

441 G St. N.W.
Washington, DC 20548

B-332922

February 11, 2021

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Review of Dust-Lead Post Abatement Clearance Levels*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA) entitled “Review of Dust-Lead Post Abatement Clearance Levels” (RIN: 2070-AK50). We received the rule on January 26, 2021. It was published in the *Federal Register* as a final rule on January 7, 2021. 86 Fed. Reg. 983. The effective date of the final rule is March 8, 2021.

According to EPA, the final rule revises the dust-lead clearance levels based on an action plan released by the President’s Task Force on Environmental Health Risks and Safety to Children. Specifically, the final rule revises the dust-lead clearance levels for floors and window sills. EPA states that clearance levels indicate the amount of lead in dust on a surface following the completion of an abatement activity. EPA further states that surface dust is collected via dust wipe samples that are sent to a laboratory for analysis to determine whether clearance has been achieved. According to EPA, the post-abatement dust-lead levels must be below the clearance levels, which are the standards used to evaluate the effectiveness of post-abatement cleanings. EPA states that if the levels are not below the clearance levels, the components (for example, floors, window sills, etc.) represented by the failed sample(s) shall be recleaned and retested.

Enclosed is our assessment of EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Lanelle Wiggins
Regulatory Management Division
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
“REVIEW OF DUST-LEAD POST ABATEMENT CLEARANCE LEVELS”
(RIN: 2020-AK50)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) conducted an economic analysis of this final rule. The economic analysis is focused on a subset of the target housing (for example, most pre-1978 housing) and child-occupied facilities where abatement activities are subject to this rule. EPA contacted states with authorized lead programs and found that several have already revised or are in the process of revising their regulations to adopt clearance levels on floors and window sills. As a result, EPA has narrowed the range of estimated benefits and costs in the economic analysis of the final rule by including abatements in these jurisdictions in the baseline.

EPA estimates that 57 percent to 61 percent of the abatements otherwise affected by the clearance levels in this rule will take place in these jurisdictions. For the subset of adverse health effects where these effects were quantified, the estimated annualized benefits are \$13 million to \$202 million per year using a 3 percent discount rate, and \$3 million to \$44 million per year using a 7 percent discount rate, with the range representing the uncertainties about the blood lead levels at which an environmental investigation will be triggered and about the relationship between changes in blood lead levels and IQ. There are additional unquantified benefits due to other avoided adverse health or behavioral effects in children, including attention-related behavioral problems, greater incidence of problem behaviors, decreased cognitive performance, reduced post-natal growth, delayed puberty, decreased hearing, and decreased kidney function.

This rule is estimated to result in costs of \$2 million to \$14 million per year using either a 3 percent or a 7 percent discount rate. In the events affected by this rule, incremental costs are incurred for specialized cleaning used to reduce dust-lead loadings to below the clearance levels and for retesting lead levels. In some instances, floors will also be sealed, overlaid, or replaced, or window sills will be sealed or repainted.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

EPA certified that the final rule will not have a significant economic impact on a substantial number of small entities. EPA determined that this rule may impact an estimated 1,240 to 10,215 small abatement firms. In order to estimate the potential impacts of the rule, EPA assumed that an environmental investigation occurs whenever a child's blood lead level is found to equal or exceed a federal or state trigger value, that the environmental investigation always includes dust wipe testing of the child's home, and that a clean-up occurs whenever the environmental investigation indicates that dust-lead loadings exceed a

hazard standard. Additionally, EPA assumed that in all cases where a dust-lead hazard is identified, the property owner performs at least one baseline abatement activity. EPA stated that these assumptions may result in an overestimation of the number of abatements affected, and thus the number of small abatement firms with significant impacts.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

EPA determined that this final rule will not have an effect on state, local, or tribal government, in the aggregate, or on the private sector, of \$100 million (\$156 million adjusted for inflation) or more.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On June 24, 2020, EPA published the proposed rule. 85 Fed. Reg. 37810. EPA received 28 comments from private citizens, state/local governments (including state health departments), potentially affected lead-based paint businesses, nongovernmental organizations, environmental and public health advocacy groups and an individual from an academic institution. EPA responded to major relevant comments in this final rule. According to EPA, several commenters, including individuals and non-governmental organizations, supported EPA revisions on clearance levels. Some commenters expressed concern over lower dust-lead clearance levels and that contractors may not be able to meet lower clearance requirements without additional work in some cases, which may make it difficult to attract qualified contractors.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

EPA determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to sections 2605, 2607, 2681-92 of title 15, and section 4852d of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined that this final rule is economically significant under the Order and submitted it to the Office of Management and Budget for review.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule does not have federalism implications and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.