

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1113 (Delegate Rosenberg)
 Environment and Transportation

Environment - Dust-Lead Hazard Standards and Dust-Lead Clearance Levels - Adoption

This bill requires the Maryland Department of the Environment (MDE), within 60 days after a regulation adopted by the U.S. Environmental Protection Agency (EPA) that imposes stricter federal dust-lead standards takes effect, to adopt regulations to make the State dust-lead standards consistent with the federal standards, including the State dust-lead standards used for the following purposes: (1) abatement and clearance inspections for abatement projects; (2) satisfying the risk reduction standards; and (3) identifying dust-lead hazards during an environmental investigation. **The bill takes effect June 1, 2024.**

Fiscal Summary

State Effect: No effect in FY 2024. General fund expenditures increase by \$192,300 in FY 2025, based on the assumptions discussed below. Future years reflect annualization, inflation, and ongoing costs. Revenues are not materially affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	192,300	323,400	335,800	348,600	361,900
Net Effect	(\$192,300)	(\$323,400)	(\$335,800)	(\$348,600)	(\$361,900)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Federal Toxic Substances Control Act

The federal Toxic Substances Control Act requires the Administrator of the EPA, in cooperation with other appropriate federal departments and agencies, to conduct a comprehensive program to promote safe, effective, and affordable monitoring, detection, and abatement of lead-based paint and other lead exposure hazards. The Administrator must maintain protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint films, soil, and dust.

Federal and State Dust-lead Standards

With respect to dust-lead hazard standards, EPA has regulatory authority over the following: (1) the owners of most pre-1978 housing that is covered by a federal housing assistance program, as specified; (2) certified inspectors, risk assessors, supervisors, and individuals involved in abatement work that conduct lead-based paint activities; and (3) individuals leading or providing training programs that offer lead-based paint activities courses, renovator courses, or dust sampling technician courses.

EPA's dust-lead hazard standards, except for the owners of pre-1978 housing as specified above, do not compel property owners or occupants to evaluate their property for lead-based paint hazards or take specified actions. EPA's dust-lead hazard standards do apply if a person undertakes or performs a lead-based paint activity such as an abatement.

Under EPA's current dust-lead hazard standards, dust-lead concentrations must be less than 10 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) for floors and $100 \mu\text{g}/\text{ft}^2$ for window sills. However, on August 1, 2023, EPA proposed a rule to lower the dust-lead hazard standards from $10 \mu\text{g}/\text{ft}^2$ for floors and $100 \mu\text{g}/\text{ft}^2$ for window sills to any reportable level as analyzed by an approved laboratory.

Maryland's dust-lead standards are aligned with EPA's existing standards, under which dust-lead concentrations must be less than $10 \mu\text{g}/\text{ft}^2$ for floors and $100 \mu\text{g}/\text{ft}^2$ for window sills.

Maryland's Lead Poisoning Prevention Program

Overview: Chapter 114 of 1994 established the Lead Poisoning Prevention Program within MDE. The program serves as the coordinating agency of statewide efforts to eliminate childhood lead poisoning. Under Title 6, Subtitle 8 of the Environment Article (Reduction

of Lead Risk in Housing), MDE assures compliance with mandatory requirements for lead risk reduction in rental units built before 1978; maintains a statewide listing of registered and inspected units; and provides blood lead surveillance through a registry of test results of all children tested in Maryland. The Lead Poisoning Prevention Program also oversees case management follow-up by local health departments for children with elevated blood lead (EBL) levels; certifies and enforces performance standards for inspectors and contractors working in lead hazard reduction; and performs environmental investigations for lead poisoned children. Finally, the program provides oversight for community education to parents, tenants, rental property owners, homeowners, and health care providers to enhance their role in lead poisoning prevention.

Registration of Affected Properties: Owners of “affected properties” in the State are required to register the properties with MDE, as specified. An “affected property” means (1) a property constructed before 1950 that contains at least one rental dwelling unit; (2) on and after January 1, 2015, a property constructed before 1978 that contains at least one rental unit; or (3) any residential rental property for which the owner elects to comply with the Reduction of Lead Risk in Housing subtitle. “Affected property” includes an individual rental dwelling unit within a multifamily rental dwelling. “Affected property” does not include (1) affected property owned or operated by a unit of federal, State, or local government, or any public, quasi-public, or municipal corporation, if the affected property is subject to lead standards that are equal to, or more stringent than, the risk reduction standard established in Title 6, Subtitle 8 of the Environment Article or (2) affected property which is certified to be lead-free, in accordance with specified conditions.

Risk Reduction Standard: The owner of an affected property must satisfy the risk reduction standard at the initial and each subsequent change of occupancy by passing the test for lead-contaminated dust. At each change in occupancy, an owner of affected property must have the property inspected to verify that the risk reduction standard has been satisfied. An accredited lead paint visual inspector or lead paint risk assessor must conduct the inspection and issue a certificate, either passing or failing, for every inspection performed. When conducting an inspection, if the lead inspection contractor identifies chipping, flaking, or peeling paint, a failing certificate must be issued to the owner unless the property has passed a reinspection within 30 calendar days of the initial inspection. If no chipping, flaking, or peeling paint is identified during the visual review, the lead inspection contractor must select dust sample locations which best characterize the potential for lead exposure within a dwelling unit and collect dust samples from the dwelling unit, as specified. If laboratory analysis shows that the dust samples meet MDE’s dust-lead standards, then the lead inspection contractor may issue a certificate of satisfactory lead dust inspection to the property owner.

Abatement Clearance Inspections: Following completion of a lead abatement project, a lead paint visual inspector, inspector technician, or risk assessor accredited by MDE must

perform a clearance inspection for lead-contaminated dust to determine if the lead content in dust is less than 10 µg/ft² for floors and 100 µg/ft² for window sills and window wells. The lead inspection contractor must collect dust samples from each interior room where lead abatement was performed, using specified dust sample collection procedures. At least one sample must be taken from the floor, a window sill, and a window well, respectively. Rooms containing no window in the abatement area require the collection of only a floor sample.

Environmental Investigations: Chapter 341 of 2019 required MDE to adopt regulations for conducting environmental investigations to determine lead hazards for (1) children younger than age six with EBL greater than or equal to the reference level and (2) pregnant women with EBLs greater than or equal to the reference level. The regulations must (1) be consistent or more stringent than the U.S. Department of Housing and Urban Development's *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* and (2) require an environmental investigation to be completed after receipt by MDE or a county board of health of the results of a blood lead test for children younger than age six or pregnant women with EBLs greater than or equal to the reference level.

The implementing regulations went into effect in July 2020 and are codified under COMAR 26.16.08. The regulations establish standards for environmental investigations performed by an MDE-accredited lead paint risk assessor to identify one or more lead hazards for a child or pregnant woman diagnosed with EBL. Among other things, the regulations (1) establish protocols for MDE and local health departments to schedule an environmental investigation; (2) establish protocols and technical standards for environmental investigations; and (3) set requirements for environmental investigation reports.

Lead Poisoning Screening Program

The Maryland Department of Health has statutory authority to designate an area as an “at-risk” area for lead exposure through regulation. In October 2015, the State released the Maryland Targeting Plan for Areas at Risk for Childhood Lead Poisoning (the 2015 targeting plan). The 2015 targeting plan and accompanying proposed regulations called for blood lead testing at 12 months and 24 months of age throughout the State. Previously, only children living in certain at-risk zip codes or who were enrolled in Medicaid were targeted for testing. As a result, since March 28, 2016, any geographic area within the State is considered an “at-risk” area for lead exposure. Under current regulations, all children born on or after January 1, 2015, must be tested for lead poisoning. Children born prior to January 1, 2015, must be tested for lead poisoning if they reside in an at-risk area, as designated by the 2004 Targeting Plan for Areas at Risk for Childhood Lead Poisoning.

Typically, lead poisoning is tested using a blood test. Under Maryland regulations (COMAR 10.11.04.04), effective March 28, 2016, a primary care provider for a child who resides or who is known to have previously resided in an at-risk area must administer a blood test for lead poisoning during the 12-month visit and again during the 24-month visit.

A primary care provider for a child who is between the age of 24 months old and age 6 who resides or who is known to have previously resided in an at-risk area must administer a blood test for lead poisoning if (1) the child has not previously received a lead poisoning blood test; (2) the child's parent or guardian fails to provide documentation that the child has previously received a blood test for lead poisoning; or (3) the provider is unable to obtain the results of a previous blood lead analysis.

State Expenditures: Although EPA has thus far only *proposed* a rule to lower its existing dust-lead hazard standards, this analysis assumes that EPA adopts the proposed rule as a *final rule* and that it takes effect by November 1, 2024. This analysis further assumes that MDE adopts regulations to make the State's dust-lead standards consistent with the federal standards by January 1, 2025. If EPA does not adopt the proposed rule as a final rule, there is no increase in general fund expenditures for MDE. To the extent that EPA adopts the final rule but it takes effect later than November 1, 2024, the increase in general fund expenditures estimated below decreases accordingly.

MDE advises that it needs additional staff to comply with the bill. Specifically, MDE advises that it needs two environmental compliance specialists to conduct inspections, one administrator to collect, track, and ship dust-lead samples to laboratories for testing, and one contractual administrative specialist to provide general program support.

MDE also advises that its testing costs for dust-lead samples increase as a result of the bill. This is because of an anticipated increase in the volume of dust-lead samples tested, as well as increase in the per unit costs of testing dust-lead samples. According to MDE, more sophisticated techniques and equipment are required to conduct testing of dust-lead samples at the lower dust-lead clearance levels proposed by EPA. MDE estimates that testing and shipping costs for dust-lead samples increase by 50% as a result of the bill.

Therefore, general fund expenditures increase by \$192,286 in fiscal 2025, which reflects a January 1, 2025 implementation date. This estimate reflects the cost of hiring three regular employees (two environmental compliance specialists and one administrator) and one contractual administrative specialist to handle the increase in workload resulting from the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including contractual services (for testing).

Positions (Regular)	3.0
Position (Contractual)	1.0
Salaries and Fringe Benefits (Regular)	\$118,590
Salary and Fringe Benefits (Contractual)	23,752
Contractual Services (Testing)	22,000
Other Operating Expenses	<u>27,944</u>
Total FY 2025 State Expenditures	\$192,286

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

General funds are assumed to be needed, as special funds in the Lead Poisoning Prevention Fund are not anticipated to be sufficient to cover the costs resulting from the bill. To the extent any special funds are available, the need for general funds decreases.

Small Business Effect: A subset of small business property owners that are subject to dust-lead testing, whose properties would have previously passed inspection, may fail inspection due to the more stringent dust-lead hazard standards that MDE imposes under the bill (assuming EPA adopts its proposed rule as a final rule). To the extent this occurs, those property owners incur abatement costs to bring their properties into compliance with MDE’s dust-lead standards. Small businesses involved in lead-based paint activities, including abatement work, may benefit from an increase in the demand for their services as a result of the bill.

Additional Comments: The Department of Legislative Services notes that departmental legislation (House Bill 245) has been introduced to increase registration fees that are paid into the Lead Poisoning Prevention Fund.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Maryland Department of Health; U.S. Environmental Protection Agency; Department of Legislative Services

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