time, and a dust lead hazard standard of 40 μg/ft^2 for windows is achievable 87 percent of the time—all using the most common, least intensive, currently-employed methods for lead hazard control.[17]

4. EPA Must Also Revise the Soil-Lead Hazard Standards

Just like the dust-lead hazard standards, the current soil-lead hazard standards of "400 parts per million (μg/g) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard,"[18] were set in 2001 and are outdated.[19] Information provided by other commenters in the record demonstrate that these standards are outdated.[20] In light of EPA's own recognition that "[i]ngestion of lead-contaminated *soil* and dust is a major contributor to [blood lead levels] in children,"[21] we urge the agency also to revise the soil-lead hazard standards in this rulemaking.

5. EPA Should Update the Definition of Elevated Blood Lead Level ("EBL")

EPA should revise its definition of EBL under the TSCA regulations to reflect current science. Specifically, the agency should define EBL to mirror CDC's reference blood lead level.

Elevated blood lead level is defined by EPA as "concentration of lead in whole blood of 20 μg/dl (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 μg/dl in two consecutive tests taken 3 to 4 months apart."[22] This definition is wildly out of sync with current scientific understanding. In 2012, CDC established 5 μg/dL as the reference level that should trigger a public health response—a figure that it is committed to re-assessing every

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[16] *See* Braun JM, Hornung R, Chen A, et al., *A Randomized Controlled Trial to Reduce Childhood Lead Exposure and Lead-Associated Neurobehavioral Deficits*, JAMA Pediatrics (2018) (in press) (attached to the Comments of Bruce Lanphear, M.D., M.P.H. on Proposed Rule, EPA-HQ-OPPT-2018-0166 (Aug. 16, 2018)).
[17] *See* HUD, Office of Lead Hazard Control Clearance and Healthy Homes, *Lead Hazard Control Clearance Survey Final Report* v (Oct. 2015), https://www.hud.gov/sites/documents/CLEARANCESURVEY_24OCT15.PDF.
[18] 40 C.F.R. § 745.65.
[19] 66 Fed. Reg. at 1206.
[20] *See* Petitioners' Comments.
[21] 83 Fed. Reg. at 30,891 (emphasis added).
[22] 40 C.F.R. § 745.223.

four years.[23] HUD has accordingly amended its Lead Safe Housing Rule to lower its standard for identifying children with elevated blood lead levels to "the most recent guidance published by the U.S. Department of Health and Human Services (HHS) on recommending that an environmental intervention be conducted"—in other words, CDC's reference level.[24] EPA should similarly amend its definition of EBL to reflect CDC's most recent reference blood lead level for purposes of the lead regulations under TSCA.

6. EPA Should Establish a Six-Month Implementation Period

EPA is proposing to allow States, territories, and tribes up to two years to implement EPA's new standards, but offers no support for providing such an extended implementation period.[25] In light of the unreasonable delay that has already occurred in revising the current dust lead hazard standards and the pressing urgency to protect children living in this country's pre-1978 homes, we urge EPA to adopt a six-month implementation period instead.

7. EPA Should Amend Its Regulations Defining Target Housing to Make Them Consistent With Recently Amended Statutory Language

In 2017, Congress amended the definition of target housing under TSCA to include 0-bedroom dwellings in which a child under six lives.[26] EPA's regulations under TSCA have not since been updated to reflect the statute's new inclusion of 0-bedroom dwellings inhabited by children, and still defines "target housing" more narrowly to exclude all 0-bedroom dwellings.[27] EPA should address this inconsistency in this rulemaking by revising the regulatory definitions to match the recently amended statutory language.

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[23] CDC, *What Do Parents Need to Know to Protect Their Children?*, https://www.cdc.gov/nceh/lead/acclpp/blood_lead_levels.htm (last updated May. 17, 2017) (last visited Aug. 16, 2018). Following suit, the American Academy of Pediatrics has adopted 5 μg/dL as its current reference value for case management. American Academy of Pediatrics, *Council on Environmental Health. Prevention of Childhood Lead Toxicity*, 138 (1) Pediatrics (July 2016), http://pediatrics.aappublications.org/content/pediatrics/early/2016/06/16/peds.2016-1493.full.pdf.

[24] 24 C.F.R. § 35.110; *see also* 83 Fed. Reg. at 30,892.

[25] 83 Fed. Reg. at 30,899.

[26] See Pub. L. No. 115-31, Div. K, Title II, § 237(c), 131 Stat. 789 (May 5, 2017) (amending 15 U.S.C. § 2681 to read "'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)").

[27] *See* 40 C.F.R. § 745.103 (defining target housing as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0–bedroom dwelling"); *see also id.* § 745.223 (same).

Conclusion

EPA has called lead poisoning the number one health threat in the U.S. for children ages 6 and younger.[28] With this rulemaking, the agency has an opportunity to address this threat meaningfully by establishing clearance levels to match lower dust lead-hazard standards of 5 $\mu g/ft^2$ on floors and 40 $\mu g/ft^2$ on window sills; revising the definition of lead-based paint, the soil-lead hazard standards, and the definition of elevated blood lead level to accurately reflect the current state of science; and adopting a six-month implementation period.

Thank you for considering these comments,

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[28] Press Release, EPA, *EPA Lead Poisoning Prevention Week is Oct. 25-31 – Learn How to Protect Your Home and Family* (Oct. 23, 2015), https://archive.epa.gov/epa/newsreleases/epa-lead-poisoning-prevention-week-oct-25-31-learn-how-protect-your-home-and-family.html.

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