



Institute for  
**Policy Integrity**

NEW YORK UNIVERSITY SCHOOL OF LAW

August 24, 2020

**VIA ELECTRONIC SUBMISSION**

**Environmental Protection Agency**

**Attn:** Claire Brisse, National Program Chemicals Division, Office of Pollution Prevention and Toxics

**Re:** Review of Dust-Lead Post-Abatement Clearance Levels, 85 Fed. Reg. 37,810 (proposed June 24, 2020)

**Docket ID:** EPA-HQ-OPPT-2020-0063

The Institute for Policy Integrity (“Policy Integrity”) at New York University School of Law<sup>1</sup> respectfully submits the following comments to the Environmental Protection Agency (“EPA”) regarding its proposed revisions to dust-lead post-abatement clearance levels (“Proposed Rule”).<sup>2</sup> Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decision-making through advocacy and scholarship in the fields of administrative law, economics, and public policy.

Policy Integrity writes to emphasize that the economic analysis supporting the Proposed Rule is concededly inaccurate and that EPA cannot reasonably proceed to finalization without first releasing a corrected analysis for public comment.

In a note at the top of its economic analysis, EPA reveals that “an important modification was made to assumptions late in the process.”<sup>3</sup> The agency claims that the cost and benefit estimates in the document’s executive summary were updated to reflect the changed assumptions but that, in order “to meet the schedule for EPA’s development of the rule, EPA was unable to modify and recalculate all estimates throughout this economic analysis.”<sup>4</sup> In other words, EPA disclaims the accuracy of 244 of the 267 pages of economic analysis it has prepared for the Proposed Rule. Furthermore, the agency does not explain which of the assumptions underlying its original estimates were modified and why.

By disavowing the bulk of its economic analysis and failing to explain how it reached the cost-benefit estimates in the short section on which it *does* rely, EPA violates the Administrative Procedure Act, which requires “the agency to make available to the public, in a form that allows

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<sup>1</sup> This document does not purport to present New York University School of Law’s views, if any.

<sup>2</sup> EPA, Review of Dust-Lead Post-Abatement Clearance Levels, 85 Fed. Reg. 37,810 (proposed June 24, 2020).

<sup>3</sup> EPA, ECONOMIC ANALYSIS OF THE PROPOSED RULE TO REVISE THE TSCA DUST-LEAD POST-ABATEMENT CLEARANCE LEVELS at ES-1 (June 2020).

<sup>4</sup> *Id.*

for meaningful comment, the data the agency used to develop the proposed rule.”<sup>5</sup> Commenters cannot see “an accurate picture of the reasoning that has led the agency to the [P]roposed [R]ule”<sup>6</sup> if EPA does not even disclose, much less “examine,” the “key assumptions” underlying its conclusions regarding the policy’s expected impacts.<sup>7</sup>

Accordingly, before finalizing the Proposed Rule in any form, EPA must release an updated economic analysis and provide an additional comment period sufficient “to allow for useful criticism” from the public.<sup>8</sup>

Respectfully,

Jack Lienke  
*Regulatory Policy Director*

Institute for Policy Integrity at NYU School of Law  
jack.lienke@nyu.edu

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<sup>5</sup> *Engine Mfrs. Ass’n v. EPA*, 20 F.3d 1177, 1181 (D.C. Cir. 1994).

<sup>6</sup> *Connecticut Light & Power Co. v. Nuclear Regulatory Comm’n*, 673 F.2d 525, 530 (D.C. Cir. 1982).

<sup>7</sup> *Clean Wisconsin v. EPA*, 964 F.3d 1145, 1172 (D.C. Cir. 2020) (quoting *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, 923 (D.C. Cir. 1998)) (internal quotation marks omitted).

<sup>8</sup> *Connecticut Light & Power Co.*, 673 F.2d at 530.