# Lead Laws and Regulations in New York City

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. Preface - A Toxic Legacy

The poisonous qualities of lead ingested by humans has long been known. Dioscerides, in the 2nd Cent. B.C., said that "Lead makes the mind give way." Ben Franklin in 1763 noted symptoms among printers who worked with lead type. Mathieu Orfila, considered a founder of the science of toxicology, wrote in 1817 that “If we were to judge of the interest excited by any medical subject by the number of writings to which it has given birth, we could not but regard the poisoning by lead as the most important to be known of all those that have been treated of, up to the present time.” Charles Dickens, in The Uncommercial Traveler (1861) described widespread poisoning from local lead mill on the Isle of Dogs.

The potential for toxic exposure of children to lead from paint was recognized by the late 19th century. Indeed, an article published in a medical journal by an Australian doctor in 1897 (Turner) diagnosed lead poisoning in children, followed by a series of reports by another Australian, H. Lockhart Gibson, beginning with A Plea for Painted Railings and Painted Walls of Rooms as the Source of Lead Poisoning Among Queensland Children. 23 Australian Medical Gazette 149-53 (1904). In 1914, Drs. Kenneth Blackfan and Henry Thomas at Johns Hopkins Hospital in Baltimore diagnosed a case of a child who died from lead poisoning after chewing the lead paint on his crib railing. Thomas, Blackfan, Recurrent Meningitis, Due to Lead, in a Child of Five Years, 8 Am. J. of Diseases of Children 377 (Nov. 1, 1914). By 1914, a Paint Manufacturers' Assoc. paper noted that tons of corroded white lead... applied to the walls and ceilings of school rooms and hospitals. Gradual disintegration of such paint would result in formation of dried...
particles of white lead dust. The presence of such dust in the atmosphere of a room is very dangerous to the health of the inmates.

Despite this knowledge, the lead industry in the United States did little, if anything, to discourage the use of lead paint on interior walls and woodwork. To the contrary, beginning in the 1920s, the Lead Industries Association and its members conducted an intensive campaign to promote the use of paint containing white lead, even targeting children in their advertising – including promoting its use on children’s furniture and toys. Instead, lead paint was promoted as healthy product. National Lead claimed lead paint was healthy in hospitals, and recommended painting nurseries with lead paint (“Dutch Boy Painter,” May 1923) and in schools (id., 1924). (“Dutch Boy” brand was named after an industrial process for preparing lead known as the “Dutch” process.) National Lead even created coloring books for children as a way to induce product loyalty.

During the first decades of the 20th century, many other countries banned or restricted the use of lead paint for interior painting. But in the United States, the lead industry continued not only to aggressively market lead paint for many decades of the 20th century, but to prevent its regulation, including efforts by the New York City Department of Health in the early 1950s to put warning labels on lead paint identifying it as “poisonous.” It was not until the 1950s that the industry, under increasing pressure, adopted a voluntary standard limiting the amount of lead in interior paints.1 While a few jurisdiction, such as Baltimore (1954),

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1. An excellent article on this subject is Markowitz, Rosner, Cater to the Children, 90 American Journal of Public Health (1) January 2000, available at www.nmic.org/nyccelp/documents/Cater-to-the-Children.PDF. The authors, Dr. David Rosner of Columbia School of Public Health and Dr. Gerald Markowitz of the CUNY Graduate Center, were retained by the City of New York to go through materials obtained by the City in its lawsuit against the lead industry, and from these material published a book, Deceit and Denial, University of California Press (2002), compiling the results of (continued...)
Warning labels only began to appear in 2003

New York City (1960), and New York State (1970) began to ban the use of lead paint in the interiors of homes, lead paint continued to be marketed in most of the United States right up until the Consumer Product Safety Commission banned it in 1978. Indeed, even as the federal ban approached, a memo from one paint company executive to his sales force urged:

I want you to begin the continual program with each of your dealers of making sure their stock is rotated with the older material being sold first. This is a very important project due to the lead regulations. At the present time we are cleaning up our material of heavy metals and putting this into our stock items. When the lead regulation is finally put into effect those dealers who have old material will not be able to sell it. The only alternative they will have is to dump it. Let's do our dealers a favor now by rotating their new stock.

Memo from Mautz Paint, quoted in City of Milwaukee v. NL Industriest and Mautz Paint, 278 Wisc.2d 313, 326, 691 N.W.2d 888, 894 (Ct. of Appeals, 2004); pet. for rev. dis'm., 285 Wisc.2d 631, 703 N.W.2d 380 (2005)

Only in 2003 did manufacturers of paints and other coatings sold in New York began to add a warning concerning the presence of lead in old paint that might be released by sanding or scraping.

Thus, lead paint remains pervasive; the vast majority of older painted dwellings contain some lead paint. The legal tools to deal with this toxic legacy in New York City consist of a somewhat bewildering array of federal, state, and local laws of varying efficacy.

These materials will present an overview of the various federal, New York State, and New York City statutes and regulations that apply to the issues of lead paint and childhood lead poisoning in New York City.

1. (...continued)

their historical research on the early knowledge of the hazards of lead in paint within the industry.

I. Context: An Overview of the Childhood Lead Paint Poisoning Issue

A. The Environmental Toxicity of Lead

Lead is “a highly toxic metal which, when introduced into the human body, produces a wide range of adverse health effects, especially with regard to children.” Williamsburg Around the Bridge Block Ass'n (“WABBA”) v. Giuliani, 223 A.D.2d 64, 66 (1st Dep’t 1996). Lead-induced injuries include “nervous system disorders, delays in neurological and physical development, cognitive and behavioral changes, and hypertension, [and other brain damage,] most of which are irreversible.” WABBA v. Giuliani, 167 Misc. 2d 980, 984 (S. Ct. N.Y. Co. 1995), aff’d, 223 A.D.2d 64.

1. The Role of Lead Paint


The problem stems primarily from peeling or chalking lead paint on aging or damaged structures. U.S. Dep't of Health and Human Services, Centers for Disease Control (“CDC”), Preventing Lead Poisoning in Young Children (1991) (herein “CDC 1991 Statement”) at 18. The paint particles either fall off from natural deterioration or are removed when the structure is repaired.

The New York Court of Appeals has declared that “the dangers of exposure to lead-based paint, especially to young children, are well documented and pose a serious public health problem,” NYCCELP v. Vallone, 100 N.Y.2d 337, 342 (2003), and that “[c]hildhood lead paint poisoning may be the most significant environmental disease in New York City.” Juarez v. Wavecrest Management, 88 N.Y.2d 828, 641 (1996) (citation omitted); see also United States Department of Health & Human Services, Centers for Disease Control and Prevention (CDC), Strategic Plan for the Elimination of Childhood Lead Poisoning (Feb. 1991) (herein “Strategic Plan”) at xi (“the most common and societally devastating environmental disease of young children”).

The courts have repeatedly and consistently held that lead paint causes irreparable and lifelong harm to children. NYCCELP v. Vallone, 100 N.Y.2d at 342-3; NYCCELP I, 138 Misc. 2d


4. Published in 138 Pediatrics (1) (July 2016).
Because lead poisoning is the most common, preventable and devastating environmental disease among children, even at very low exposure levels, the consensus among the public health community and federal officials is to focus efforts on primary prevention, rather than awaiting the poisoning of a child before performing environmental remediation. E.g., CDC, Advisory Committee on Childhood Lead Poisoning, Preventing Lead Exposure in Young Children - A Housing-Based Approach to Primary Prevention of Lead Poisoning, October 2004 (urging primary prevention); CDC 1991 Statement, at 7-12; CDC, Preventing Lead Poisoning in Young Children, (August 2005) (herein “CDC 2005 Statement”) at 3; CDC, Strategic Plan; Chisolm, The Road to Primary Prevention of Lead Toxicity in Children, 107 Pediatrics (3) 581-83 (March 2001); Lanphear, Cognitive Deficits Associated with Blood Lead Concentrations < 10 i g/dL in US Children and Adolescents, 115 Public Health Reports 521-29 (Nov-Dec. 2000); Rogan, The Effect of Chelation Therapy with Succimer on Neuropsychological Development in Children Exposed to Lead, 344 New England Journal of Medicine (19) 1421-26 (May 10, 2001); Landrigan, Schechter, Lipton, Fad, and Schwartz, Environmental Pollutants and Disease in American Children: Estimates of Morbidity, Mortality, and Costs for Lead Poisoning, Asthma, Cancer, and Developmental Disabilities, 110 Environmental Health Perspectives

5. Dr. Chisolm noted that the studies now show “a greatly increased risk of long lasting, if not permanent, cognitive and neurobehavioral deficits” id. at 581, in children with low blood lead levels, while there are essentially no medical treatments for such poisonings:

90 to 95% of lead is sequestered in bone [and] we have no chelating agents that remove any significant amount of lead from bone.... bone can be a source of lead in blood for years.

Id. Dr. Chisolm concluded:

When one considers the number of children treated with chelation therapy during the past 50 years and all of the associated cost, proper environmental control would have had a much longer lasting benefit to our population.

Id. at 583.

6. The authors of that study found that medical treatments for children with lead levels below 45 i g/dL “did not improve the cognitive, behavioral, or neuropsychological outcomes” and concluded:

Since lead poisoning and its sequelae are entirely preventable, our inability to demonstrate effective treatment lends further impetus to efforts to protect children from exposure to lead in the first place.

Id. at 1426.
2. **The Role of Lead Dust**

Experts now consider lead dust to be “the primary exposure pathway of childhood lead poisoning.” 

NYCCELP v. Vallone, 100 N.Y.2d at 343. Lead dust is invisible to the naked eye and highly toxic even in very small quantities. Indeed, in 1999 the U.S. Department of Housing and Urban Development (“HUD”) lowered its safety standards to only 40 micrograms (millionths’ of a gram) per square foot of floor area (\(\text{ug/ft}^2\)), 64 F.R. 50140, 50181 (1999), an amount less than half the mass of a single particle of coffee sweetener.

Lead dust can be inhaled or swallowed when present on contaminated surfaces, such as children’s toys, hands, and food, and is generated not only from peeling or chalking lead paint on aging or damaged structures, but also from normal abrasion of intact painted surfaces, such as window and door frames. CDC 1991 Statement at 18.

Lead paint on impact surfaces such as baseboards and door frames generates lead dust via regular wear and tear. Lead-based paint on accessible surfaces such as window sills poses a great risk to toddlers who explore the world through “mouthing.” Lead paint on surfaces breaks down over time and also generates lead dust. Even intact lead-based paint can generate lead dust through regular wear and tear. Because of lead’s toxicity, unsafe paint repairs can generate dangerous levels of lead dust and create extremely hazardous conditions. Thus, even when covered by several subsequent coats of lead-free paint, lead paint transforms from a potential hazard to an actual hazard when the paint begins to deteriorate, the surface it rests on becomes unsound, or it is broken, abraded, scraped or sanded.

3. **The Health Effects in Children**

By impairing the development of a child’s central nervous system, lead poisoning can cause learning disabilities, mental retardation, decreased intelligence, limited attention span, impaired growth, hearing loss and behavior problems, lowering learning ability and academic performance.  

The diverse and often severe injuries to young children from lead ingestion are generally irreparable, and indeed, current science has now found that even very low blood lead levels, “as low as one” have been linked to adverse health effects. 

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7. Sargent, Dalton, Demidenko, Simon, Klien, *The Association Between State Housing Policy and Lead Poisoning in Children*, 89 Am. J. Pub. Health (11) 1690-1695 (1999), demonstrated the profound difference in public health outcomes as a result of strict controls such as those imposed by Massachusetts. The study compared similar counties in Massachusetts and Rhode Island, with similar housing stock, populations, etc., and found that the incidence of blood lead levels greater than 20 \(\text{ug/dL}\) was over three times higher among residents in Rhode Island than in the Massachusetts. Id. at 1692 (Table 1). Moreover, the incidence of levels over 30 \(\text{ug/dL}\) was four times higher. The difference was largely attributed to the strict requirements of lead abatement in Massachusetts.

as two micrograms per deciliter (“μg/dL”) \(^9\) in children under seven years old lowers IQ, stunts growth and causes behavioral problems.” WABBA, 223 A.D.2d at 66; see also Lanphear, Cognitive Deficits Associated with Blood Lead Concentrations < 10 \(μg/dL\) in US Children and Adolescents, 115 Public Health Reports 521-29 (Nov.-Dec. 2000) (finding a one point decrement in reading scores for every 1 \(μg/dL\) increase in blood lead level above 1.0 \(μg/dL\)); Lanphear, Subclinical Lead Toxicity in U.S. Children and Adolescents, 47 Pediatric Research (4) 152A (2000); NYCCEL v. Vallone, 100 at 342-43 (“Even low levels of blood lead have been linked to diminished intelligence, decreased stature or growth and loss of hearing acuity”); CDC 2005 Statement (noting “data demonstrating that no ‘safe’ threshold for blood lead levels in young children has been identified”). \(^10\)

Children are at risk of lead poisoning, particularly from birth until at least age seven, because of several key reasons. First, in their early developmental stages children’s brains and nervous systems are particularly vulnerable to lead-induced injuries, especially as lead more easily crosses the blood/brain barrier. Secondly, children’s normal hand-to-mouth activity causes frequent ingestion of lead particles, and their environment -- particularly for infants crawling on floors -- puts them at higher risk to lead dust exposure. Lastly, young children tend to absorb and retain lead at a higher rate than do older children and adults. \(^11\) Environmental factors cause older children to be at risk as well, and children continue to be at risk through the age of seven and beyond. Ingestion of lead particles by pregnant women also causes damage to the developing fetus, because lead can cross the placental

\(^9\) Blood lead levels (“BLL”) are discussed infra at page 19.

\(^10\) Available at www.cdc.gov/nceh/lead/Publications/PrevLeadPoisoning.pdf. See also Jusko, Blood Lead Concentrations < 10 \(μg/dL\) and Child Intelligence at 6 Years of Age, 116 Env. Health Perspectives (2) 243 (Feb. 2008); Braun, Exposures to Environmental Toxicants and Attention Deficit Hyperactivity Disorder in U.S. Children, 114 Env. Health Perspectives (12) 1904 (Dec. 2006)

\(^11\) However, there are long term impacts on older children and adults as well. See, e.g., Lanphear et al, Low-level Lead Exposure and Mortality in US Adults: a Population-based Cohort Study, 3 The Lancet: Public Health (4) e177 (April 2018) (data on 14,000 adults found that an increase from 1 to 6.7 \(μg/dL\) in blood leads was significantly associated with an increase in mortality of 37% for all-causes, 70% for cardiovascular, and 108% for ischemic heart disease); Kosnett, Recommendations for Medical Management of Adult Lead Exposure, 115 Env. Health Perspectives (3) 463 (2007) (summarizing body of literature on potential for hypertension, effects on renal function, cognitive dysfunction, and adverse female reproductive outcome in adults with blood lead levels < 40 \(μg/dL\)); Weuve, Cumulative Exposure to Lead in Relation to Cognitive Function in Older Women, 117 Env. Health Perspectives 574(2009) (cumulative exposure to lead, even at low levels experienced in community settings, may have adverse consequences for women’s cognition in older age); Lustberg, Silbergeld, Blood Lead Levels and Mortality, 162 Ach. Intern. Med. 2443-2449 (Nov. 2002) (individuals with elevated blood lead levels experienced significantly increased circulatory and cardiovascular mortality, and lead exposure may increase susceptibility to cancer); Schwartz, Stewart, Bolla, Simon, Bandeen-Roche, Gordon, Links, Todd, Past Adult Lead Exposure Is Associated with Longitudinal Decline in Cognitive Function, 55 Neurology 1144-50 (2000).
Research has shown that lead’s damage to children’s mental and physical development is irreversible and permanent:

[T]he data do not indicate that lead-induced cognitive defects are reversible. Primary prevention and preventing additional increases in blood lead levels among children whose blood lead levels are high remain the only effective means of dealing with lead poisoning.


B. The Scope of the Lead Paint Poisoning Problem

1. The Incidence of Childhood Lead Poisoning

The “numbers of New York City children with elevated blood lead levels remain alarmingly high,” NYCCELP v. Vallone, 100 N.Y.2d at 343. In 2003, the City of New York asserted that childhood lead poisoning remains a significant public health problem in New York City, despite the reduction in the rate and severity of lead poisoning cases. Over the last five years, more than 35,000 NYC children have been newly identified as having elevated blood lead levels.”

Application of the City of New York for a Grant under the Lead Hazard Reduction Demonstration Grant Program, July 2003 (herein “NYC Grant Application”) at 22. While these numbers have declined since then, the problem is still significant: Although NY City law sought to end lead poisoning by 2010, from 2010 through 2016, some 52,692 with blood lead levels of 5 \( \mu \)g/dL or greater, and of those 6,713 children were newly identified with blood lead levels of 10 \( \mu \)g/dL or greater. NYC Department of Health and Mental Hygiene (“DHMH”), Report to the NYC Council on

12. Moreover, lead is eventually absorbed into the bones, and studies indicate that the accumulated stored lead from a mother’s earlier exposures (even from childhood) can become demineralized into the blood and passed on to her child either during pregnancy (as blood lead readily crosses the placenta) or via breast feeding. Rothenberg, Khan, Manalo, Jiang, Cuellar, Reyes, Acosta, Jauregui, Diaz, Sanchez, Todd, Johnson, Maternal Bone Lead Contribution to Blood Lead During and after Pregnancy, 82 Environmental Research (1) 81-90 (Jan. 2000); Goyer, Transplacental Transport of Lead, 89 Environmental Health Perspectives 101-105 (Nov. 1990); Tellez-Rojo, Hernandez-Avila, Gonzalez-Cossio, Romieu, Aro, Palazuelos, Schwartz and Hu, Impact of Breastfeeding on the Mobilization of Lead from Bone, 155 American Journal of Epidemiology (5) 420-428 (2002). Lead exposure during the third trimester of pregnancy, even at levels below 10 \( \mu \)g/dL, has been associated with IQ declines in children. Schnaas, et al., Reduced Intellectual Development in Children with Prenatal Lead Exposure, 114 Env. Health Perspectives (5) 791 (May 2006) (available at http://ehp.niehs.nih.gov/members/2005/8552/8552.pdf), see also Goyer, Results of Lead Research: Prenatal Exposure and Neurological Consequences, 104 Env. Health Perspectives (10) 1050 (Oct 1996); Bump, Prenatal and Early childhood Blood Lead Levels and Cardiovascular Functioning in 9/12 year old Children, 27 Neurotoxicology and Teratology 655-665 (2005); Emory, Maternal blood lead effects on infant intelligence at age 7 months, 188 Am. J. Obstet. Gynecol. (4) S26 (2003); Leasure, Low-Level Human Equivalent Gestational Lead Exposure Produces Sex-Specific Motor and Coordination Abnormalities and Late-Onset Obesity in Year-Old Mice, 116 Env. Health Perspectives (3) 355 (March 2008).

Moreover, only 51% of New York City children are screened as required by state law, so the actual number is undoubtedly much higher. Id. at 6.

Likewise, in the rest of New York State lead poisoning is a major problem. The New York State Department of Health data indicates that from 2011 through 2015 some 49,889 children under age 18 living outside of New York City were identified with blood lead levels of 5 i g/dL or greater, and of those 10,290 children were with blood lead levels of 10 i g/dL or greater. NYSDoH LeadWeb (as of April 2016). Again, given the non-compliance with mandated screening, the number of children under six who actually had elevated blood levels was undoubtedly much higher. Id. In 2014, statewide New York had the dubious distinction among all 50 states of having the highest number of newly identified cases of children under age 5 with blood lead levels of 10 i g/dL or greater. Raymond, et al., Childhood Blood Lead Levels in Children Aged < 5 years – United States, 2009-2014, in CDC, Morbidity and Mortality Weekly Report (herein “MMWR”) (Jan. 20, 2017) at 1-10.

The children who are lead poisoned appear to be overwhelmingly found among minority populations. U.S. Public Health Service, Agency for Toxic Substances and Disease Registry (ATSDR), The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress (1988). More recent CDC data indicated that the rate of young children with blood leads of 5 i g/dL or above among black non-Latino children was 5.6%, more than twice the 2.4% rate for white non-Latino children. CDC, “Blood Lead Levels in Children Aged 1–5 Years — United States, 1999–2010” in MMWR (April 5, 2013) at 245:248. In 2006, at least 89% of New York City children with higher blood lead levels were known to be African-American, Latino, or Asian, and only 9% were known to be Caucasian. DHMH, Preventing Lead Poisoning in New York City. Annual Report 2006 at 6 (2001).


2. The Prevalence of Lead Paint in Housing

For much of the 20th century lead paint was used on both exterior and interior surfaces in the United States. The use of lead paint in housing interiors and schools was not banned in New York City until 1960 (Health Code § 173.13(c)). The rest of New York State did not follow suit until 1970 (PHL § 1372), and the federal government didn’t ban it until 1977 (16 CFR Part 1303). Thus, lead paint remains pervasive; the vast majority of older painted structures contain some lead paint. See CDC 1991 Statement, at 18; 16 C.F.R. pt. 1303. Congress estimated that some 3,000,000 tons of lead in paint remains in pre-1980 US housing stock. 42 USC 4851(3). According to HUD, “an estimated 29 million homes have some interior lead-based paint, of which 39 percent have dust lead levels above [federal standards].” HUD, National Survey of Lead and Allergens in Housing, Final Report, Volume I: Analysis of Lead Hazards, Revision 6.0 (April 18, 2001) at ES-3 (herein “HUD National Survey”). The National Academy of Sciences National Research Council, in Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations (1993) at 113, estimated that nationally, 99% of pre-1940 buildings (and 85% of pre-1960 buildings) have at least some lead paint.

The figures have particular relevance to New York. According to HUD, some 43% of the housing stock in the Northeast has significant lead-based paint hazards. HUD National Survey, at 3-5 (Table 3.1), and the problem of lead paint appears to be particularly acute throughout New York State:

Because the concentration of lead in paint steadily declined before 1978, older homes are more likely to have paint with higher concentrations of lead. The risk for lead exposure associated with this source is greatest in homes built before 1950; in New York, both the number (3,401,416) and proportion (47%) of housing units built before 1950 are greater than any other state.


See also, “Surveillance for Elevated Blood Lead Levels Among Children — United States 1997-2001” in CDC, MMWR, (Sept. 12, 2003) at 10 (chart indicating that New York continues to have — by far — the highest number of pre-1950 housing units); United States Census Bureau, Profile of Selected Housing Characteristics: 2000 (indicating that 74% of housing structures in New York were constructed before New York’s 1970 ban on lead paint, 60% were built before 1960, and 31% were built before pre-1940).

According to the New York State Division of Housing Conservation and Renewal (“DHCR”),

approximately 6 million (or 88 percent) of the State's housing units were built before 1980 and may, therefore, be contaminated with lead-based paint.

... 59 percent of all units built before 1940 are inhabited by households with incomes classified by HUD as “low” or “very low”.... Low and very low income households also occupy 49 percent of all units built between 1940 and 1979.

DHCR, New York State Consolidated Plan: Federal Fiscal Years 1996-1997, at 71-72. Low-income tenants are most likely to fall in this segment because, unfortunately, low-income correlates with deteriorating housing.

The 2000 Census indicated that New York City had some 736,976 rental units of housing built before 1940 -- the highest in the nation -- comprising some 35% of its rental housing stock. NYC Grant Application at 21. In 1998 the City estimated that 78% of New York City's 2,980,762 housing

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17. Available at www.cdc.gov/mmwr/PDF/wk/mm4551.pdf

18. Available at www.cdc.gov/mmwr/PDF/ss/ss5210.pdf

19. Available at factfinder.census.gov

20. By comparison, nationally only 39% of housing stock is pre-1960. HUD National Survey at 2-3 (table 2.1).

21. See also N.Y.S. Department of Health, Protecting Our Children - The Success of New York's Efforts to Prevent Childhood Lead Poisoning, May, 2000 [herein “N.Y.S. DoH, Protecting Our Children”] (available online at http://www.nmic.org/nyccelp/medical-studies/nysdoh-2000-report.pdf), noting that New York has the highest number of housing units built before 1950 in the nation. Of the 7,226,891 housing units in this state, 63.4% were built prior to 1960 and 46.9% were built prior to 1950. [HUD] has estimated that 75% of pre-1950 housing contains lead paint.

Lead poisoning can reach across all socioeconomic levels, but poor children tend to be at greater risk. More than 627,000 children under the age of six were eligible for Medicaid benefits during 1998. As a result of their economic standing, these children are more likely to live in older, deteriorated housing with lead paint hazards.

Id. at 1 (emphasis added).
units were pre-1960, and that 2,000,000 housing units contained lead paint (of which half were occupied by low or moderate income families). Children under 6 years of age resided in an estimated 323,000 of these units. Low income families occupy an estimated 174,000 of these units—in presumably the most deteriorated housing conditions. As the Court of Appeals has noted:

[lead] paint continues to cover the walls of two out of three City dwellings ... Its widespread use thus renders lead poisoning a continuing threat to the health of young children in New York City, especially those in older and poverty-ridden neighborhoods.

Juarez v. Wavecrest Management, 88 N.Y.2d at 641 (citing NYCCELP I).

3. The Prevalence of Lead Paint in Schools and Day Care Facilities

Although New York City Health Code § 173.13(c) banned the use of lead paint in day care centers and schools in New York City on January 1, 1960, in violation of this law industrial grade lead-based paint continued to be applied in City schools until nearly 1980, according to a report issued by the School Chancellor’s Task Force on Lead Hazard Reduction (August 4, 1993), Report on Lead-Based Paint Policy Recommendations. For this reason, the NYC Board of Education (now Department of Education) generally assumed that all schools constructed before 1980 potentially have some lead-based paint. Id. at 1. Some 628 elementary schools in New York City were built before 1980, id., and as of 1996 approximately half of New York City’s public school buildings were over 65 years old. New York City Public Advocate, Construction vs. Children: The Need to Improve Environmental Safety During Renovation of Schools and Public Housing, April 24, 1996, at 12.

A NYC Board of Education survey in 1994 found 5,114 of 11,574 rooms in its schools had damaged walls and 4,441 had peeling ceilings. Id. at 49 n.128. The U.S. General Accounting Office (“GAO”) found that schools in New York City were far more deteriorated than most schools in other major urban districts in the nation. GAO, School Facilities: Condition of America’s Schools, (GAO/HEHS-95-61) (Feb. 1995). A report by the Moreland Act Commission on New York City Schools (established by the Governor pursuant to Executive Law § 6), Building A New Foundation: The Need for Critical Reform of the Board of Education’s Planning for School Construction, May 2000, concluded that the Board of Education had failed to conduct safety inspections of the schools and has inordinately delayed the repair of hazardous conditions, "potentially jeopardizing the safety

22. NYC Department of Health (“DoH”), "A Non-Competitive Continuation Application for NYC DoH Provision of 1997-1998 State and Community-Based Childhood Lead Poisoning Prevention Program & Surveillance of Blood Levels in Children - #H64/CCH205097-08" (Grant application to CDC) 3/24/97, at 32.

23. NYC HPD and DoH, Request for Grant Assistance Lead-Based Paint Hazard Control (to HUD), July 31, 1997, at 18.

24. Id. at 19.
of ... students.” Id. at 41-42. See also, Matter of Feldman v. City of New York, N.Y.L.J. April 2, 1998, p. 29 col. 5 (S. Ct. N.Y. Co., Friedman, J.) (noting that many school buildings were “in decrepit condition”). These are the buildings most likely to contain lead-based paint and most likely to have conditions that can result in exposing small children to hazardous lead.

Lead hazards in day care facilities have also been a major concern. In a report issued by the New York Public Interest Research Group, Needless Exposure: How the New York City Health Department Fails to Protect New York City Pre-School Children from Lead Hazards (August, 1993), based on Health Department records obtained under the Freedom of Information Law, a review of records of 321 child care centers licensed by New York City disclosed that at least 69 of these 321 child care centers had been found to have lead-based paint. Nine centers had lead-based paint that contained more than 20% lead — 40 times over the regulatory limit. In 2005, New York City Health officials testified at a City Council budget hearing that more than half of the 300 day care centers inspected by the City since New York City’s Local Law 1 of 2004 went into effect on August 2, 2004, were found to have lead paint hazards, and about 7% had more than 100 violations each. Lisa L. Colangelo, City Finds Lead Risk in Day Cares, New York Daily News, March 11, 2005

4. The Social Costs of Lead Poisoning

While there is no doubt that reducing children's exposure to lead costs money, the failure to protect children from lead poisoning is far costlier. Not only do families of lead poisoned children struggle economically because of the cost of providing special needs of the child (not including the pain and suffering), but society as a whole suffers as well.

In the CDC's Strategic Plan, “which calls for a concerted, coordinated societywide effort to eliminate this disease,” CDC 1991 Statement at iii, the CDC’s cost-benefit analysis showed that the costs of not removing lead paint safely from the environment are much higher than of doing so properly. Such costs include, among others, the medical treatment of children and construction workers, special education, and decreases in productivity, competitiveness, and lifetime earnings. Strategic Plan at 10-12, app. II. Studies show that if property owners abated lead hazards so as to reduce blood lead levels in the annual populations of six year olds by 1 l g/dL, the savings in health care, special education, lost IQ points, lost productivity, and lost earning capacity would yield approximately $17.2 billion per year. Schwartz, Societal Benefits of Reducing Lead Exposure, 66 Envtl. Res. 105 (1994); see also Salkever, Updated Estimates of Earnings Benefits from Reduced Exposure of Children to Environmental Lead, 70 Envtl. Res. 1, 4 (1995) (concluding that such reduction in blood lead levels would produce a net present value benefit of $1,950 per child for all children turning 6 years of age each year).

Another study estimated that, on a national basis, the annual costs for lead poisoning are $43.4 billion. Landrigan, et al., Environmental Pollutants and Disease in American Children:
Estimates of Morbidity, Mortality, and costs for Lead Poisoning, Asthma, Cancer, and Developmental Disabilities, 110 Environmental Health Perspectives (7) 721-728 (July 2002). This number was attributed to discounted lifetime expenditures, the direct costs of healthcare, the costs of rehabilitation, and lost productivity which include cognitive deficits (specifically decrements in IQ) and behavioral changes that may effect rates of criminality, drug abuse, and incarceration.

Another study concluded that the economic gains from reducing blood lead levels could range from $110 to $318 billion per year. Grosse, et al., Economic Gains Resulting from the Reduction in Children’s Exposure to Lead in the United States, 110 Environmental Health Perspectives (6) 563-569 (June 2002). According to the report, cognitive ability influences productivity of an individual through a direct effect on earning potential and annual earnings and an indirect influence through years of schooling and employment. Id. Other studies have demonstrated that widespread exposure to lead is likely to have profound implications for a broad spectrum of socially undesirable outcomes. See, e.g., Nevin, How Lead Exposure Relates to Temporal Changes in IQ, Violent Crime, and Unwed Pregnancy, 83 Environmental Research (1) 1-22 (April 1999); Needleman, et al., Bone Lead Levels and Delinquent Behavior, 275 J. Am. Med. Assoc. (5) 363-370 (1996).

The costs arising from lead poisoning can be avoided by preventative policy initiatives and effective intervention of already existing lead poisoning cases. In a study comparing the strict versus limited lead poisoning enforcement programs of two adjoining New England counties, it was found that the county with limited enforcement of lead poisoning prevention in dwellings was ultimately burdened with follow up costs including lead inspection and retesting, medical costs, and special education costs. Brown, Costs and Benefits of Enforcing Housing Policies to Prevent Childhood Lead Poisoning, 22 Medical Decision Making (6) 482-492 (Nov-Dec 2002). Much of the cost is also attributed to recurrent cases. The Brown study found that the societal costs of strict enforcement in a building where a previously lead poisoned child had been identified were $56,639 whereas costs for a building where there was limited enforcement and recurrent lead poisoning cases were approximately $101,999. Given these results, the strict enforcement of policies to remove lead hazards yielded a $45,360 savings in lifetime costs for recurrent cases of lead poisoning within the same building. Thus, reducing continued exposure by bearing a one-time cost of safe, timely, and effective lead abatement decreases the costs of follow up of recurrent cases. Id., at 488.

25. One of the authors of that study, Dr. Philip Landrigan of Mt. Sinai Medical Center, testified to the City Council’s Housing and Buildings Committee that these costs were $1.27 billion dollars “each and every year in New York City.” Transcript, November 14, 2002, at 178, available at www.nmic.org/nyccelp/documents/transcripts/11-14-02.pdf
C. Measuring Lead Poisoning and Lead Paint

1. Screening for Lead Poisoning

Lead poisoning often has no observable symptoms, or at least ones that differentiate it from other common childhood illnesses and conditions. Symptoms can include fatigue, pallor, malaise, loss of appetite, irritability, sleep disturbance, sudden behavioral change, and developmental regression; in more severe cases, symptoms may include clumsiness, ataxia, weakness, abdominal pain, constipation, vomiting, and changes in consciousness (coma) due to early encephalopathy, leading to death. However, there may be no obvious symptoms at all, even though the child is lead poisoned. Thus, it is important that children are tested for lead exposure.

The usual method is by measuring the amount of lead in the blood, expressed micrograms of lead per deciliter of blood ("μg/dL"). A small fingerstick sample from fingertip capillaries is sometimes taken. A test on a larger sample of venous blood, however, is more reliable, as the fingerstick sample may yield a false positive from skin contamination.

One limitation of blood testing is that lead tends to leave the bloodstream after several weeks and is either deposited in other tissues, particularly the bones, or is excreted. Blood tests only reveal exposure in the four to six weeks before the blood sample is drawn. In addition, although -- as will be discussed later -- while lead screening of children at ages one and two is mandatory under New York State law (as well as under Medicaid), only about 1/2 of children in New York City and State are screened as required;26 thus, many children go undetected.

Another measure of blood levels sometimes utilized is the erythrocyte protoporphyrin (EP) test, which, while it may miss lower blood lead levels, can sometimes indicate older exposures and overall body toxicity over time. Also, bone scans can measure the long term total body lead burden.

It is important to note, however, that as the research has improved over time the amount of lead considered dangerous to health has consistently evolved to more stringent levels. Before the 1960s, a level above 60 μg/dL was considered toxic. By 1978, the defined level of toxicity was down to 30 μg/dL. In 1991, the CDC27 reduced the level of concern to 10 μg/dL as “the blood lead level... defined as 'elevated’ and associated with decreased performance on intelligence tests and impaired neurocognitive development and growth.” NYCCELP v. Vallone, 100 N.Y.2d at 343 (citations omitted), and New York State regulations since 1993 have as well defined an elevated blood lead level as 10 μg/dL. 10 N.Y.C.R.R. § 67-1.1(d). By 2012, however, CDC reduced the “reference level” at


27. CDC 1991 Statement at 1.
which CDC recommends public health actions be initiated to 5 \text{ g/dL}. \textsuperscript{28}

There appears to be, however, a consensus that even 5 \text{ g/dL} does not at all indicate the threshold for the onset of this disease, and calls within the academic community for the CDC to lower the definition to even less. \textsuperscript{See, e.g.,} Lanphear, Cognitive Deficits Associated with Blood Lead Concentrations < 10 \text{ g/dL} in US Children and Adolescents, \textit{115 Public Health Reports} 521-27 (Nov.-Dec. 2000); Canfield, et al., Intellectual Impairments in Children with Blood Lead Concentrations below 10 \text{ g/dL} per Deciliter \textit{348 New Eng. J. of Med.} (16) 1517-1526 (April 2003) (reporting IQ decline of 7.4 points with lifetime average blood leads of 10 \text{ g/dL}, and marked impairments below this level); Froehlich et al, The Association of Tobacco and Lead Exposure with Attention-Deficit/Hyperactivity Disorder, \textit{124 Pediatrics.} (6)(2009) (blood lead concentration >1.3 \text{ g/dL} associated with an elevated risk for attention-deficit/hyperactivity disorder (ADHD)); Lidsky, Schneider, Lead Neurotoxicology in Children: Basic Mechanisms at Clinical Correlates, \textit{126 Brain} 5-19 (2003), at 15,16 (reporting “effects of lead occur at concentrations several orders of magnitude lower than” 10 \text{ g/dL} and concluding that the “existing literature indicates that the safe level of lead in the blood has not yet been identified.”); \textsuperscript{see, also,} WABBA v. Giuliani, \textit{223 A.D.2d} at 66 (levels as low as 2 \text{ g/dL} may cause adverse impacts). The CDC has acknowledged that the data seems to demonstrate that there is no safe threshold for blood lead levels in children, CDC 2005 Statement at ix, \textsuperscript{29} Raymond, et al., Childhood Blood Lead Levels in Children Aged < 5 years – United States, 2009-2014, \textit{MMWR} (Jan. 20, 2017) at 1-10 (“no safe BLLs in children have been identified.”).

2. Lead Paint and Dust Detection and Measurement

A major reference on testing for, and remediation of, lead paint is HUD’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995) (herein, “HUD Guidelines”). Chapter 7, which was separately revised in 1997, describes the procedures for inspecting housing for lead paint. There are two major methods of testing for lead paint on walls and other painted surfaces: field testing with X-ray fluorescence (“XRF”), and laboratory testing of paint samples removed from the site. HUD Guidelines at 7-3 and 7-4.


\textsuperscript{29} The public health implications of these lower levels of concern are obvious; as DHMH recently noted:

Although NYC has made tremendous progress in reducing lead poisoning, these lower levels are [the lead program’s] next challenge. In 2009, 12,039 children younger than 18 years of age were newly identified with [blood lead levels] between 5 and 9 \text{ g/dL}.

DHMH, Annual Data Report \textit{2009} (Dec. 2010) at 6
a. **On site XRF Analysis**

Today, XRF analysis is the most common method to test for lead paint, and has several advantages: speed (the results are immediately available, on site), cost, and non-destructiveness (the painted surface does not need to be disturbed). A hand-held XRF instrument exposes the wall or other surface to x-rays or gamma rays. The radiation causes any lead to emit X-rays with a characteristic frequency. The instrument then measures the frequency and displays the lead level, expressed in milligrams of lead per square centimeter ("mg/cm²"). See *H & H Equities v. Baez*, NYLJ Oct 11, 1995 p 29 col. 3 (Civ Ct., Bx Co), aff’d, NYLJ Nov. 7, 1997, p. 25, col. 5 (A.T., 1st Dep’t).

The inspector then interprets the reported result with reference to the XRF Performance Characteristic Sheet that HUD and the federal EPA have issued for the specific model of instrument. HUD Guidelines at 7-3. If the inspector does not do the work properly and record it accurately, the readings are subject to challenge. For example, the instrument must be properly calibrated, and correct allowances must be made in some instances for the "substrate" -- i.e., the underlying materials. Generally, a given brand and model of XRF instrument has a certain range of tolerances. For example, if a device is accurate within ± 0.3 mg/cm² and the regulatory definition of lead paint is 1.0 mg/cm², then results above 1.3 mg/cm² will be classified as “positive,” and less than 0.7 mg/cm² as “negative,” and anything in between will be classified as “inconclusive.” (A sample report from a private inspection firm is in the Appendix at page 242).

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31. Federal regulations use the 1.0 mg/cm² standard, which New York State effectively uses the same, as discussed later. In New York City, the definition was 0.7 mg/cm² in Local Law 1 of 1982, but was changed to 1.0 mg/cm² in Local Law 38 of 1999, which continues in Local Law 1 of 2004.
To put in context the extreme toxicity of lead paint to children, it is worth contemplating the comparatively minute quantities of lead being measured here juxtaposed to the massive amounts of lead used during lead paint’s heyday. A gallon of paint may have contained 10 or more pounds of lead, and, of course, a room may have been repeatedly painted with lead-based paint. Conversely, the current definition of “lead-based” paint in most jurisdictions is 1.0 milligrams (i.e., thousandth’s of a gram) per square centimeter (children’s blood lead levels are measured in micrograms -- i.e., millionths of a gram -- per deciliter of blood). Ten pounds of lead would be about 4,536,000 milligrams; the wall area of an 8 x 8 foot square room wall is about 240,000 square centimeters; thus, in theory the application of just one gallon of such paint could result in a lead level of 19 mg/cm². Obviously, repeated coats would result in even higher levels.

b. Laboratory Analysis of Paint Chips

Laboratory analysis of paint chips removed from the site is usually performed using Atomic Absorption Spectroscopy (“AAS”) analysis, with the results most often expressed as a percentage by weight figure. HUD Guidelines at 7-52. The definition of lead-based paint under the federal, New York State and New York City law is 0.5 percent by weight, which may also be expressed as 5,000 micrograms per gram ("ug/g"), 5,000 milligrams per kilograms ("mg/kg"), or 5,000 parts per million by weight ("PPM"). It is also possible in some circumstances to render the results in mg/cm² (the two measurements are not per se correlatable). Id. at 5-35, 7-52. In the past, New York City laws used either measurement; but today, the primary measurement is mg/cm²; New York State’s primary measurement is still percent by weight. PHL §1373(2)

Volume mixing directions, from The Handbook on Painting (1950) published by the National Lead Foundation.

32. The current CDC blood lead “reference level” of 5 i g/dL is about the same concentration as a half teaspoon of lead dissolved into the volume of water in a large backyard swimming pool.
Laboratory analysis of paint chip samples is slower and can be more expensive than XRF testing. Theoretically it may be more reliable than XRF analysis, but only if the sample if carefully collected and tested. For example, if some of the substrate, i.e., underlying material, is removed and tested along with the paint, the proportion of lead may be diluted. Id. at 7-3, 7-29 Conversely, if, in the process of cutting out a chip sample, the technician fails to cut down to the innermost -- and oldest -- layers of paint, the sample may not capture all of the lead present in the painted surface. Removal of the paint chip sample, moreover, damages the painted surface, possibly releasing more lead. Id. The damage, moreover, may alert the landlord, exposing the tenant to retaliation. The damage also gives a landlord a ready-made pretext that a tenant has damaged the rented premises.

The sample must be sent to an EPA-approved laboratory for analysis, with appropriate documentation regarding chain of custody. Id at 7-30 to 7-31

c. Lead Dust Measurement

Lead dust is usually tested using a "wipe test," in which a swab or cloth is passed over a measured surface, sealed in a container, and sent to a laboratory. There are various permitted levels of lead dust, depending on the surface tested, i.e., floors, window sills or window troughs. The results are reported usually in micrograms per square foot ("ug/ft²"). As discussed earlier, lead dust is extremely toxic to children. In 1999 (64 F.R. 50140, 50181) the federal HUD lowered its safety standards from 100 ug/ft² to only 40 ug/ft² (an amount that is less than half the mass of a single particle of coffee sweetener), the federal EPA and most jurisdictions use this standard as well (the New York City Health Code was amended to follow this standard in 2002, and Local Law 1 of 2004 followed suit in its definition of lead dust); increasingly, this standard is being challenged as insufficiently protective. 33

33. See discussion infra at page 28.
II. Federal Laws

A. The Lead-Based Poisoning Prevention Act of 1971

In 1971, Congress enacted the Lead-Based Paint Poisoning Prevention Act ("LPPPA"), 42 U.S.C. Chapter 63, §§ 4821 et seq., to require reduced levels of lead in paint in federally financed and subsidized housing and to fund screening and research programs. In 1973, the LPPPA was amended to require HUD to take steps to eliminate insofar as practicable the hazards of lead-based paint in federally financed and subsidized housing. HUD adopted several implementing regulations, the current versions of which appear in 24 C.F.R. parts 35, 570, 882, 887, 905, 965, & 968.

Implementing 1976 amendments to the LPPPA, the Consumer Product Safety Commission ("CPSC") banned the sale of lead-based paint effective February 27, 1978, with certain exceptions for industrial, agricultural and other paints supplied in containers with specified warning labels. Lead-containing paint was defined as any coating material with a lead content in excess of 0.5% by weight of its nonvolatile content or the dried film, but by operation of 42 U.S.C. § 4841(3)(B) was reduced to .06% when the CPSC did not determine that a higher level was safe. The CPSC further tightened the standard to .009 % effective August 14, 2009, for paint (as well as for toys and furniture for consumer use). 16 CFR § 1303.1

In April, 1990, HUD published “Interim Guidelines” for hazard identification and abatement of lead-based paint in Public and Indian Housing Programs assisted under the Comprehensive Improvement Assistance Program (“CIAP”). The Interim Guidelines contained extensive requirements and also valuable information about methods and technologies. Among the guidelines were testing methods and equipment, qualifications and training of abatement contractors and workers, abatement choices and methods, worker protection, cleanup and disposal. The appendices included descriptions of state and local laws and extensive additional data.

B. Title X and the Residential Lead-Based Paint Reduction Act of 1992

In 1992, Congress made significant revisions in the federal response to lead poisoning via Title X of the Housing and Community Development Act of 1992, an omnibus housing bill.

34. 16 C.F.R. Part 1303.

35. Id.

36. 55 Federal Register 14556, April 18, 1990.

Title X has several components, discussed separately below: amendments to the Lead Poisoning Prevention Act of 1971, 42 U.S.C. Chapter 63, §§ 4821 - 4846; the addition of a new chapter, the "Residential Lead-Based Paint Hazard Reduction Act," ("RLBPHRA") 42 U.S.C. Chapter 63A, §§ 4851 - 4856; and the addition of a new Title IV, entitled "Lead Exposure Reduction," to the Toxic Substances Control Act ("TSCA") at 15 U.S.C. §§ 2681 et seq.; as well as various amendments to other scattered statutes, discussed herein as applicable.

Title X imposes, among other things, specific requirements and deadlines on federally owned, insured and assisted housing relating to the prevention and abatement of lead-based paint hazards. Title X extends existing federal lead-based paint regulations to all housing units which receive more than $5,000 in assistance under any federal housing or community development program (§ 1012), and in some cases less than $5,000. All federal housing is subject to Title X’s requirements, together with any state and local requirements which may be imposed (§ 1021).

Only a few provisions of Title X, however, directly imposed requirements for most private housing (although there may be indirect components, such as, e.g., training requirements for certified lead abatement contractors). Section 1018, codified at 42 U.S.C. § 4852d, imposed lead-based paint disclosure and warning requirements at the time of the sale or rental of the vast majority of pre-1978 housing units. TSCA § 406, codified at 15 USC § 2686, requires the certain warning notices prior to renovations; TSCA § 402, codified at 15 USC § 2682(c), requires guidelines for the conduct of renovation and remodeling activities where there is a risk of lead exposure. These are discussed infra.

1. Amendments to the Lead Paint Poisoning Prevention Act

Title X inserted a number of amendments to the LPPPA.

Formerly, 42 U.S.C. § 4822(a) had required, for housing constructed or substantially rehabilitated prior to 1978 covered by an application for mortgage insurance or housing assistance payments under a HUD administered plan, that the Secretary of HUD to establish "appropriate measures to eliminate as far as practicable immediate hazards due to the presence of accessible intact, intact, and not intact interior and exterior painted surfaces that may contain lead in any such housing where a child who is less than 7 years of age resides or is expected to reside.” Sections 1012 and 1013 to Title X inserted a series of more specific minimal requirements for risk assessment, interim controls, inspection, reduction of lead-based paint hazards, and abatement, depending, among other things, on the level of expenditures, the type and age of the housing, and the federal program involved. A comprehensive set of revisions to the regulations concerning these provisions was issued on September

38. See, e.g., 24 C.F.R. § 35.930

39. The text of § 4852d appears in the Appendix at page 81.
15, 1999, most of which took effect on September 15, 2000 (although a prohibition of certain unsafe work practices took effect on September 15, 1999), and are discussed below in Section II.C.5 (page 41).

Section 1012 to Title X also inserted amendments in a number of other laws concerning housing and related subjects, such as 42 U.S.C. § 5305(a) (Community Development Block Grants), 42 U.S.C. § 1437f(c)(2)(B) (Section 8 Rental Assistance programs), 12 U.S.C. §§ 1703(a) and 1815l(d)(4) (National Housing Act FHA Insurance), linking them to the requirements and programs in the LPPPA and RLBPHRA.

2. Residential Lead-Based Paint Hazard Reduction

In addition to the amendments to the LPPPA discussed above, Title X added an entirely new law, the Residential Lead-Based Paint Hazard Reduction Act (“RLBPHRA”), codified in Chapter 63A to 42 U.S.C., §§ 4851 - 4856.

Section 1018, codified at 42 U.S.C. § 4852d, required EPA to issue regulations requiring that every seller and lessor of “target housing” (generally, pre-1978 housing dwellings, see § 1004(27)) meet several requirements for the benefit of the buyer or tenant (discussed in further detail in Part II.C.4 below). Contracts for purchase or sale of any interest in target housing must contain a warning statement and a statement signed by the purchaser that evidences compliance with the requirements of the RLBPHRA, including disclosure of known lead hazards. Treble damages, attorneys fees and civil penalties are provided for violations.

Another provision, § 1017, codified at 42 U.S.C. § 4852c, required HUD to issue guidelines for lead-based paint hazard evaluation and reduction activities applicable to all federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards. The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing were issued in 1995, and revised in 1997.

3. Amendments to the Toxic Substances Control Act


Section 401 (15 U.S.C. § 2681) contains extensive definitions, including a definition of “lead-based paint” as any surface coating containing in excess of 1.0 milligrams per centimeter square (“mg/cm²”) or 0.5% by weight or such lower levels in target housing as may be established by HUD or for other coatings by the federal Environmental Protection Agency (“EPA”).

Section 402 (15 U.S.C. § 2682), "Lead-based paint activities training and certification," mandated the EPA, in consultation with the Department of Labor, HUD and the National Institute for Occupational Safety and Health ("NIOSH"), to issue regulations (discussed below at part II.C.1) requiring training and accreditation of individuals engaged in "lead-based paint activities" and that all risk assessment, inspection and abatement activities performed in “target housing” be performed by trained, certified contractors. TSCA § 402 also required the EPA to promulgate guidelines and eventually adopt regulations to govern renovation and remodeling activities in target housing that may create lead exposure risk.

TSCA § 403 (15 U.S.C. § 2683) ("Identification of Dangerous Levels of Lead") directed the EPA to promulgate regulations “for the purposes of this title and the [RLBPHRA]” defining lead-based paint hazards, lead-contaminated dust, and lead contaminated soil. These regulations are discussed below in part II.C.1

TSCA § 405 (15 U.S.C. § 2685) created a mandate to EPA and other federal departments and agencies, among other things, to engage in public education and outreach activities "to increase public awareness" of lead poisoning, targeted to, among others, homeowners, landlords, the residential real estate industry, and the home renovation industry. TSCA § 406 (15 U.S.C. § 2686) required the creation of a lead hazard information pamphlet, which is to be distributed in a number of contexts, including during renovation of target housing (15 U.S.C. § 2686(b)), and as part of real estate transactions.

AS further discussed below in Part II.C.4.b, the Court of Appeals decision in Chapman v. Silver, 97 N.Y.2d 9 (2001) declared that a landlord’s general knowledge of the hazards of lead paint in older dwellings is one of the factors to be considered in determining whether such landlord acted reasonably; the above provisions would appear relevant to that factor.

41. The pamphlet is available from EPA’s website at www.epa.gov/lead/protect-your-family-lead-your-home in English, Spanish, Arabic, Vietnamese, Russian, and Somali.

42. RLBPHRA § 1018, 42 U.S.C. § 4852d, discussed in Part II.C.4, infra.
certification requirements; listing of accredited or certified laboratories; performance of exposure studies; public education and technical assistance; establishment of a lead-based paint hazard “hotline” (1-800-424-LEAD); and establishment of criteria, test protocols and performance characteristics for new products used for the evaluation and reduction of lead-based paint hazards. The technical assistance includes establishment of a new National Clearinghouse on Childhood Lead Poisoning and preparation of a lead hazard information pamphlet. The EPA must also establish regulations providing record keeping and reporting requirements. Federal facilities are required to comply with federal, state, interstate and local requirements regarding lead-based paint, activities and hazards.

C. Federal Regulations

1. Worker certification (TSCA § 402 Regulations) (Subpart L)

Lead-based paint activities are defined in § 402(b) (15 U.S.C. § 2682(b)) as “in the case of target housing [i.e., pre-1978], risk assessment, inspection, and abatement” and in the case of “pre-1978 public buildings, commercial buildings, bridge, or other structures, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.” The EPA regulations were published August 29, 1996, 61 Fed. Reg. 45778, and are found in 40 C.F.R. Part 745, Subpart L (§§ 745.223-745.238) (see Appendix at page 108). They began to go into effect on August 28, 1998, although certain provisions were phased in after that time. The regulations became fully effective in New York State on March 1, 2000. 64 Fed. Reg. 42849.

Under TSCA § 404 (15 U.S.C. § 2683), states were given permission to administer and enforce § 402 if the EPA Administrator approved the state program, otherwise the EPA would handle the administration. While a number of states have now set up such programs, New York is not among them, and thus the practitioner will need to contact the EPA Region 2 lead program (732-321-6671) to determine whether a lead inspector or abatement contractor is (or was) certified.

The regulations not only regulate the certification of persons engaged in lead-based paint activities, but set fairly exacting standards for the activities themselves. See, e.g., 40 C.F.R. § 745.227 (“Work-practice standards for conducting lead-based paint activities: target housing and child-occupied facilities”).

2. Identification of Dangerous Levels of Lead (TSCA § 403 Regulations) (Subpart D)

Although TSCA § 403 required EPA to issue regulations within 18 months, the EPA took considerable time to promulgate these regulations (and indeed, was sued for failing to timely promulgate them, Atlantic States Legal Foundation v. Browner, 1996 WL 6620 (N.D.N.Y.)). In 1995,

43. A table of the major Title X regulations appears in the Appendix at page 74.
EPA issued an interim "Guidance on Identification of Lead-based Paint Hazards," published in the federal register on September 11, 1995 at 60 Fed. Reg. 47248. It defined lead-based paint hazards as any deteriorated lead-based paint, or lead-based paint on friction, impact, or chewable surfaces (60 Fed. Reg. 47249-50). Lead dust hazards were defined as 100 micrograms per square foot ("\text{\text{\textmu}g/ft}^2\) — about the size of a grain of coffee sweetener — on bare floors (there was no standard for carpeted floors), 500 \text{\textmu}g/ft^2 on window sills, 800 \text{\textmu}g/ft^2 on window wells or troughs. 60 Fed. Reg. 47250. Soil lead levels were set at a 400 parts per million ("ppm") level of concern in play areas, a 2,000 ppm level of concern in other areas, and 5,000 ppm as an abatement level.

Proposed regulations were issued in 1998, 63 Fed. Reg. 30302, and final regulations were published in the federal register on January 5, 2001, at 66 Fed. Reg. 1205-1240, and became effective March 6, 2001, codified at 40 C.F.R. 745 Subpart D, § 745.65 (see Appendix at page 83).

The final regulations set a more stringent dust clearance levels: 40 \text{\textmu}g/ft^2 on floors (including carpeted floors), 250 \text{\textmu}g/ft^2 on window sills, 400 \text{\textmu}g/ft^2 on window wells or troughs. 40 C.F.R. § 745.65(b). Soil lead hazards are also more stringent: 400 ppm in play areas, 1,200 ppm remainder of yard. 40 C.F.R. § 745.65(c). Lead-paint hazards are defined as "Any ... deteriorated lead-based paint in any residential building or child-occupied facility," 40 C.F.R. § 745.65(a)(4), all lead-paint on friction surfaces, where subject to abrasion and dust levels exceed standards, § 745.65(a)(1), damaged lead-based paint caused by impact from a related building component, § 745.65(a)(2), and chewable lead-based painted surfaces with evidence of teeth marks. § 745.65(a)(3).

The TSCA § 403 regulations themselves state that "nothing in this subpart requires any persons to evaluate the propert(ies) for the presence of lead-based paint hazards or to take any action to control these conditions if one or more of them is identified." 40 C.F.R. § 745.61. However, in the commentary to the regulations, EPA "strongly recommends that property owners or other decision makers take appropriate actions to reduce or eliminate hazards." EPA also notes in the commentary that "the standards are intended to identify dangerous levels of lead, not housing that is free from risks associated with exposure to lead" (66 Fed. Reg. 1211) and that "lower levels are not risk-free and may in individual cases present significant risks." (66 Fed. Reg. 1232). Thus, the TSCA § 403 regulations certainly constitute guidance as to appropriate actions to be taken, but are not necessarily

44. It should be kept in mind that a federal study found that one in three homes with lead based paint in good condition nonetheless have levels of lead dust above those regulatory definitions of “hazard.” HUD, National Survey of Lead and Allergens in Housing. Final Report, Volume I: Analysis of Lead Hazards, Revision 6.0 (April 18, 2001) at 5-15 (available at www.hud.gov/utilities/intercept.cfm/?offices/lead/library/hhts/NSLAH%20Final%20Report%20%28Rev%207.1%29.zip

45. Commentary to regulations, 66 Fed. Reg. 1210
determinative of the absence or presence of the risks of lead hazards and the appropriateness of a property owner's actions.46

Indeed, of late there has been a push among researchers for more stringent dust clearance levels, particularly as the blood lead levels (BLLs) of concern have become more stringent. As explained in the AAP 2016 Statement, at the current floor standard of 40 \( \mu g/ft^2 \), some 50% of children were estimated to have a BLL of \( \geq 5 \mu g/dL \), whereas only 5% of children have BLLs \( \geq 5 \mu g/dL \) at a more stringent median floor dust lead level of 1.5 \( \mu g/ft^2 \). In 2009, a number of advocates petitioned the EPA to tighten the dust standards to 10 \( \mu g/ft^2 \) for floors and 100 \( \mu g/ft^2 \) for window sills, and the lead in paint standard to .06%. At the end of 2017, after the EPA failed to timely act on the 2009 petition, the Ninth Circuit

46. For example, HUD’s analysis (discussed in the commentary to its Part 35 regulations (discussed below) published at 64 FR 50140 (Sept. 15, 1999)), noted that a pooled analysis of dust studies resulted in the following data:

<table>
<thead>
<tr>
<th>Floor dust level ( \mu g/ft^2 )</th>
<th>Percentage of children with blood leads ( \geq 10 \mu g/dL )</th>
<th>Percentage of children with blood leads ( \geq 15 \mu g/dL )</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>0.07</td>
<td>1</td>
</tr>
<tr>
<td>40</td>
<td>18</td>
<td>5</td>
</tr>
<tr>
<td>100</td>
<td>28</td>
<td>9</td>
</tr>
</tbody>
</table>

Id., at 50180-01. Given that the data showed approximately 1 in 5 children exposed to a floor dust level of 40 \( \mu g/ft^2 \) would have been expected to have a blood lead level greater than the CDC’s then-applicable 101 \( \mu g/dL \) “level of concern,” one can understand that these standards were to a significant extent regulatory compromises, rather than an absolute threshold for injury. And as discussed earlier, the current CDC reference level is now 51 \( \mu g/dL \), and does not at all indicate the threshold for injury.

47. See, e.g., Dixon, 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 Env. Health Perspectives 468 (models of floor dust levels of 12 \( \mu g/ft^2 \) predict that 4.6% of children living in homes constructed before 1978 have blood lead levels of \( \geq 10 \mu g/dL \), 27% have levels \( \geq 5 \mu g/dL \), and a geometric mean level is 3.9 \( \mu g/dL \); lowering floor standard below the 40 \( \mu g/ft^2 \) would protect more children).
Court of Appeals directed the EPA to issue a proposed rule within 90 days. Community Voice et al. v. EPA, 878 F3d 779 (9th Cir 2017). As of this writing, however, the proposed rule has yet to be issued (EPA obtained a 90 day extension).

3. **Pre-renovation Warnings and Repair and Renovation Regulations (Subpart E)**

As required by TSCA § 406, EPA issued regulations that became effective June 1, 1999, 40 C.F.R. 745 Subpart E (§ 745.80 et seq.) (see Appendix at page 86), requiring the distribution of lead hazard information prior to commencing renovation work. The rules apply where work is done that disturbs over two square feet of painted surfaces, and require renovators, no more than 60 days prior to beginning work, to give the owner of the unit the EPA lead pamphlet on lead hazards (see page 27), and the adult occupant of the unit. If work will be performed in common areas, the renovator must ensure that each unit is notified, and make the pamphlet available.

Although TSCA § 402 required EPA to promulgate regulations by April 1994 concerning renovation and remodeling work that may create a risk of exposure to lead paint, these regulations were not issued until April 22, 2008. 73 FR21692 (see Appendix at page 86; a chart comparing them to New York City’s regulations is in the Appendix at page 245). These regulations have been phased in by stages beginning June 23, 2008, and did not fully come into effect until April 22, 2010. However, as a result of an August 2009 settlement in litigation brought by the Sierra Club, the New York City Coalition to End Lead Poisoning, and others, the EPA amended the regulations effective July 6, 2010, and is engaged in rulemaking that may result in further changes.

The regulations apply to target housing (i.e., generally, any housing constructed before 1978) and child-occupied facilities (i.e. other buildings regularly used by children under age 6). EPA has established requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; and renovation work practices. The training programs began to go into effect on June 23, 2008, firms could begin applying for certification on October 22, 2009.

Effective April 22, 2010, in target housing and child-occupied facilities, no firm may

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48. Some sample forms from the EPA are in the appendix at page 153.

49. This is more specifically addressed by the definitions in § 745.83 for “child occupied facility” to include those locations visited by a child at least 2 days a week for a minimum of 3 hours each visit and a combined weekly total of at least 6 hours, and combined annual visits of at least 60 hours. This may include day care centers, preschools and kindergartens. In common areas of public or commercial buildings, common areas are included only to the extent that they are regularly used by children, such as cafeterias or restrooms, but not areas that children only pass through, such as halls or stairways.
perform, offer, or claim to perform renovations without EPA certification for repair and renovation activities and must comply with the work practice standards under this rule. These include provisions for occupant protection, warning signs, work area isolation, requirements for removing or sealing furnishings and other items in the work area, and other measures to restrict the dispersal of leaded dust. Certain work practices are prohibited (such as open flame burning of leaded paint, sanding, grinding, etc. of leaded paint (unless a HEPA exhaust control is used), waste controls, clean-up requirements, post-renovation cleaning verification, and record keeping. States may apply for and receive authorization to administer and enforce the new renovation provisions.

4. Lead Disclosure (Subpart F)

On March 6, 1996, HUD and the EPA promulgated joint regulations entitled “Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing” (“Lead Disclosure Rules”).

The effective dates of the Lead Disclosure Rules were September 6, 1996, for owners of buildings containing more than four residential dwelling units, and December 6, 1996, for owners of one to four units. Sweet v. Sheahan, 235 F.3d 80 (2d Cir. 2000).

The regulations require the lessor to make the following disclosures before the lessee becomes legally bound under the lease. The lessor must:

(a) provide the lessee a copy of the EPA pamphlet Protect Your Family From Lead in Your Home (EPA 747-K-94-001), or an equivalent pamphlet that the EPA has approved for use in the situs state;

(b) disclose to the lessee the presence in the housing of any lead-based paint or lead-based paint hazards, defined as conditions that cause exposure to lead from lead-contaminated soil or dust, or from any lead-contaminated paint that has deteriorated or is present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects.

50. Final Rule, 61 Fed. Reg. 9064 (Mar. 6, 1996). The rules are codified in the HUD regulations as 24 C.F.R. §§ 35.80 through 35.98, and in the EPA regulations as 40 C.F.R. §§ 745.100 through 745.119. (A copy of the latter is in the Appendix at page 103).

51. The RLBPHRA, Title X, § 1004(15) (42 U.S.C. § 4851b(15)) defines “Lead-based paint hazard” as “any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.”

52. Sample disclosure forms are in the Appendix at page 150. Similar regulations apply to real estate sales, and obviously would be directly relevant to a purchasing landlord’s actual knowledge of lead paint hazards, or at a minimum, general knowledge of lead paint as a hazard. See discussion infra at page 62.

53. See page 27.
effects;

c) disclose to the lessee any additional information available concerning the
known lead-based paint or lead-based paint hazards, such as the basis for
the conclusion that lead-based paint or lead-based paint hazards are
present, the location of any such paint or hazards, and the condition of the
paint; and

d) provide the lessee with any records or reports available to the lessor
pertaining to lead-based paint or lead-based paint hazards, not only in the
rental unit, but also in common areas. In multifamily housing, the lessor
must also provide reports and records about paint and hazards in other
units, if the information was part of an evaluation or reduction of paint and
hazards in the project as a whole.  

The regulations also oblige lessors’ agents to inform lessors of their disclosure obligations
and to ensure that they comply with them.  

Every lease must include a Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead
from paint, paint chips, and dust can pose health hazards if not
managed properly. Lead exposure is especially harmful to young
children and pregnant women. Before renting pre-1978 housing,
lessors must disclose the presence of lead-based paint and/or
lead-based paint hazards in the dwelling. Lessees must also
receive a federally approved pamphlet on lead poisoning
prevention.  

The lease must also contain a statement by the lessor disclosing the presence of any lead-
based paint or lead-based paint hazards, or indicating that the lessor does not know of any such paint
or hazards. It must also list any records or reports on lead-based paint or lead-based paint hazards that
the lessor has provided to the lessee, or state that no such records or reports are available. The lease
must also contain a statement by the lessee affirming receipt of this information and of the EPA-
approved pamphlet.  All this information must be in the same language as the rest of the lease.

The regulations provide exemptions for leases of housing previously found to be lead-free
by a certified inspector, short-term leases (100 days or less) where no renewal or extension can occur,
and renewals of leases where the lessor has previously made the required disclosures and has not

54. 24 C.F.R. § 35.88 (a); 40 C.F.R. § 745.197 (a). The cited definition of lead-based paint hazard
is in 24 C.F.R. § 35.86 and 40 C.F.R. § 745.103.

55. 24 C.F.R. § 35.94 (a); 40 C.F.R. § 745.115 (a)

56. 24 C.F.R. § 35.92(b) (1); 40 C.F.R. § 745.113(b) (1).

57. 24 C.F.R. § 35.92(b)(2)-(4); 40 C.F.R. § 745.113(b)(2)-(4).

58. 24 C.F.R. § 35.92(b); 40 C.F.R. § 745.113(b).
obtained any new information that must be disclosed.

Section 1018 also provides for a number of enforcement mechanisms, including penalties and injunctions.\textsuperscript{59} although violation does not void leases.\textsuperscript{60} The statute expressly creates a private right of action. Knowing violators\textsuperscript{61} are liable to lessees for treble damages, and that liability can extend to agents;\textsuperscript{62} the court can also award a prevailing lessee costs, reasonable attorney fees, and expert witness fees;\textsuperscript{63} the courts can also impose up to $10,000 in civil and/or criminal penalties and up to one year in jail.

\textbf{a. Some Practice Issues}

(1) How are the damages incurred by a purchaser or lessee to be calculated?

Although there seems to be no case law yet directly on point, violation of the lead disclosure law, on a landlord and tenant issue, arguably could result in damages for the difference in rental value between a safe apartment and a lead-contaminated one. In \textit{Graham Court Owners Corp. v. Powell}, 196 Misc. 2d 825 (Civ. Ct., NY Co., 2003), aff’d as modified, 9 Misc. 3d 94 (A.T. 1st Dep’t 2005) the tenant was permitted to amend her answer in a non-payment proceeding to add a counterclaim asserting the landlord’s violation of the lead disclosure law, seeking treble damages based on the total abatement of all rent paid from the inception of the tenancy. On appeal, however, the Appellate Term modified to sever to the lead disclosure claim to be tried separately.\textsuperscript{64}

At least one court has held that the treble damages provision is mandatory, i.e., that “there

\textsuperscript{59} 42 U.S.C. § 4852d (b).

\textsuperscript{60} Id., § 4852d (c).

\textsuperscript{61} In \textit{Smith v. Coldwell Banker Real Estate Services, Inc.}, 122 F. Supp.2d 267, 273-74 (D. Ct. 2000), the term “knowingly” in this statute was interpreted to mean that a party was aware of its conduct and did not perform it merely through ignorance, mistake or accident; the court rejected arguments that the statute imposed a higher scienter requirement such as bad faith or willfulness. It did not address whether ignorance of statute itself would be a defense to the “knowing” requirement.

\textsuperscript{62} However, at least one court has declared that it is only the seller’s agent that can be held liable for ensuring complaint. \textit{Flowers v. Era Unique Real Estate, Inc.}, 170 F. Supp. 2d 840 (N.D. Ill. 2001). Although the implementing regulations indicated that a buyer’s agent who was paid via a cooperative agreement with the seller’s agent could also be liable, the court held that this administrative construction was not in accordance with the statutory language.

\textsuperscript{63} Id., § 4852d(b)(3) & (4); 40 C.F.R. § 745.118(c). They can also be criminal sanctions. § 745.118(f).

\textsuperscript{64} But see \textit{601 W. Realty, LLC v. Chapa}, 19 Misc. 3d 1133A (Civ. Ct. N.Y. Co., 2008) (distinguishing \textit{Graham Court} and permitting amended answer asserting Title X counterclaim in Housing Court non-payment).

(2) Are children of lessees and buyers entitled to treble damages?

While one might think that allowing children to recover treble damages for their personal injuries might promote the policy of the disclosure law by deterring violators, this is decidedly a minority view at this point. A literal reading of the statute seems to bar such suits because the statutory language provides for liability “to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual,” and even though this would have the result of denying a right of action to the very children that Congress sought to protect, thus far most decisions on this have gone in this direction.

In Gladysz v. Mesmarais, 2003 U.S. Dist. LEXIS 4252, WL 1343033 (D.N.H. 2003), the lessee’s son (also an occupant) asserted Title X disclosure claims individually and as parent and next friend of his two lead-poisoned children (grandchildren of the lessee). The court held that none of the plaintiffs were lessees, as they did not meet the meaning of the EPA and HUD definition (“any entity that enters into an agreement to lease ...”) 24 C.F.R. § 35.86, 40 C.F.R. § 745.103), and that the statute limited recovery to a “purchaser or lessee.” The court disagreed with the plaintiff’s argument that statutory purpose of the Residential Lead Based Paint Hazard Reduction Act was “to protect children from the hazards of lead-based paint,” holding rather that it was “to ensure the disclosure of information concerning lead upon transfer of residential property.”

Likewise, in Wallace v. United States of America, 335 F. Supp. 2d 252 (D.R.I.), where the lessee and the lessee’s children sought to assert a disclosure claim against the real estate broker who had handled the sale of the subject premises from HUD to the lessee’s landlord, the court indicated that the statutory language and regulations “imply strongly that the obligations created thereunder run from a seller to a purchaser, or from a lessor to a lessee” Id. at 260.

Neither the statute nor the regulations indicate whether sellers or lessors must comply with the disclosure obligations with respect to parties unconnected to the real estate transaction with which they were involved. For the reasons that follow, this Court finds that the regulations do not impose a duty running from the realtor to the eventual lessee. Rather, the duty to disclose runs from the seller to a purchaser and/or from a lessee to a lessee only.

Id. Thus, the court ruled that lessees (and lessee’s children) of an innocent buyer could not maintain an action against a seller or broker who violated the disclosure law in the earlier real estate transaction.

In Mason v. Morrisette, 403 F.3d 28 (1st Cir. 2005), two lead poisoned children argued that the plain language of the RLPBHRA, along with the legislative history and the regulations

65. 42 U.S.C. § 4852d(b)(3).
implementing the RLPBHRA, make it clear that the statute was enacted to protect children residing in residential property from lead poisoning, and thus Congress intended for the minor children of lessees to have standing under the civil liability provision. They contended that to interpret the statute otherwise produces an absurd result because it provides that only the adult lessee may seek damages for violations of the disclosure provision of the RLPBHRA when it is actually the children of the adult lessees, not the adults themselves, who are the ones likely to suffer injury from such violations. However, the First Circuit found that the plain language of the statute limits the private cause of action to a “purchaser or lessee,” and the Mason children could not be considered to be either and thus had no claim:

We find this limitation not only clear, but also consistent with the purpose of the disclosure provision—to provide the purchaser or lessee of target property with notice that there could be a lead-based paint hazard present in the subject premises, and the opportunity to either decline to enter into a contract regarding the premises or proceed forward with the transaction in the face of the knowledge that a lead-based paint hazard could be present. See § 4852d(a)(1). This disclosure provision does not require the seller or lessor to abate the lead-paint hazard, nor disqualify a purchaser or lessee with young children from occupying a property that possibly contains lead-based paint hazards. Thus, because a violation of the statute occurs when the seller or lessor fails to disclose, it is logical that the party harmed by the failure to disclose is the purchaser or the lessee.

Id. at 31 Likewise, in Skerritt v. Bach, 23 A.D.3d 1080(4th Dep’t 2005), the Appellate Division held:

The Act further provides that “any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual” ... Here, based upon the express language of the Act designating the purchaser or lessee of a residence as the person intended to be protected thereby, we conclude that plaintiff’s son is not within the class of persons intended to be protected by the Act. ... [A]lthough Congress found that the presence of lead-based paint hazards is particularly hazardous to children under the age of six, there is no implied private right of action on the part of plaintiff’s son pursuant to the Act. The Act requires notice of lead-based paint hazards to potential purchasers or lessees and provides the means to avoid a purchase or lease agreement in the event that lead-based paint hazards are present.

See also, Brown v. Maple3, LLC, 88 A.D.3d 224 (2d Dep't 2011) (same, but holding that “our determination that the plaintiffs lack standing to maintain a cause of action under the RLPHRA does not mean that they are foreclosed from seeking recovery for injuries sustained as a result of exposure to lead paint and lead paint hazards” under NYC’s Local Law 1); L.B. III v. Hous. Auth. of Louisville, 345 F.Supp.2d 725, 729 (W.D.Ky.2004) (minor children of lessees “fail to fit the statutory [standing] requirement because they were neither purchasers nor lessees of the property in which they lived”); Sabra v. Iskander, 2008 U.S. Dist. LEXIS 91832 (N.D. Ga. 2008) (same).

At least two published decisions have gone the other way, however. Cudjoe v. Dep’t of Veterans Affairs, 426 F.3d 241, 250 (3d Cir. 2005), the Third Circuit came to the conclusion that a
minor child's claim would not be dismissed because "a person without express statutory standing may still have standing to sue if the person meets the minimum requirements for Article III standing as well as the additional elements of prudential standing," and remanded to the District Court for a determination as to whether the child had made out a claim for standing on that basis.

In McCormick v. Kissel, 458 F. Supp. 2d 944, 947 (S.D. IN. 2006), a magistrate, relying on Cudjoe, held that because an individual’s standing to sue may go beyond that which is explicitly stated in the statute, an injured child could – and in that instance did – demonstrate both Article III and prudential standing to sue under the RLPBRA.

(3) What statute of limitations is applicable?

The answer seems to be four years under 28 U.S.C. § 1658. This statute, enacted in 1990, establishes a four-year limitations period for actions arising under federal laws enacted after the passage of § 1658. Because the RLBPHRA was enacted in 1992, after § 1658, this statute of limitations should apply.

(4) What court?

The disclosure law expressly creates a private right of action; the existence of a federal claim based upon breach of disclosure duties can be a basis for bringing a federal case. See Sweet v. Sheahan, 1999 WL 1011921 (N.D.N.Y. Nov. 5 1999), reversed on other grounds, 235 F.3d 80 (2d Cir. 2000); Sipes v. Russell, 2000 WL 207175 at *2 (D. Kan. 2000). Smith v. Coldwell Banker Real Estate Services, Inc., 122 F. Supp. 2d 267 (D. Ct. 2000). In general, state and federal courts have concurrent jurisdiction over federal causes of action, unless Congress has expressly or impliedly made federal court jurisdiction exclusive. Congress said nothing about jurisdiction, except to provide that the “appropriate court” may award costs to the prevailing plaintiff. And while 24 C.F.R. §35.96(b) and 40 C.F.R. §745.118(b) specifically provide a right of action by an officer of the Secretary of HUD in “the appropriate Federal district court,” with respect to the private right of action by lessees treated by 24 C.F.R. §35.96(c) and 40 C.F.R. §745.118(c), 40 C.F.R. §35.96(d) and 40 C.F.R. §745.118(d) state that any civil action brought for damages pursuant to 42 U.S.C. §4852d(b)(3) is to be brought

66. "Plaintiff's federal claim is grounded upon her allegations that 'defendant Sheahan failed to disclose to plaintiffs the presence of any known lead based (sic) paint, or any known lead based (sic) paint hazards, in the residential housing and failed to provide plaintiffs any lead hazard evaluation report available to the defendant,' ... and that he failed to provide plaintiffs with a lead hazard information pamphlet, as prescribed by 15 USC § 2686, or a lead warning statement, pursuant to 42 U.S.C. § 4852d(a)(2)." Sweet, at *1.


68. 42 U.S.C. § 4852d (b)(4).
in “the appropriate court.” Accordingly, state courts should have concurrent jurisdiction.

This issue arose in Graham Court v. Powell, supra, where the tenant in a non-payment case asserted a Title X damages counterclaim. The landlord argued that under 28 U.S.C. §1355(a) exclusive jurisdiction lay in federal court for “fines, penalties, or forfeiture” sought under any federal law. The tenant argued that § 1355(a) does not apply to damages claims; the case law would seem to support this. Fields v. Washington, 173 F.2d 701, 702 (3rd Cir. 1949); Hales v. Winn Dixie Stores, 500 F.2d 836, 840 (4th Cir. 1974); Currie v. Fleck, 190 F.2d 549, 550 n.1 (1st Cir. 1951). Neither 42 U.S.C. §4852d nor its implementing regulations at 24 C.F.R. §35.96 and 40 C.F.R. §745.118 provide exclusive jurisdiction to federal courts in a private claim for damages under 24 C.F.R. §35.88(a)(2). The Housing Court in Graham Court declared the federal claims were properly interposed, and the Appellate Term agreed. See, also, 601 West Realty, LLC v. Chapa, 2008 NY Slip Op 50985U, 19 Misc. 3d 1133A (Civ. Ct. NY Co. 2008).

(5) What must be disclosed?

Although EPA has issued regulations under TSCA § 403 defining "lead hazards," 40 C.F.R. Part 745, the commentary to the regulations (66 Fed. Reg. 1210) states that under the § 1018 rules, once the TSCA § 403 rules become effective all records "'pertaining to' lead-based paint, lead-based paint hazards and/or any lead hazard" must be disclosed. Thus, "if a seller or lessor has a report showing lead is present in levels that would not constitute a hazard, that report must be disclosed ... even if dust and soil levels are less than the [defined] hazards." This would seem to indicate that all known reports of lead paint, lead dust, or lead contaminated soil — at any level — must be disclosed.69

Additionally, §1018(a)(1) provides examples of records that must be disclosed, which include records retained by a separate or outside entity on behalf of the seller or lessor and copies of reports retained by the original inspector or risk assessor that would be available to the owner in cases where the original records were destroyed or lost ( 61 Fed. Reg. 9061 at 9069). Aside from disclosing lead paint hazards or reports pertaining to lead paint within the apartment unit or common areas, 24 C.F.R. §35.88(a) and 40 C.F.R. §745.197(a) require that “in multifamily housing, the lessor must also provide reports and records about paint and hazards in other units, if the information was part of an evaluation or reduction of paint and hazards in the project as a whole.”

69. Disclosure merely of the existence of a report “does not satisfy the statutory requirement that the report be provided.” Smith v. Coldwell Banker Real Estate Services, Inc., 122 F. Supp.2d 267, 271 (D. Ct. 2000). The court rejected a “Substantial compliance” defense – i.e., disclosure of the fact that lead paint was present and the existence of a report (but no provision of the report itself) – declaring that there was no language in the statute or regulations permitting merely “substantial compliance” with the purposes of the statute. Id. at 272-273.
Finally, it should be noted that these regulations in themselves don’t require a seller or lessor to inspect for lead paint hazards. However, when considered in concert with New York City’s former Local Law 38 of 1999 or the current Local Law 1 of 2004, or Rochester’s lead paint law (Rochester Municipal Code § 90-50 et seq.) for example, all of which require landlords to do inspections for lead paint hazards and document the results of such inspections as well as lead repair work, the disclosure regulations should generate significant records that must be disclosed to tenants and purchasers (and conversely, the absence thereof may indicate non-compliance). 70

b. Impact on Constructive Notice of Lead Hazards

As will be discussed in greater detail later, in Juarez v. Wavecrest Management Team, 88 N.Y.2d 628, 647 (1996) the Court of Appeals held that New York City’s then-Local Law 1 of 1982 (“LL1/1982”) (former NYC Admin. Code § 27-2013(h)) “provide[d] for constructive notice of the hazardous lead condition” if the landlord knew there were children under age 7 present. In reaching this conclusion, the Court noted that 1) LL1/1982 placed a specific duty to abate lead paint where children under age 7 resided; and 2) LL1/1982 — in conjunction with New York City Administrative Code § 27-2008 — gave owners authority to enter to inspect for and repair lead paint.

For many years, New York courts were generally unreceptive to inferring constructive knowledge in cases where LL1/1982 did not apply — i.e., non-multiple dwellings inside New York City71 or dwellings in general outside of New York City. 72 However, in 2001 the Court of Appeals, in Chapman v. Silver, 97 N.Y.2d 9, 20, held that the absence of a statutory scheme such as LL1/1982 “is not fatal to this type of action.” Instead, the Court ruled that there was a triable issue of fact as to constructive notice where the plaintiff showed the landlord 1) retained a right of entry to the premises and assumed a duty to make repairs, 73 2) knew the apartment was constructed before lead paint was banned, 3) was aware the paint was peeling or otherwise damaged or deteriorated, 4) knew of the hazards of lead paint to children, and 5) knew that a young child resided in the apartment. 97 N.Y.2d

70. Local Law 1 of 2004 requires records to be kept for 10 years, § 27-2056.17; former Local Law 38 of 1999 required records to be maintained for three years.

71. See, e.g., Hines v. RAP Realty Corp., 258 A.D.2d 440 (2d Dep’t 1999), Andrade v. Wong, 251 A.D.2d 609 (2d Dep’t 1998)


73. The duty to make repairs can arise by operation of Multiple Dwelling Law § 78 or Multiple Residence Law § 174, which direct that every multiple dwelling or multiple residence (i.e., 3 or more unit building) “shall be kept in good repair” and make owners “responsible for compliance.” See, Juarez, 88 N.Y.2d at 643.
Given the test set forth in Chapman, the federal lead disclosure provisions can have a significant role in lead litigation even where housing is not covered by local laws such as New York City or Rochester.

First, the element of knowledge of the hazards of lead paint to children would seem to be relatively easy to demonstrate if a landlord has engaged in any residential real estate transaction since the disclosure laws went into effect in 1996 — a sale or purchase, or a lease or lease renewal — by virtue of the requirement that the EPA lead hazard pamphlet (discussed above at page 27) was required to be provided by the seller or lessor (and if a lease was made, the Lead Warning Statement).

Secondly, the lead disclosure law requires lessors to provide copies of any lead hazard evaluation reports available to them. Indeed, under the rules, the lessor must provide the lessee with any records or reports “available” to the lessor pertaining to lead-based paint or lead-based paint hazards, not only in the rental unit, but also in common areas. The regulations define available as meaning “in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.” (emphasis added)


75. 24 C.F.R. § 35.88 (a) (4); 40 C.F.R. § 745.107 (a) (4).

76. 24 C.F.R. § 35.86; 40 C.F.R. § 745.103. HUD and the EPA jointly explain this definition:

Section 1018(a)(1) requires that sellers and lessors provide the purchasers and lessees with “any lead hazard evaluation reports available to the seller or lessor.” EPA and HUD interpret available lead hazard evaluation reports to mean records and reports that pertain to lead-based paint and/or lead-based paint hazards in the target housing and that are in the possession of the seller or lessor or that are reasonably obtainable by the seller or lessor at the time of the disclosure.

EPA and HUD expect that most sellers and lessors will retain copies of relevant information in their possession along with other important housing files (title, outstanding leases, etc.). In some cases, however, the seller or lessor may no longer have possession of the records but may have reasonable access to the information. Examples of “reasonably obtainable” records include records retained by a separate or outside entity on behalf of the seller or lessor and copies of reports retained by the original inspector or risk assessor that would be available to the owner in cases where the original records were destroyed or lost. The term “reasonably obtainable” is not intended to impose an obligation on the seller or lessor to conduct further evaluation of the housing.

5. **HUD Regulations for Federally Owned or Assisted Housing**

(24 C.F.R. Part 35)

On September 15, 1999, pursuant to §§ 1012 and 1013 of the RLBPHRA of 1992, HUD issued a comprehensive set of regulations, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," 64 Fed. Reg. 50140, codified in 24 C.F.R. Part 35, which put virtually all of HUD's lead-based paint regulations in one part of the Code of Federal Regulations. The new requirements took effect on September 15, 2000. HUD estimated that about 2.8 million housing units would be affected by the regulations during their first five years.

The regulations set hazard reduction requirements that gave much greater emphasis than prior regulations to reducing lead in house dust. The new regulations require dust testing after paint is disturbed to make sure the home is lead-safe. However, the specific requirements depend on a host of factors, including whether the housing is being disposed of or assisted by the federal government, the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied. The housing categories covered include:

- Federally-owned housing being sold
- Housing receiving a federal subsidy that is associated with the property, rather than with the occupants (project-based assistance)
- Public housing
- Housing occupied by a family (with a young child) receiving a tenant-based subsidy (such as a voucher or certificate)
- Multifamily housing for which mortgage insurance is being sought
- Housing receiving federal assistance for rehabilitation, reducing homelessness, and other special needs
- Housing where the tenant is receiving federal rental assistance, such as Section 8 rental assistance.

Under 24 C.F.R. § 35.150(b), “local laws, ordinances, codes or regulations governing evaluation and hazard reduction” are not only applicable, but indeed, “the more protective definition (i.e., the lower level)” shall be followed....” Thus, the interplay between these regulations and local

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77. The HUD National Survey found that one out of three homes with lead based paint in good condition nonetheless have hazardous levels of lead dust. Id. at 5-15.

78. A summary of the different housing programs covered by the various subparts of Part 35 is in the Appendix beginning at page 75; a summary of the specific requirements for these different programs and subparts is in the Appendix beginning at page 78.
law must be analyzed on a case-by-case basis.

a. **Section 8 Rental Assistance**

Section 8 subsidized housing must meet certain Housing Quality Standards ("HQS"), which include inspections for lead-based paint hazards by the Housing Authority and safe removal of those hazards. The Housing Quality Standards applicable to lead paint were formerly found in 24 C.F.R. § 882.109(I), and there were requirements for initial inspection, § 822.209(h)(1) and periodic inspection, § 882.211(b). These provisions were significantly recodified over the years, see 60 Fed. Reg. 34695, and are now found in 24 C.F.R. § 982.401.

A tenant enters into a Section 8 lease with the landlord, and the landlord in turn enters into a Housing Assistance Payment ("HAP") contract with New York City housing Authority ("NYCHA"). The Section 8 lease will contain requirements that the landlord maintain the property in accordance with federal, state, and local laws and regulations. In addition, the HAP contract will mandate that the landlord maintain the premises in accordance with the Section 8 regulations. Thus, the Section 8 landlord has both regulatory and statutory obligations with respect to lead paint in the premises.

**III. New York State Laws**

A. **Overview**

In 1970, in an effort to limit the lead poisoning epidemic, the State legislature enacted Title X of Article 13 of the Public Health Law (codified at PHL § 1370 et seq.), declaring:

> The occurrence of the disease of lead poisoning in children has become a major public health concern. Severe lead poisoning cases result in death or mental retardation. It is estimated that children in our nation with abnormally high blood levels of lead number in the hundreds of thousands. Many thousands of children in the cities of our state are actual or potential victims of lead poisoning. The disease of lead poisoning is most prevalent in areas of old and deteriorating housing where leaded paint and plaster in a peeling condition is accessible for ingestion by young children.

Lead poisoning is a disease which will require the concerted efforts of public health agencies and other agencies concerned with the availability of healthful housing for the people of our state before the disease can be brought under control and its incidence reduced.

McKinney’s PHL § 1370, Historical and Statutory Notes. Despite these noble sentiments, a quarter of a century later, NYSDoH data indicated that in 1994 — while only 42% of children under age 3 were screened — some 17,741 children under 3 years of age had blood lead levels of 10 i g/dL or above. NYSDoH, Maternal, Child and Adolescent Health Profile, New York State 1995; New York State Lead Poisoning Prevention Advisory Council, 1998 Report for the Program Years 1995-1996.

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79. The full text of current PHL Title X is in the appendix at page 155. The implementing regulations appear at 10 NYCRR Part 67, and are in the appendix beginning at page 162.
The actual number of children under six who had elevated blood levels was undoubtedly much higher, as only “31 percent of the State's 1.5 million children under 6” were tested for lead in 1994. DHCR, Consolidated Plan: Federal Fiscal Years 1996-1997 at 73.

Soon after Title X was enacted, in *Graham v. Wisenburn*, 70 Misc. 2d 492 (S. Ct. Albany Co. 1972) rev’d, 39 A.D. 2d 334, 336 (3d Dep't 1972) an Albany family with lead poisoned children used it as the basis for obtaining an injunction to force their landlord to correct lead hazards (hazards he admitted were present). The Third Department swiftly reversed, holding that Title X gave health officials enforcement powers “but add[ed] nothing to the rights of a private party to force landlords into action.” 39 A.D.2d at 336.

The following year, an Albany group brought an Article 78 to compel the county and state health commissioners to designate certain areas as “high risk,” inspect housing for lead hazards, and administer blood lead tests pursuant to Title X. In *Community Action Against Lead Poisoning v. Lyons*, 72 Misc. 2d 662 (S. Ct. Albany Co. 1973), rev’d, 43 A.D.2d 201 (3d Dep’t 1974), aff’d, 36 N.Y.2d 686 (1975) the same justice as in *Graham* declared the provisions of Title X were mandatory, only to be reversed once again by the Third Department, which found the enforcement of Title X committed to the judgment and discretion of the health departments. 

Clearly, state law had not been as effective as had been hoped. In 1992, the legislature enacted the Lead Poisoning Prevention Act, amending PHL Title X and declaring that:

> lead is the number one environmental poison for children and lead poisoning is still one of the most prevalent and preventable childhood health problems in New York State today. Despite advances in reducing or eliminating lead from paint and gasoline, little progress has been made in limiting childhood exposure to leaded paint from the interior and exterior of older housing.

McKinney’s PHL § 1370-a, Historical and Statutory Notes. Yet while the amendments improved the mechanisms for blood lead screening, PHL Title X still largely remains a “secondary prevention” health policy — i.e., one which waits until a child is identified as lead poisoned before requiring environmental intervention — rather than a “primary prevention” policy (mandating intervention before a child is lead poisoned). 

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80. In *Pelaez v. Seide*, 2 N.Y.3d 186 (2004), the Court of Appeals in essence decided that local health departments and municipalities were largely immune from negligence liability in their enforcement of Title X.

81. As the CDC declared well over a decade ago, “programs must not rely solely on screening and secondary prevention but also focus on prevention lead exposure through the implementation of housing-based primary prevention.” CDC, Advisory Committee on Childhood Lead Poisoning, Preventing Lead Exposure in Young Children - A Housing-Based Approach to Primary Prevention of Lead Poisoning, October 2004, at 9.
B. Public Health Law Title X ("Control of Lead Poisoning") of 1970

Effective September 1, 1970, PHL § 1372 banned the application of leaded paint on the interior surfaces, window sills and frames, and porches of dwellings. Dwellings included child care facilities, kindergartens and nursery schools. PHL § 1370(1). The manufacture or sale of lead painted children’s toys and furniture were also banned by PHL §1371. The definition of “leaded paint” was first set at 1% by weight in 1970, reduced to .5% in 1977, and further reduced to .06 % in 1992. 82

PHL § 1370(2) provided the State Commissioner of Health or local county health department and housing code enforcement agencies (pursuant to § 1375) the power (although not the mandate) to designate areas of one or more dwellings with paint “conditions conducive to lead poisoning” (defined as lead paint that was accessible 83 for ingestion or peeling or chipping, 84 § 1371(3)) as “high risk” 85 and, under § 1373(1), the power (but apparently not the obligation) 86 to order the removal of the hazardous conditions. Lead paint in this context is defined in § 1373(2) as .5% by weight, although the implementing regulations create a presumption that the paint is .5% lead by weight if X-ray fluorescence (“XRF”) 87 testing indicates 1.6 mg/cm² (or 2.0 mg/cm² without substrate correction). 88 10 NYCRR § 67-2.4(a). PHL § 1373(3) and (4) provide enforcement mechanisms for the health department, as well as § 1373, which grants the health department the power to seek appointment of a receiver should the owner not comply. Assuming a health department order has issued, § 1373(5) provides that even if the landlord removes the tenant, the obligation to remove the cited lead hazards continues.

82. Note that this is the definition used for new paint that is being “applied,” rather than paint that is already in place, which is defined in PHL § 1373, discussed infra.
83. See 10 NYCRR § 67-2.2(b)
84. See 10 NYCRR § 67-2.2(g)
85. The state Commissioner of Health was given the duty to establish criteria for identifying areas and conditions of “high risk” of lead poisoning, codified under PHL § 206(1)(n).
86. Although an amendment in 2017 (L 2017, ch 411 § 1, eff. March 29, 2018) made this order mandatory, it left unaddressed the problem that the Commissioner’s decision to designate a dwelling as “high risk” remains wholly discretionary, as established in the 1973 Community Action Against Lead Poisoning v. Lyons decision.
87. See 10 NYCRR § 67-2.2(q)
88. The regulation also provides that if the surface tests under 0.4 mg/cm² it is deemed not to be lead, and if greater than 0.4 mg/cm² but less than 1.6 mg/cm² it is deemed inconclusive and a paint chip sample must be taken. Thus, in essence, New York State is using a 1.0 mg/cm² standard with an inconclusive range of ± 0.6 mg/cm².
C. Lead Poisoning Prevention Act of 1992 Amendments to Title X, and Implementing Regulations

The amendments to PHL Title X in 1992 included various requirements for lead screening of children and reporting of the results (§§ 1370-a(2), 1370-c, 1370-d, and 1370-e) and the establishment of a Lead Poisoning Prevention Program (“LPPP”) within the Department of Health (§ 1370-a(a)), which would promulgate and enforce regulations for Title X. An advisory council on lead poisoning prevention was established. § 1370-b.

Under § 1370-c, all physicians or other authorized practitioners who provide medical care to children or pregnant women must screen children (or refer them for screening) at the intervals and using the methods established by the LPPP’s regulations. The regulations require mandatory screening at 12 and 24 months of age, and at each well-child visit or at least annually if at risk. 10 NYCRR § 67-1.2. Prenatal health care providers are also required to provide pregnant women guidance on lead poisoning prevention and assess them for risk of exposure; if at risk, they too must be screened. 10 NYCRR § 67-1.5. Hospitals, health care facilities, HMOs, clinics and similar facilities that serve children must ensure that their patients are screened, and the practitioner must give a certificate of screening to the child’s parent or guardian. § 1370-c.

PHL § 1370-d requires that child care providers, public and private nursery schools and preschools must — prior to or within three months after initial enrollment of a child under age six — obtain from the child’s parent or guardian evidence that the child was screened for lead. If there is no such evidence, the institution must provide the parent with information of lead poisoning and refer the parent or guardian to a primary care provider or local health department for screening. Implementing regulations are at 10 NYCRR § 67-1.4.

PHL § 1370-e mandates that doctors, hospitals, and clinics report elevated blood lead levels (defined in PHL § 1370(6) as 10 µg/dL or above) to the local health department. Laboratories that analyze blood samples for lead are required to report all results to the local and state health departments. 89 Using this data, under § 1370-a(2)(c) the LPPP is required to establish a statewide registry of children with elevated blood lead levels, to be maintained as confidential except for disclosures for medical treatment purposes or of non-identifying epidemiological data.

Pursuant to 10 NYCRR § 67-1.2(a)(11), when children have blood lead levels at 20 µg/dL or over, a referral must be made to the local health department for environmental management. Under

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89. The regulations concerning reporting are found at 10 NYCRR Subpart 67-3. All blood lead tests must be reported to the state and local health departments (§67-3.1 and 3.2) and labs must report all blood lead tests results within 5 business days to the state and local health departments, and must notify health care providers — and health care providers must notify local health departments — within 24 hours when test results for children under age 18 are 45 µg/dL or above. § 67-3.1, 3.2.
10 NYCRR § 67-2.3, upon receipt of such referral, the local health department must perform an environmental investigation of the child’s dwelling, child care facility, and other areas where the child spends significant amounts of time. The methods for paint sampling are specified in 10 NYCRR § 67-2.4. If the health department finds a “condition conducive to lead poisoning” exists in the dwelling, it may order its abatement under 10 NYCRR § 67-2.6, to the extent and using such methods as the health department orders. The owner must comply with any federal, state or local laws concerning worker health and safety, disposal of lead-containing wastes, and housing, and provide documentation upon request as to compliance. Id. 10 NYCRR § 67-2.7 specifies certain work practices for control of lead dust during abatement and post-abatement cleanup, as well as additional provisions the health department can specify, as well as methods of abatement.

D. Recent Amendments to Title X and Implementing Regulations

Recently, the State has began to finally add some primary prevention efforts into state law. In 2007, the PHL was amended to require some pilot programs in certain key high risk communities, which included cities such as Rochester, Utica, Syracuse, and Buffalo; further amendments were made in 2009 that made these programs permanent. Enhancements in blood lead data collection and reporting were also codified in Title X and Part 67-1 and 67-3. In 2016 a temporary subpart 67-4 was added concerning testing school drinking water for lead, which expires on May 25, 2018.

IV. New York City Law

A. Overview

Compared to New York State, New York City has had a far more extensive body of local laws, health codes, and regulations concerning lead paint and lead poisoning prevention, and an even more extensive body of case law. These laws underwent a major revision in 1999, via Local Law 38 (“LL38”) and further revisions in 2003 and 2004 as a result of litigation and the enactment of Local Law 1 of 2004 (“LL1/2004”). Since many current lead paint cases have arisen under different legal regimes, however, a review of these is needed to understand the various responsibilities of owners and the City during the applicable periods.

B. City Lead Laws through 1998

Four major measures regarding lead paint and lead poisoning were promulgated in New York City during the years preceding 1999: Health Code §§ 173.13 and 173.14, and Local Laws 50 of 1972 and 1 of 1982, discussed in order of enactment.

Effective January 1, 1960, Health Code § 173.13 banned the sale (§173.13(a)(1)) of lead paint for household use, and the application (§ 173.13(c)) of lead paint on the interior surfaces (and readily accessible exterior surfaces) of dwellings, day care centers and schools in New York City — some 10 years before the rest of the state and 18 years before the federal ban. It also gave the Department of Health ("DoH") the power to order the owner to remove lead paint when a person in the residence was lead poisoned.

By 1970, with lead poisoning recognized as a "silent epidemic," Garcia v. Freeland Realty, Inc., 63 Misc. 2d 937, 940 (Civ. Ct. N.Y. Co. 1970), an amendment to the Health Code that year, codified as § 173.13(d)(2), mandating that when DoH receives a report that a child’s lead poisoning has already occurred, it must inspect and order the owner immediately to remove or permanently cover all lead paint in the dwelling; if the owner failed to comply within 5 days, DoH must request the Department of Housing Preservation and Development ("HPD") to correct the lead paint conditions.

Admin. Code § 27-2126, enacted as Local Law 50 of 1972, added a mandate that whenever a landlord failed to remove a DoH lead violation, DoH — within 16 days of the complaint or inspection (whichever occurred first) — must request HPD to correct, and HPD must do so within 18 days thereafter. Together, § 27-2126 and Health Code § 173.13 thus required the City to assure the correction of all lead paint violations in the home of any lead-poisoned child, in 1- and 2- family homes as well as in multiple dwellings, within 34 days after discovery of lead poisoning.

Outside of the ban on the sale of lead paint, however, New York City’s early legislative scheme remained largely a “secondary prevention” model — i.e., one which waited until a child was already lead poisoned before requiring environmental intervention (or, as some would say, using children as the guinea pigs to test the safety of homes) — rather than a “primary prevention” policy that mandated intervention before the child was lead poisoned. This changed rather dramatically in 1982.

91. A copy is in the appendix at page 179
92. DoH was renamed the Department of Health and Mental Hygiene ("DHMH") after a revision to the City Charter that became effective July 1, 2002. The names will be used interchangably herein.
93. The action level at which DHMH is mandated to take action was originally 60 g/dL, and was successively lowered over time to the present level of 15 g/dL as of August 2, 2004. Health Code § 173.13(d)(2), Admin. Code § 27-2056.14.
94. Known as a Commissioner’s Order to Abate (“COTA”). A sample is in the Appendix at page235.
95. As discussed later, § 27-2126 was essentially recodified in Local Law 1 of 2004 as §27-2056.14.
96. See Lanphear et al., The Paradox of Lead Poisoning Prevention; Science 1998;281:1617-1618
Admin. Code § 27-2013(h), enacted as Local Law 1 of 1982 (“LL1/1982”), required the owner of a multiple dwelling (i.e., a building with 3 or more dwelling units) occupied by a child under age seven to eliminate all lead paint on specified interior surfaces “in a manner approved by the department” in the child’s apartment. Unless extended by the agency, the owner was expected to correct a violation within 24 hours of the service of a violation by HPD. Admin. Code §§ 27-2013(h)(3), 27-2115(c)(3). As will be discussed below, unlike the prior laws LL1/1982 was a primary prevention measure that did not require a child’s poisoning nor a City inspection to trigger the duty to abate lead paint. Landlords had to abate wherever lead paint existed — whether or not the City cited the violation. Admin. Code § 27-2013(h)(1). Juarez, 88 N.Y.2d at 647; Valdez v. Sherman Estates, Inc., 224 A.D.2d 240, 241 (1st Dep’t 1996).

97. Admin. Code § 2013(h) provided in relevant part as follows:

1. The owner of a multiple dwelling shall remove or cover in a manner approved by the department any paint or other similar surface-coating material having a reading of 0.7 milligrams of lead per square centimeter or greater or containing more than 0.5 percent of metallic lead based on the non-volatile content of the paint or other similar surface-coating material on the interior walls, ceilings, doors, window sills or moldings in any dwelling unit in which a child or children six (6) years of age and under reside.

2. In any multiple dwelling erected prior to January first, nineteen hundred sixty in which paint or other similar surface-coating material is found to be peeling on the interior walls, ceilings, doors, window sills or moldings in any dwelling unit in which a child or children six (6) years of age or under reside, it shall be presumed that the peeling substance contains more than 0.5 percent of metallic lead based on the non-volatile content of the paint or other similar surface-coating material or having a reading of 0.7 milligrams of lead per square centimeter or greater.

3. The existence of paint or other similar surface-coating material having a reading of 0.7 milligrams of lead per square centimeter or greater or containing more than 0.5 percent of metallic lead based on the nonvolatile content of the paint or other similar surface-coating material in the interior walls, ceilings, doors, window sills or moldings in any dwelling unit in a multiple dwelling in which a child or children six (6) years of age and under reside shall constitute a class C immediately hazardous violation and subject the owner of such multiple dwelling to the penalties for such violation provided in article two of subchapter five of this code. The presumption established in paragraph two of this subdivision may be rebutted by the owner of the multiple dwelling. Such proof shall be in form and substance acceptable to the department or a court of competent jurisdiction.

98. Multiple Dwelling Law § 4(7); see also Administrative Code § 27-2004(a)(7)

99. It must be emphasized that neither LL1/1982, nor (for the most part) its successors, LL38 of 1999 and LL1/2004 (discussed later), altered the pre-existing scheme for the City’s response to those situations where children were already lead poisoned. Thus, there are two concurrent administrative schemes:

- DoH inspection and enforcement under Health Code § 173.13 (with HPD assistance where needed under Admin. Code § 27-2126), regardless of building size. See flow chart at page 178 of the (continued...)
Lastly, Health Code § 173.14 promulgated in 1993 as a result of orders in the New York City Coalition to End Lead Poisoning v. Koch class action (herein “NYCCELP”), discussed below, imposed safety standards for work on lead paint. These standards followed guidelines promulgated by HUD and incorporated then-state-of-the-art safety measures needed to prevent dispersing toxic lead dust during such work.

To fully set forth the full scope of owners’ obligations under the pre-1999 New York City legal scheme, a brief review of some of the case law is needed. Among the key issues is the meaning and significance of the rebuttable presumption that peeling paint in a pre-1960 building contained lead, provided by § 2013(h)(2) of LL1/1982.

A class action commenced in 1985, NYCCELP v. Koch, sought enforcement of the City’s lead paint laws. In NYCCELP II, N.Y.L.J., July 21, 1989, at 18 (Sup. Ct. N.Y. Co.), aff’d, 170 A.D.2d 419 (1st Dep’t 1991), the court found the City’s interpretation of LL1/1982’s statutory presumption — as limiting its inspection and enforcement duties regarding lead paint solely to peeling painted surfaces and solely to pre-1960 buildings — contrary to the law’s plain meaning. Instead, the court declared that LL1/1982 required the abatement (i.e., the removal or covering) of lead paint regardless of whether the paint is peeling or intact (and regardless of the age of the building):

[T]he clear language of sec. 27-2013(h) of the Housing Maintenance Code requires that all lead paint existing in the designated areas of an apartment in which a child under six (sic) resides must either be removed or covered, and not just those areas where the paint is visibly peeling.

NYCCELP II, (emphasis in original). In effect, the court declared that the purpose of the

99. (...continued)

Appendix.
● HPD inspection and enforcement, regardless of blood lead levels, in multiple dwellings with children below a particular age, pursuant to LL1/1982, LL38, or LL1/2004. See flow charts for LL38 and LL1/2004 at pages 176 and 177 of the Appendix.

100. A copy is in the appendix at page 180

101. The enforcement of these regulations was originally placed with a third agency, the Department of Environmental Protection; this was subsequently moved to DoH in 1999.

102. The court said that the City “should not ... rely on the naive presumption that no lead based paints were ever utilized in violation of the law in post-1960 buildings.” Indeed, in 1971 DoH tests found 10 percent of interior paints offered for sale still had illegal levels of lead. In Rabin, Warnings Unheeded: A History of Child Lead Poisoning, 79 Am. J. Pub. Health (12) 1668, 1673.

103. In Woolfalk v. New York City Housing Authority, Index No. 112405/93 slip op. (S. Ct. N.Y. Co. May 12, 1998)(Goodman, J.) aff’d, 263 A.D.2d 335 (1st Dep’t 1999), leave to app. den., slip op. (1st Dep’t, Sept. 28, 1999), the court, relying on NYCCELP II, held LL1/1982 applicable where lead paint was found in lead poisoned child’s home — a New York City Housing Authority building constructed in 1973.
rebuttable presumption was to aid the City in its code enforcement efforts, by eliminating the need to test peeling paint in pre-60 buildings; it was not a limitation of the scope of LL1/1982. The court ordered the City to enact regulations to enforce LL1/1982 in line with this decision, as well as regulations on safe work practices for abatement of lead hazards, and regulations for relocating children and pregnant women during abatements. 104

Subsequently, the courts declared that LL1/1982's mandates applied regardless of whether a landlord was cited for a lead violation — the very existence of lead paint hazards was a violation that landlords had a duty to inspect for and safely abate, whether or not cited by a City agency. Juarez v. Wavecrest Mgt., 212 A.D.2d 34, 47 (1st Dep’t 1995). 105 As the First Department subsequently noted,

The plain effect of [§27-2013(h)] ... and the entire remedial scheme would be meaningless if a landlord could suffer a lead condition in its building until given "notice" of the condition as the result of a test performed by others. Valdez v. Sherman Estates, Inc., 224 A.D.2d 240, 241 (1st Dep't 1996). See also Lane v. Ruiz, N.Y.L.J., May 29, 1996, p. 29 col. 3 (Sup. Ct. Queens Co.) ("A landlord is required to take action to remedy a lead condition prior to receiving any 'notice' of the condition as a result of a confirmed test performed by others." )

Thus, the Court of Appeals held in Juarez v. Wavecrest Management Team, 88 N.Y.2d 628, 647 (1996), that LL1/1982 "provide[d] for constructive notice of the hazardous lead condition" as long as the landlord knew there were children under age 7 present. In reaching this conclusion, the Court noted that 1) LL1/1982 placed specific duty to abate lead paint where children under age 7 resided and 2) that LL1/1982 in essence (and in conjunction with Admin Code § 27-2008) gave owners authority to enter to inspect for and repair lead paint. Id.

104. When — after four years — the City failed to enact any of these regulations, the court found civil contempt and imposed continuing fines until the regulations were adopted. NYCCELP III, N.Y.L.J., May 12, 1993, at 29 (Sup. Ct. N.Y. Co.). Two years later, this Court found that the City still “failed to fulfill that mandate in numerous respects in direct violation of a lawful order.” NYCCELP IV, 216 A.D.2d 219, 220 (1st Dep’t 1995).

Although the City did eventually enact the safety regulations that are codified as Health Code § 173.14, it still failed to enact the regulations required by NYCCELP II regarding relocation and timely inspection and enforcement of all lead paint conditions, and the court found contempt again and certified a class. NYCCELP VI, slip op. (Sup. Ct. N.Y. Co. Dec. 14, 1995), aff’d as modified, 245 A.D.2d 49, 50-51 (1st Dep’t 1997). The City was yet again held in contempt in NYCCELP VII, 173 Misc. 2d 235, 240 (Sup. Ct. N.Y. Co. 1997), aff’d, 248 A.D.2d 120 (1st Dep’t 1998), because, inter alia, Health Code § 173.14 was limited in applicability to only violations cited by DoH and HPD (rather than all lead hazards as required by NYCCELP II), still failed to provide for relocation during lead abatements, and because the City had sought to weaken Health Code § 173.13(d) by limiting inspections, in the case of already lead poisoned children, to only peeling paint.

105. The Court of Appeals, although reversing the result on other grounds, specifically affirmed the First Department on this point. Id., 88 N.Y.2d at 638, 642.
C. The Enactment of Local Law 38 of 1999

The numerous NYCCELP orders directed at the City regarding enforcement of LL1/1982 on the one hand, and the implications for owner liability wrought by Juarez’s interpretation of LL1/1982 on the other, undoubtedly were the main impetuses for the City Council leadership’s decision in 1999 to push through a major revision of the City’s lead paint laws via the enactment of LL38, which revoked LL1/1982 (§ 27-2013(h)) and portions of LL50 (§ 27-2126). Implementing regulations were promulgated by HPD in the City Record on October 13, 1999.

LL38 vastly altered almost all facets of the laws governing whether, how, when, and by whom lead hazards – especially lead dust hazards – are identified and addressed. Among these: LL38 narrowed the definition of a “lead-based paint hazard” from the existence of lead paint in any condition to peeling paint or paint on a deteriorated subsurface only, thus omitting conditions with intact lead paint that nonetheless generate lead dust, such as friction, impact, and accessible surfaces. In addition, LL38 increased the amount of lead content permitted on painted surfaces from 0.7 mg/cm$^2$ to 1.0 mg/cm$^2$. Compare LL38, N.Y.C. Admin Code §§ 27-2056.1(2), 27-2056.7(3) with LL1/1982, Admin. Code § 27-2013(h)(1). LL38 also reduced the age of children protected by its lead paint poisoning prevention and enforcement measures from under 7 years to under 6 years. Compare Admin. Code § 27-2056.1(2) with Admin. Code § 27-2013(h)(1).

LL38 enlarged the time frame for enforcement of correction of violations. Under LL1/1982 lead paint hazards constituted a class C immediately hazardous violation that had to be corrected within twenty-four hours. Admin. Code §§ 27-2013(h)(3), 27-2115(c)(1). LL38 allowed between 176 to 226 days to elapse from complaint to correction. Admin Code §§ 27-2056.7(a), 27-2115(l).

LL38 altered, and in some respects reduced, landlords’ inspection duties. Although the Court of Appeals had interpreted LL1/1982 as placing a continuing duty on landlords to eliminate all lead paint hazards on specified interior surfaces, Juarez, 88 N.Y.2d at 642, 647; Chapman v. Silber, 97 N.Y.2d 9, 19-20 (2001), LL38 only required landlords to conduct a visual inspection for peeling paint once a year of those premises for which they had received notice that a child under 6 resided therein. Admin. Code §§ 27-2056.3(d) & (e). For lead paint hazards that arose subsequent to the visual


108. Under the implementing regulations, the landlord had to inquire at the lease signing and renewal for the presence of a child under six, and also send a notice in January of each to enquiring as to the (continued...)
inspection, LL38 stated that landlords has no responsibilities absent either actual notice of peeling paint or written notice from tenants. Unlike LL1/1982, LL38 limited the inspection duties of landlords and HPD to pre-1960 buildings.

LL38 eliminated HPD’s mandate in LL50, Admin. Code § 27-2126(b), to correct lead paint hazards within 18 days in one- and two-family homes where a child had already been poisoned when landlords had failed to do so.

LL38 altered safe work requirements for renovations on lead paint. LL38 allowed a landlord to use one set of weakened work practices (titled “interim controls”) if the violation was corrected within 21 days, only requiring compliance with the preexisting more stringent work practices in Health Code § 173.14 if the work took longer. In part, LL38’s “interim controls” eliminated filing notices with HPD about renovation work; eliminated warning signs; eliminated licensing and training requirements for persons performing lead paint work; relaxed record-keeping requirements; and omitted lead dust clearance tests to assure work was properly cleaned up. LL38’s “interim controls” also eliminated numerous discrete requirements related to work area preparation; daily cleanup; final cleanup; and final inspection.

109. For those situations where landlords were operating under “interim controls,” a new section of the Health Code, § 173.15, was promulgated in late 1999, to enable DoH to respond to complaints of unsafe work practices (this section was revoked by DHMH’s revisions to the Health Code in 2004 to harmonize with Local Law 1 of 2004; pursuant to revised § 173.14((f), DHMH now has authority to investigate any complaints of unsafe work practices.)

110. See note 97, page 48 above.
D. Some Practice Issues under Local Law 38

1. Defenses

LL38 created a number of new tenant obligations, which were somewhat buried in § 27-2056.3, a section entitled "Owner's Duty to Notify, Inspect and Correct". Unfortunately, unsophisticated tenants, or those without command of the English or Spanish languages, may have been unaware of those obligations.

While LL1/1982, as interpreted by Juarez, placed owners on continuing constructive notice of lead hazards, LL38 appeared to significantly shift this burden to tenants. § 27-2056.3(f) provided:

In the event of any ... claim by or on behalf of the occupant of the dwelling unit or a child under six years of age who resides therein, such owner may in defense or mitigation of such owner's liability show that ... the owner visually inspected the dwelling unit but the lead-based paint hazard arose subsequent to such inspection and the occupant did not provide notice to the owner of such hazard.

On the other hand, nowhere did LL38 explicitly state that it was the tenant's responsibility to notify regarding such subsequent-arising hazards.

Tenants were also required to notify the landlord if a child under six resided in or moved into the apartment, and complete and return an annual inquiry notice to the landlord regarding such children. A failure to comply with these requirements could also be a defense under § 27-2056.3(f).

As mentioned earlier, the definition of lead hazards in LL38 — lead paint that was peeling or on deteriorated surfaces (§ 27-2056.1(a)(2)) — was far more limited than that under LL1/1982 (which, as interpreted by NYCCELP II, comprised virtually all interior lead paint in any condition).

111. The two languages of the various LL38 forms.

112. See also 28 R.C.N.Y. § 11-05(a) (owner shall perform a visual inspection “if an occupant informs the owner regarding the presence of a lead hazard”).

113. Whether a municipality has the power to explicitly limit private tort liability (or for that matter, create it) in this manner is not addressed here; however, in a 2001 decision, Elliott v. City of New York, 95 N.Y.2d 730, the Court of Appeals reaffirmed that a “violation of a municipal ordinance constitutes only evidence of negligence.” Id., at 734. It noted that In Juarez, we . . . specifically declined to address the tort implications of an Administrative Code provision that mandates a specific duty. Now that this issue is before us, we hold that, for tort purposes, even a specific duty provision in the Administrative Code must be treated as any other local enactment if its status is that of a local law. Id., at 736.)

114. See also former 28 R.C.N.Y. § 11-05(a) (“Owner’s Duty to Inspect”), which required inspections if the owner either received written notice of a child or “otherwise has actual notice.”
and indeed, far more limited than federal definitions as well. Hazards such as lead dust, conditions that cause lead dust (such as intact lead paint on friction and impact surfaces), and "chewable" surfaces (i.e., surfaces that an infant might mouth, such as windowsills or stair balusters), were not included as defined "hazards" in LL38. And LL38's mandated landlord duties provided for only for a visual inspection of these limited defined hazards.

LL38 also sought to limit remedies against the City "for the failure to perform any regulatory duty ... pursuant to this chapter" to an Article 78 proceeding. § 27-2059.9.

2. Non-Multiple dwellings

LL1/1982 applied only to multiple dwellings (i.e., 3 or more unit buildings). LL38 as well generally had the same limitation, with one significant difference: the addition of Admin. Code § 17-181, which prohibits "the dry scraping or dry sanding of lead-based paint or paint of unknown lead content in any dwelling unit" as a public nuisance and a condition dangerous to life and health. (emphasis added)

3. Record keeping

LL38 required owners to maintain records concerning lead paint in a variety of instances. For example, when correcting lead paint hazards where no violation has been issued, the owner had to "maintain or transfer to subsequent owners records of any work performed ... [and] such records shall be maintained for three years."§ 27-2056.2(12) Owners were required to do the same with records of visual inspections and work performed under § 27-2056.3 (see § 27-2056.3(g)) and in removing violations (§ 27-2056.13). The record keeping requirements were elaborated upon in LL38's implementing regulations, particularly 28 R.C.N.Y. §§ 11-02(b)(3), (c)(2) and (d)(2), 11-03 (b), 11-04(a)(1) and (b)(1)(3); and 11-05(c). These record keeping requirements may be particularly relevant with respect to the Title X disclosure requirements, discussed earlier.

115. TSCA § 401 (codified as 15 USC § 2681) broadly defines lead-based paint hazard as: any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Administrator under this title.

116. Whether the City could limit its liability in this manner in LL38 is not addressed here, but in any event is probably now irrelevant, given the subsequent Court of Appeals decision in Pelaez v. Seide, 2 N.Y.3d 186 (2004).

117. Codified within the Health title (Title 17) of the Administrative Code, rather than Housing Maintenance title (Title 27). This provision was re-enacted in LL1/2004.
E. **NYCCELP v. Vallone and the revival of Local Law 1 of 1982**

In late 1999, NYCCELP and a number of other organizations and individual parents brought an Article 78 challenge to LL38, asserting that the City Council had failed to properly conduct environmental reviews under the State Environmental Quality Review Act (“SEQRA”). In late 2000, the Supreme Court issued a decision nullifying LL38, thus reviving LL1/1982 and undoing the changes to LL50. NYCCELP v. Vallone, N.Y.L.J., October 16, 2000, at 26 (Sup. Ct. N.Y. Co.) (Order entered on February 22, 2001). Although the City swiftly served a notice of appeal, the question of whether the order was automatically stayed under CPLR 5519(c) was not resolved until May 10, 2001, when the Appellate Division granted the City a discretionary stay (implicitly recognizing that there was no automatic stay in that instance); thus, technically LL1/1982 was back in effect during the interval from February 22 to May 10, 2001.

Subsequently, the Appellate Division unanimously reversed, 293 A.D.2d 85 (1st Dep’t 2002), only to be in turn unanimously reversed by the Court of Appeals on July 1, 2003. 100 N.Y.2d 337. The Court of Appeals’ decision explicitly revived LL1/1982, 100 N.Y.2d at 350, which thus became the operative law from July 1, 2003, until revoked on August 2, 2004 when LL1/2004’s went into full effect. See O’Neal v. New York City Housing Authority, 4 A.D.3d 348 (2d Dep’t 2004); Dep’t of Housing Preservation and Development v. 50 Lincoln LLC, 2003 N.Y. Slip Op. 51315(U), 2003 WL 22399612 (A.T. 1st Dep’t). However, since the implementing regulations required by the many orders in the NYCCELP v. Koch litigation were never fully promulgated, the regulatory climate was left somewhat muddled during the interregnum before LL1/2004 went into effect.

F. **Local Law 1 of 2004**

The New York City Childhood Lead Poisoning Prevention Act of 2003, known as Local Law 1 of 2004 (“LL1/2004”), went into effect on August 2, 2004, repealing LL1/1982 and LL 50 of 1972 (the latter essentially recodified as § 27-2056.14), and formally repealing as well the already

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118. In O’Connor v. Weiss, 2008 NY Slip Op 50191U (S. Ct. Kings Co. 2008), a personal injury case concerning a child diagnosed with lead poisoning in 2000, the Court, considering the question of which statutory obligations were to be applied in adjudicating the landlord’s conduct, ruled that because of the NYCCELP v. Vallone decision LL38 was essentially void ab initio and thus the applicable standard would be that of LL1/1982.

119. See Pelaez v. Seide, 2 N.Y.3d 186, 198 at n. 5 (2004). The law, then designated “Intro 101A,” was initially passed by the New York City Council by a 44-5 vote on December 15, 2003; Mayor Bloomberg vetoed the bill on December 19, 2003, but on February 4, 2004, the Council overrode the veto by the same vote majority. Two legal challenges to the new law were dismissed in August of 2004, see, Community Preservation Corp. v. Miller, 5 Misc. 3d 388, (S. Ct., N.Y. Co. 2004), aff’d sub. nom. Rent Stabilization Assoc. v. Miller, 15 A.D.3d 194 (1st Dep’t 2005), leave to app. den. 4 N.Y.3d 709 (2005). Minor amendments to the J-51 tax credit provisions (found in Admin Code §11-243) were enacted via Intro 607-A on August 9, 2005 (now Local Law 74 of 2005).

While it would be perhaps easiest to characterize LL1/2004 as a middle ground – in some ways narrower than LL1/1982 but broader than LL38 – it is important to note the preliminary statement of findings and purposes, which, in explaining that the approach of this act, signaled a major philosophical shift from the prior laws. While LL1/2004 does not require LL1/1982’s full abatement, it does continue LL1/1982’s mandate that owners maintain a safe dwelling at all times, using their knowledge of the particular characteristics of the buildings they manage. The overall approach of LL1/2004 recognizes that if landlords are to be permitted to leave some lead paint in place, they must proactively assure that the lead paint is kept in a condition that is not hazardous to the occupants. And more specifically, it requires that any work involving repairs or disturbance of lead paint – including activities that in and of themselves are not intended to remediate lead paint but nonetheless will disturb it (such as major plumbing or electrical repairs that involve opening up large sections of a lead-painted wall) – may only be done by properly trained personnel using safe work practices. In sum, under LL1/2004 it is the landlord’s continuing duty to assure that a dwelling where a young child resides is safe from lead hazards, and to use professional judgment in assuring so, depending on the conditions of the dwelling and building. Unlike either LL1/1982 or LL38 of 1999, this standard of care is decoupled from the standards that guide the City’s code enforcement actions when there is a problem landlord; as to the latter, clear uniform standards are set, with defined violations and defined timeframes for enforcement.

1. Definitions

LL1/2004 and its implementing regulations introduced many new defined terms that were not utilized in prior New York City lead laws. Most importantly, it included “lead-contaminated dust,” (Admin. Code § 27-2056.2(8), 28 R.C.N.Y. § 11-01(u)) which is the major pathway of lead poisoning in children, and unlike LL38, subsumes lead-contaminated dust within the definition of a “lead-based paint hazard.” (§§ 27-2056.2(6), 11-01(s)) The definition of a lead-based paint hazard is itself broader than that in LL38: it comprises basically any condition that causes environmental exposure to lead from paint, rather than just peeling paint. Moreover, it indicates various areas where lead-
Based paint hazards are likely to exist, such on a “Chewable Surface,” “Friction Surface,” and an “Impact Surface.” It also provides a definition for an “underlying defect” and redefines a “deteriorated subsurface.” Since under LL1/2004 landlords are responsible for lead-based paint hazards in the common areas of a child-occupied multiple dwelling, the “Common Area” is defined as “a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling” (§27-2056.2(2), see also 28 R.C.N.Y. § 11-01(f)). Other new terms include “Remediation” or “Remediate” and “encapsulation.” Lastly, “lead-based paint” is defined as 1.0 mg/cm² (as in LL38 and federal law).

121. “a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides and which is readily accessible to such child . . . also . . . any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that child of applicable age who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.” §27-2056.2(1); see also 28 R.C.N.Y. § 11-01(d).

122. “any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.” §27-2056.2(4); see also 28 R.C.N.Y. § 11-01(o).

123. “any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.” §27-2056.2(5); see also 28 R.C.N.Y. § 11-01(r).

124. “a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.” §27-2056.2(14); see also 28 R.C.N.Y. § 11-01(ff).

125. “an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.”§27-2056.2(3); see also 28 R.C.N.Y. § 11-01(i).

126. “the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of health and mental hygiene.” §27-2056.2(11); see also 28 R.C.N.Y. § 11-01(y).

127. “the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate.” 28 R.C.N.Y. § 11-02(l).

The regulations permit only encapsulants approved by the N.Y.S. Dep’t of Health or other appropriate agency, and only if it is designed to be permanent. Id. (“permanent” means “an expected design life of at least 20 years,” § 11-02(x)) A list of approved encapsulants is available at http://www.nyc.gov/html/hpd/downloads/pdf/nys-doh-encapsulant-list.pdf
2.  **Applicability, Child of Applicable Age**

In general, LL1/2004 applies to Multiple Dwellings (buildings with 3 or more units) built before 1960 (or 1978 if the landlord is aware of the presence of lead paint) in units where a “child of applicable age” resides, and common areas of those buildings.

There are several limited circumstances, discussed below, where some provisions of LL1/2004 apply to non-multiple dwellings; in particular, the provisions concerning the City’s responses to a lead poisoned child, and the requirements at turnover of a rental property that will not be occupied by the owners’ family.

Co-ops and condos are treated essentially as non-multiple dwellings when occupied by the condo unit owner or the proprietary leaseholder, or their immediate families. § 27-2056.15(c); 28 R.C.N.Y. § 11-12.  

There is also an emergency provision in LL1/2004 for actions “immediately necessary to safeguard against imminent danger to human life, health or safety or to protect property from further major damage,” – that is, structural collapse or fires – but even in those circumstances occupant protections are required to the extent possible, and the exception is only during the immediate emergency.

The age of children protected by LL1/2004 is referred to throughout as “a child of applicable age.” Section 27.2056.18 defines this as a child “under seven years of age’ (as in LL1/1982) for at least one calendar year from the effective date” (i.e., August 2, 2004) of LL1/2004; see also 28 R.C.N.Y. §11-01(b), after which the Board of Health could redefine the “applicable age” to mean under six years of age, but no lower. By a resolution adopted on March 16, 2006, the Board of Health lowered the applicable age to under six years, effective October 1, 2006. See Health Code §173.14(b) (Definitions: “Child of applicable age”)

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128. In the event a unit is sublet by the condo-unit owner, the proprietary leaseholder or by the sponsor, § 27-2056.15(b) permits the co-op or condo to allocate responsibility for compliance with LL1/2004 to the unit owner or proprietary leaseholder. See also 28 R.C.N.Y. § 11-12. In all other instances, § 27-2056.15 bars landlords and tenants from waiving any of the requirements of LL1/2004.

129. Section 27-2056.16 provides:

For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety or to protect property from further major damage, such as when a property has been damaged by a natural disaster, fire, structural collapse, cascading water, lack of utilities or other emergency conditions, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable and the requirements of this article shall not apply. This exemption applies only to repairs immediately necessary to respond to the emergency. The requirements of this article shall apply to any work undertaken subsequent to or above and beyond such emergency actions.
3. Owner’s Responsibility to Remediate

LL1/2004 § 27-2056.3 (and 28 R.C.N.Y. §11-02) make the landlord responsible not only to promptly remediate lead hazards, but also to prevent the reasonably foreseeable occurrences of lead-based paint hazards. This responsibility only applies to multiple dwelling units where a child of the applicable age resides (and common areas of such buildings). § 27-2056.3 The landlord also has a duty to remediate any underlying defect causing a lead-based paint hazard. Id., see also 28 R.C.N.Y. § 11-02. The owner must always use the specific safe work practices required in § 27.2056.11 and 28 R.C.N.Y. § 11-06 whenever removing lead hazards, or indeed, whenever disturbing lead paint or paint of unknown lead content. An owner can be exempted from the responsibility to remediate lead dust if DHMH determines, pursuant to §27-2056.10(c)(6), that the lead dust on an area (such as on a window) is not caused by a source within the landlord’s control, although DHMH may nonetheless order an abatement of the dust. Health Code § 173.13(d)(1).

4. Owner’s Responsibility to Notify and Investigate

Sections 27-2056.4 and 11-04(a) provide that in a child-occupied units in multiple dwellings erected before 1960 (or before 1978 where the landlord knows of the presence of lead-based paint), the landlord must investigate for lead hazards such as peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces at least once a year. Unlike LL38, under LL1/2004 the owner may be obligated to conduct an investigation more frequently, such as when he or she knows (or should know) of a condition that is reasonably foreseeable to cause a lead-based paint hazard, when an occupant makes a complaint or requests an inspection, or when the owner receives a notice of violation or is ordered to correct a lead-based paint hazard. Unlike LL1/1982, the presence of lead paint in a child-occupied dwelling is not per se illegal, but if a landlord chooses not to permanently abate it, the landlord is continually obligated to assure that it is not in a hazardous condition.

LL1/2004 makes it the owner’s responsibility to ascertain if a child of applicable age resides in a dwelling unit. §§ 27-2056.4(a), 11-03(b)(5). And tenants are required to provide accurate information regarding the presence of such children and provide access for inspections and repairs. §§ 27-2056.4(b), 11-03(a)(2). Leases must attach a rider providing information about the respective obligations of the tenants and landlords under LL1/2004, in a format...
approved by HPD. §§ 27-2056.4(c); 11-03(a)(1). The landlord is also required to provide tenants with a pamphlet (created by DHMH pursuant to §17-179) about the hazards of lead paint and the process by which violations of LL1/2004 are to be corrected, along with phone numbers for obtaining lead screening and for reporting unsafe work practices. §§ 27-2056.4(c); 11-03(a)(1).

LL1/2004 requires that the landlord, upon signing a lease, including a renewal lease for a unit in a multiple dwelling built before 1960 (or before 1978 if it is known to contain lead paint), inquire using a standardized form whether a child of the applicable age resides or will reside in the apartment. §§ 27-2056.4(d)(1); 11-03(a). If the tenant responds in the negative, the tenant has the obligation to inform the owner if any child of applicable age moves in between the date they receive the inquiry notice and the next year. §§ 27-2056.4(d)(2); 11-03(a)(3). If the occupant fails to do so, and the owner does not otherwise have actual knowledge that a child lives in the apartment, the owner has no obligation to inspect for lead.

In addition, each year between January 1st and 16th, the landlord must send a notice to each occupant inquiring whether a child of applicable age resides in the apartment, and the occupant has the responsibility to respond in writing by February 15. §§ 27-2056.4(e)(1)(3); 11-03(b)(1), (4). The notice must be either delivered by first class mail (addressed to the occupant), by hand, enclosed with the January rent bill (if the bill is sent between December 15 and January 16), or in conjunction with the annual window guard notice. §§ 27-2056.4(e)(2); 11-03(b)(2). If the landlord receives no response by February 15, the landlord must make reasonable attempts between February 16 and March 1 to gain access to an apartment to determine if a child of applicable age resides there; if still unsuccessful, the owner must inform DHMH. §§ 27-2056.4(e)(3)(i); 11-03(b)(5). As in the initial lease, if the occupant responds in the negative, the occupant has the responsibility to inform the owner if a child of applicable age moves in before the next annual notice, and if the occupant fails to do so, and the owner does not otherwise have actual knowledge of a child living there, the landlord has no responsibility to inspect §§ 27-2056.4(e)(3)(ii); 11-03(b)(4). For the year 2004, if the owner has already delivered a notice similar to that required under LL38, the owner will have satisfied the notice requirement for 2004.

130. A copy of this rider is in the appendix at page 227
131. A copy of this pamphlet is in the appendix at page 231, 235.
132. See form in appendix at page 227
133. In Yaniveth R. v LTD Realty Co., 27 N.Y.3d 186 (2016), the Court of Appeals held that the term “reside” in former LL1/82 meant a child’s permanent dwelling, and thus a child who spent about 50 hours a week in her grandmother’s home during the day (while her parents were working) did not have a claim under LL1/82 for lead poisoning in that apartment, nor under common law if the landlord did not otherwise know the child was there. See, also, Michaud v Lefferts 750, LLC, 87 A.D.3d 990 (2d Dep’t 2011).
under LL 1.\textsuperscript{134}

For any investigation, the owner must provide the results to the occupant and keep a copy for ten years from the date of the report, which must be made available to HPD upon request and transferred to any successor in title.\textsuperscript{135}

Owners who violate the notice and investigation provisions can be charged with a misdemeanor and fined up to $500 or imprisoned for up to 6 months, or both. Additionally, the owner can be subject to a civil penalty of up to $1500 per violation. § 27-2056.4(g).

5. Turnover requirements

Sections 27-2056.8 and 11-05 provide that upon turnover of a dwelling unit in a multiple dwelling or private dwelling (if the unit is to be occupied by persons other than the owner or the owner’s family) erected before 1960, the owner must (1) remediate all lead-based paint hazards and any underlying defects, (2) make all bare floors, window sills, and window wells smooth and cleanable, (3) remove and permanently cover all lead-based paint on all friction surfaces on all doors and door frames, and (4) remove and permanently cover all lead-based paint on all friction surfaces on all windows, or install replacement window channels or slides on all lead-based painted friction surfaces on all windows.

All work performed must follow the safe work practices under § 27-2056.11(a)(3), 28 R.C.N.Y. § 11-06(g)(3), and Health Code § 173.14(e)(3), discussed infra at page 63. The owner must certify compliance to the new tenant. § 11-05(d).\textsuperscript{136}

Note this is one of the few provisions of LL1/2004 that applies to non-multiple dwelling units – i.e., one and two family building units – which were essentially unregulated under prior laws.

6. The Presumption of Lead Paint

In §27-2056.5 and 28 R.C.N.Y. § 11-07, LL1/2004 continues the rebuttable presumption of the prior laws: in any multiple dwelling erected before 1960, where a child of applicable age lives, it is presumed that the paint within the dwelling unit or the common area is lead-based paint. This presumption may be rebutted by the owner by submitting to HPD a sworn statement along with lead-based paint testing or sampling results, and a sworn written statement by the person performing the testing (who must be EPA certified) indicating that no lead-based paint exists in the dwelling unit or common area. §§ 27-2056.5(a) and 11-07(b). The owner can also apply for an exemption to the

\textsuperscript{134} This provision (§27-2056.4(4)(e)) took effect immediately upon the Council’s February 4, 2004 override of the Mayor’s veto (rather than August 2, 2004 for the other provisions of LL1/2004).

\textsuperscript{135} § 27-2056.4(f). In general, records must be kept by landlords for 10 years under LL1/2004 § 27-2056.17. LL38 only provided for 3 years of record keeping.

\textsuperscript{136} This certification is in the initial lease rider, see appendix at page 227
presumption if she or he has performed substantial alterations to the apartment such as removal or permanent covering of all lead-based paint in that dwelling unit. §§ 27-2056.5(b) and 11-08. Whether or not the proof submitted by the landlord is adequate to rebut the presumption will be decided by HPD. §§ 27-2056.5(a).

Once a landlord is found to be exempted from the presumption, the owner is exempted from the requirements to notify occupants and investigate (§27-2056.4) and turnover work (§27-2056.8), and HPD’s duties for conducting inspections under §27-2056.9 no longer apply. § 27-2056.5(b) It should be noted that if a tenant has told the landlord that no child of applicable age lives in the apartment, and then fails to let the landlord know if such a child moves in, the presumption will not apply for notice purposes in a personal injury action (§27-2056.4(e)(3)(ii)).

7. HPD Inspections

For the purposes of HMC violations, §27-2056.6 defines a lead-based paint violation lead-based paint that is peeling or on a deteriorated subsurface in a unit in a multiple dwelling where a child of applicable age resides. Note that this is narrower than the definition of lead hazards and the owner’s duties to prevent and correct them, nor does it include common areas.

Under §27-2056.9, HPD must inspect within 10 days after receiving a complaint regarding peeling paint, a deteriorated subsurface or an underlying defect in an apartment built before 1960 where a child of applicable age lives. If HPD is unable to gain access within the 10 days, it must make a reasonable second attempt to gain access within 5 days of the first attempt. Unlike the prior laws (which chiefly relied on the statutory presumption of lead paint), under LL1/2004 HPD inspections use an XRF analyzer to determine whether lead-based paint is present in the apartment, except for when the XRF analysis unable to be performed during an inspection, in which case HPD can continue to rely on the §27-2056.5 presumption to issue violations.

If a violation is found, HPD must serve a notice of violation on the owner within 10 additional days, along with a guide on the safe work practice regulations. In addition, notification of the violation must be sent simultaneously to the tenant, §27-2155(l)(1), §27-2056.13, along with the phone number of DHMH for help with lead screening. Furthermore, HPD must notify DHMH when it places a violations so that DHMH can follow up with the family regarding lead screening. § 27-2056.13. (DHMH is required to assist the family with obtaining lead screening if the child is uninsured. §§ 17-179 27-2056.13).

LL1/2004 also added several pro-active measures in §27-2056.9 regarding HPD enforcement. For example, when HPD receives a complaint about peeling paint, and underlying defect, or a deteriorated subsurface, HPD must make diligent efforts to ascertain whether a child of applicable age

resides in the apartment, and if so, treat it as a lead paint complaint. §27-2056.9(b) In addition, § 27-2056.9(a) requires that when HPD enters a dwelling unit in a pre-1960 building to investigate any violation or complaint – whether lead-related or not – the inspector must attempt to ascertain whether a child of applicable age lives in the apartment by asking the occupant. If the answer is yes, the inspector must immediately perform a room-by-room inspection of the apartment and record whether the paint in each room is peeling or intact. If peeling paint is found, within 10 days HPD must perform another inspection using an XRF analyzer to determine whether lead-based paint is within the dwelling.

Pursuant to §27-2056.10, HPD inspectors and supervisory personnel are required to be appropriately trained to EPA and HUD standards for performance of visual inspections.

8. Work Practices

HPD’s regulations, promulgated with the approval of DHMH, establish safe work practices owners must follow, tailored to different circumstances. §27-2056.11. See 28 R.C.N.Y. § 11-06. In general, these regulations are required to be as protective as the safety standards that already apply when a child is determined to be lead poisoned (Health Code § 173.14), discussed supra at page 49. See § 11-06(d) (“work methods”), (e) (“Prohibited methods”), (f) (“work practices and surface finishing”), and (g) (“occupant protection”).

a. Where a violation has not been issued.

Even when a violation has not been issued, if an owner is performing any work in a pre-1960 building (or pre-1978 if there is known lead paint) that will disturb lead-based paint or paint of unknown lead content in an apartment where a child of applicable age lives, or in the common area of such multiple dwelling, § 27-2056.11(a)(2) requires that the work practices in § 11-06 be followed, including the occupant protection provisions in § 11-06(g)(2). Dust clearance tests must be performed at the completion of work. §§ 27-2056.11(a)(2)(i), 11-06(g)(2)(vii). Those performing the work must also, at a minimum, have completed a course on lead-safe work practices given by or on behalf of HPD, EPA, or HUD or an entity authorized to give such a course. §§ 27-2056.11(a)(2)(i), 11-06(b)(3) The landlord must provide appropriate temporary relocation to the occupants when the work cannot be performed safely §§ 27-2056.11(a)(2)(i), 11-06(g)(2)(viii), (g)(1)(ix)(E). (This requirement was mandated since 1989 in NYCCelp II but never before implemented).

For work that disturbs more than 100 square feet of lead-based paint or work that involves the

138. A copy of the regulations is in the appendix at 212, a chart comparing them to the federal RRP regulations is at page 245. The RRP rules are largely similar, but with some important differences, particularly cleaning verification, pre-notification, training, and daily cleaning. On the other hand, the RRP rules are more broadly applicable than NYC rules, applying regardless of the presence of children, and also apply to exterior work, non-multiple dwellings, and 1960-1978 buildings.
removal of two or more windows with lead-based paint, the owner must, in addition, use only EPA certified firms. §§ 27-2056.11(a)(2)(ii), 11-06(b)(2). The owner of the premises or the firm performing the work must also file with DHMH, no less than 10 days prior to the commencement of work, so that the DHMH can perform audits of the work. §§ 27-2056.11(a)(2)(ii), 11-06(a).

These work practices do not apply when the work performed disturbs surfaces less than 2 square feet of peeling lead-based paint per room or 10% of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame. § 27-2056.11(a)(2)(iii)

b. Where a notice of violation is issued

Owners performing work in order to comply with a notice of violation or order to correct issued by the City must use the HPD work practices discussed in the prior section, and in addition, all work must be performed only by EPA certified firms. §§ 27-2056.11(a)(1); 11-06(b)(2).

c. Work performed upon turnover

Where a landlord is performing work on turnover pursuant to § 27-2056.8, lead-contaminated dust clearance tests must be performed after work is completed. §§ 27-2056.11(a)(3), 11-06(g)(3).

d. Dust clearance tests

Persons performing dust clearance tests must be third-parties who are independent of the owner and any individual or firm that performs the work. §§ 27-2056.11(b), 11-06(b)(2)(iii), (3)(ii), and (4). They must have successfully completed a course approved or administered by DHMH or by the EPA or HUD and must obtain a certificate or document issued by or acceptable to DHMH. Id. All dust clearance tests sent to a laboratory for analysis must include a sworn certification that the test was performed in compliance with all applicable rules and regulations. § 27-2056.11(c).

When an owner is performing work in response to a cited violation all clearance test results must be filed with HPD. § 27-2056.11(d).

A copy of all dust clearance test results must be given to the occupant by the owner, and must provide a sufficiently clear explanation of the meaning of such results. §§ 27-2056.11(d), 11-06(g)(1)(ix)(D), (g)(2)(vii), and (g)(3)(iii). Work areas cannot be cleared for permanent re-occupancy until dust clearance is achieved, however, temporary access is permitted to occupants pending lab results as long as the test samples have been collected and all the required clean-up measures have been performed. § 11-06(g)(1)(ix)(D).

139. This form is available on HPD’s website at www.nyc.gov/html/hpd/downloads/pdf/DOHMH-Notification-Form.pdf
9. **HPD Orders to Remediate**

The administrative aspects of LL1/2004 violations are chiefly set out in subdivision “l” of § 27-2115, as well as in § 27-2056.9, discussed supra, and 28 R.C.N.Y. §§ 11-09 and 11-09.

a. **Notifications of violations**

As noted above, HPD must serve the notice of violation on the landlord by HPD within 10 days. § 27-2056.9 (c), and simultaneously notify the tenant as well. §27-2155(l)(1), §27-2056.13.

b. **Time to correct**

Section 27-2115(l)(1) provides 21 days to correct the violation. The owner, “for good cause shown,” may request a postponement by submitting a detailed, sworn statement showing it took prompt action to correct the violation but because of serious technical difficulties, was unable to obtain necessary materials, funds or labor, or was unable to gain access to the dwelling unit to make the repair. §§ 27-2115(l)(1), 11-10(b). The postponement cannot be longer than 14 days from the date set for correction in the notice of violation, and must be requested no later than 5 days before the original due date for correction. § 11-10(a) One additional postponement may be granted for no more than 14 days, but the owner must provide, in addition to a sworn statement as for the first postponement, an affidavit from an EPA certified firm that the paint or condition has been stabilized. §§ 27-2115(l)(1), 11-10(c)(1) HPD may also grant a longer postponement when one or more substantial capital improvements will be made that will significantly reduce the presence of lead-based paint within the dwelling, however the paint which is the subject of the violation be stabilized. §§ 27-2115(l)(1), 11-10(c)(2) HPD must provide the owner and the occupant with a statement setting forth the reasons of each postponement or denial of postponement. §§ 27-2115(l)(1), 11-10(c)(1).

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140. Section 11-10(b) specifies, inter alia that when an owner claims inability to gain access, such application shall include a description of the steps taken to gain access, including but not limited to providing written notice to the tenant, delivered by certified or registered mail, informing the tenant of the necessity of access to the dwelling unit to correct the violation and the reason why access could not be gained.


c. Certification of Correction

Each violation must be certified to HPD, in writing and under oath by the owner, registered officer or director of a corporate owner or by the registered managing agent. §§ 27-2115(1)(2), 11-09(a). The certification must include a sworn statement by the person who performed the work that it was corrected in compliance with § 11-06's safe work practices. §§ 27-2115(1)(2), 11-09(a)(4). A copy of the lead dust clearance test results and the training certificate for the person taking the tests must also be included, and must be delivered to HPD by certified or registered mail, no later than 5 days after the date set for correction. §§ 27-2115(1)(2), 11-09(a)(3), (4). The date of correction for each violation must be included in the certification. HPD must then mail a copy of the certification to the complainant no more than 12 calendar days from the date HPD receives it. § 27-2115(1)(2).

Failure to file the certification establishes a prima facie case that the violation has not been corrected. §§ 27-2115(1)(2), 11-09(c).

d. Final inspection and correction by HPD

HPD must inspect conduct a final inspection to verify that the violation has been corrected within 14 days after the date set for correction. If HPD determines that the violation has not been corrected, it must correct the violations itself within 45 days of the final inspection or in a shorter time if practicable. § 27-2115(1)(3).

e. Removal of violation from HPD’s database

A violation cannot be removed from HPD’s records nor will it be deemed corrected until HPD’s records contain written verification that it conducted a final inspection and verified correction of the violation, and copies of lead dust clearance test results, where applicable by law, are filed. A copy of the final inspection report and the status of the violation must be mailed or delivered to the occupant and owner. § 27-2115(1)(4).

f. Penalties for False Certification

A person making a false certification of correction of a violation can be subject to a civil penalty of not less than $1000 and no more than $3000 for each false certification made, recoverable in a civil action brought by HPD. § 27-2115(1)(5). The owner shall be equally responsible for a civil penalty if the person making a false certification is an employee of the owner. Id. Any person making a false certification of correction can also be guilty of a misdemeanor punishable by a fine up to $1000
g. Penalties for Owner’s Failure to Correct a Violation

A landlord who fails to timely correct a lead-based paint violation, using the required safe work practices can be subject to a civil penalty of $250 per day for each violation to a maximum of $10,000 from the initial date set for correction in the notice of violation until the date the violation is corrected and certified. § 27-2115(l)(6) Additionally, an owner may be punished under Admin. Code §27-2118. There is a presumption that the condition constituting a violation continues after the service of the notice of violation. § 27-2115(l)(6)

h. Defenses

In an action for civil penalties by HPD, the owner may in defense or mitigation of liability for civil penalties show that (1) the condition constituting the violation did not exist at the time the violation was placed or (2) that the owner began to correct the condition promptly but that full correction could not be completed expeditiously because of serious technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling, or such other portion of the building that might be necessary to make the repair, provided that a postponement was granted by HPD, (3) that the owner was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made, or (4) that the violation giving rise to the action was caused by negligence, neglect or abuse of another not in the employ or subject to the direction of the owner, however, the owner shall not show in defense or mitigation evidence of any acts occurring, undertaken, or performed by any predecessor in title. § 27-2115(l)(6)

For mitigation of penalties, the owner must show by competent proof, pertinent financial data and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require. Id.

The court may remit all or part of any penalties arising from the violations if it finds that sufficient mitigating circumstances exist. However, it may condition such remission upon a correction of the violation within a time period fixed by the court.

142. These fines are less than those of LL38. Reportedly, Housing Court judges were extremely reluctant to impose the hefty minimum penalties for false certifications under LL38.

143. Section 27-2118 provides penalties for willful or reckless violations of the Housing Maintenance Code and for false statements. A person committing such violations “shall be guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than one thousand dollars for each such violation, or by imprisonment up to one year, or by both such fine and imprisonment.”
10. **HPD data reporting**

Section 27-2056.12 requires HPD and DHMH to provide annual reports on a variety of specified parameters concerning enforcement of LL1/2004 and statistics on childhood lead poisoning. In addition, §27-2056.12(c) requires that HPD maintain a central register of orders to correct LL1/2004 violations, including information on the complaint date and inspections and reinspections, and addresses (this may be useful in matters concerning compliance with the federal lead disclosure requirements).

![Graph showing children with lead poisoning](image)

**DHMH, Annual Data Report 2017 at 2**

![Graph showing number of children with BLL ≥50 µg/dL](image)

**DHMH, Annual Data Report 2009 at 9.**
### 11. DHMH Inspections When a Child Is Lead Poisoned

Section 27-2056.14 essentially recodified what was LL50 of 1972. Whenever DHMH receives a report that a person under 18 years old has been identified with a blood lead level of 15 µg/dl or higher, it must conduct an investigation to identify the sources of the elevated blood lead level, regardless of whether the person lives in a multiple dwelling. This includes an inspection of the dwelling unit where the person lives, but does not limit it to the person’s residence (for example, DHMH may inspect a day care facility or relative’s home where the child regularly spends time).

If DHMH issues a “Commissioners Order to Abate” (“COTA”) a violation to the landlord, it must notify HPD of the order. Where the owner fails to comply with the order issued by DHMH to correct a violation, DHMH must certify the hazardous conditions to HPD within 16 days of the report of the elevated blood lead level, and HPD must then correct the condition within 18 days. These are the same time frames as before (except LL38 had removed HPD’s mandate for non-multiple dwellings).

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144. Prior law was 20 µg/dl per Health Code §173.13(d)(2). In general, health care providers are required to report elevated lead levels to DHMH within 24 hours. Health Code § 11.03.

145. Under Health Code § 173.13(d)(2) the owner has 5 days to correct the violation, in compliance with Health Code § 173.14, using EPA certified workers.
In addition, LL1/2004 sets up a system for focusing on problem buildings. Under §§ 27-2056.7 and 11-11(a), within 15 days of HPD being notified by DHMH of a lead poisoning (pursuant to § 27-2056.14), HPD must notify the landlord that it is required to provide within 45 days all the records required under LL1/2004. Once HPD has these records, it is to inspect all child-occupied units where it determines there may be uncorrected violations. If the owner does not provide the records to HPD the department will inspect the dwelling units where a child of applicable age resides within 45 days to determine whether there are any lead paint violations. (HPD is not required to inspect or request records if it has done so already within the prior twelve month period.) An owner who fails to comply with the section can be liable for a class C violation and a maximum civil penalty of $1000.

12. Other Amendments relating to the Health sections of the Administrative Code

LL1/2004 has several innovative prevention measures codified in the Health title of the Administrative Code. For example, Administrative Code §17-186 requires the creation and distribution of a pamphlet discussing the risks and effects of lead poisoning and the intervals at which a child should be screened for blood lead level with telephone numbers of resources for parents along with the landlords...
requirements to inspect and repair lead paint hazards. This pamphlet must accompany birth certificates furnished to parents by DHMH.

Certain other provisions that were contained in LL38 have been re-enacted in LL1/2004 as well, such as the prohibition on dry scraping or dry sanding of lead-based paint or paint of unknown lead content in any dwelling, day care center or school, §17-181, and DHMH’s requirement to respond to complaints regarding unsafe lead-based paint work practices. Admin. Code §§17-185, Health Code § 173.14(f).

In addition, a new provision in the Health Code, § 173.13(a)(2), requires that stores which sell paint or paint removal products, or which sell or rent sanding equipment, must post or distribute a notice to purchasers (and renters of paint removal or sanding equipment) warning that dry scraping or sanding is prohibited as a method of removing lead paint or paint of unknown lead content in any dwelling, day care center or school. This provision is enforceable both by DHMH and the Department of Consumer Affairs.

G. Regulation of Lead-based Paint in Schools and Day Care Facilities

1. Kindergartens

Health Code § 45.12, which applies to Dep't of Education kindergartens, bars peeling lead paint or peeling paint of unknown lead content, and its immediate abatement or remediation upon discovery in accordance with the Health Code safe work practices found in § 173.14. § 45.12(b). Children must not have access to rooms where any work is being done which disturbs lead-based paint or paint of unknown lead content. § 45.12(c)(iii). Former § 45.12(c) required all interior window sills and wells and window friction surfaces to be abated by January 1, 1997. The Dep't of Education must annually survey the condition of all surfaces with lead paint or unknown lead content in kindergarten classrooms and other areas used by children under age six and report such survey to

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147. This provision was repealed as of August 2, 2004 without explanation, and one must hopefully assume that this was deemed no longer needed by that latter date if the Dep't of Education had complied seven years prior.
DHMH.

2. Day Care Facilities

LL1/2004 amended Title 17 of the administrative code of the city of New York by adding a new chapter 9, which addresses lead-based paint in child day care facilities. These do not include “family day care” programs, i.e., small day care operations in private homes. (See Social Services Law § 390(1)(d) and (e). These provisions largely mirror the residential portion of LL1/2004: The Health Code, at § 47.44, contains additional provisions concerning Day Care facilities.

a. Presumption

All paint on the interior of any day care facility in a structure erected before 1978 is presumed to be lead-based paint. Admin. Code § 17-910. As in the residential section of LL1/2004, the presumption may be rebutted by submission of a sworn written statement by an EPA certified tester, and any other proof that may be required by DHMH.

b. Remediation and abatement

Lead based paint or paint of unknown lead content that is peeling, or is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces must be immediately or remediated in a manner authorized by DHMH. Admin. Code §17-911, Health Code § 47.44(a)(2). Additionally, any equipment that is painted must be painted with lead-free paint. Health Code § 47.44(d).

Whenever a condition that warrants remediation exists, DHMH must serve an order on the operator or owner of the facility to remediate the condition. If the order is not complied with within 45 days of service, DHMH must immediately request another City agency to execute the order within 45 days of the request. The City is entitled to seek reimbursement of expenses incurred by such remediation, including credits toward lease payments. Admin. Code §17-911

Day Care Centers in operation before May 1, 1997, cannot be issued an operating permit or permit renewal unless all window sills and window wells accessible to children, all chewable, friction, and impact surfaces, and all deteriorated surfaces are remediated or abated. Health Code § 47.44(b). Day Care Centers in operation after May 1, 1997 cannot be issued a permit or operate if lead based paint exists on any interior surfaces. Health Code § 47.44(c).

c. Safe Work Practices

When performing remediation, the work must follow the safe work practices in Health Code §173.14, including lead dust clearance testing at the completion of the work. Admin. Code § 17-912, Health Code § 47.44(a)(2).
The person performing the remediation must at a minimum have completed a course in lead-safe work practices given by or on behalf of DHMH or the EPA or HUD an entity authorized to give such course. Admin. Code § 17-912. Children must not have access to rooms where any work is being done which disturbs lead-based paint or paint of unknown lead content. § 47.44(a)(5).

These work rules do not apply where the work performed disturbs a surface less than (1) 2 square feet of peeling lead-based paint per room or (2) 10% of the total surface area of peeling paint on a type of component with a small surface, such as a window sill or door frame. Admin. Code § 17-912, Health Code § 47.44(a)(4).

d. Annual Survey

The operator of a day care facility must conduct a survey annually, more often if necessary, to determine the physical condition of the paint throughout the premises and must provide a copy of the survey results to DHMH. Admin Code § 17-913, Health Code § 47.44(e).
# APPENDIX

## Table 1 - Title X regulations

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<td>Title X § 1018 42 USC § 4852d</td>
<td>24 C.F.R. §§ 35.80 et seq.; 40 C.F.R. Subpart F §§ 745.100 et seq.</td>
<td>3/6/96, by HUD and EPA</td>
<td>September 6, 1996, for buildings &gt; 4 residential units. December 6, 1996, for owners of buildings w/ 1-4 units</td>
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<td>Lead Hazard Definitions (&quot;Identification of Dangerous Levels of Lead&quot;)</td>
<td>TSCA § 403 15 USC § 2683</td>
<td>40 C.F.R. Part 745 Subpart D, §§ 745.65 et seq.</td>
<td>1/5/00 66 FR 1205-1240</td>
<td>March 6, 2001</td>
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<td>Training/certification of workers for risk assessment, inspection, and abatement</td>
<td>TSCA § 402, 15 USC § 268</td>
<td>40 C.F.R. Part 745, Subpart L §§ 745.223 et seq.</td>
<td>8/29/96 61 FR 45778</td>
<td>August 28, 1998, although certain provisions were phased in after that time. Became effective in all jurisdictions on March 1, 2000. 64 FR. 42849</td>
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<td>Federally assisted housing (requirements to inspect &amp; sometimes do interim controls or other activities in § 8 &amp; other fed. assisted housing)</td>
<td>Title X §§ 1012-1013 42 USC § 4822</td>
<td>24 C.F.R. Part 35</td>
<td>9/15/99 64 FR 50140</td>
<td>September 15, 2000 (certain prohibitions of unsafe work practices effective Sept. 15, 1999)</td>
</tr>
<tr>
<td>Guidelines for lead-based paint hazard evaluation and reduction activities</td>
<td>Title X § 1017 42 USC § 4852c</td>
<td>HUD’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing</td>
<td>issued 1995, revised 1997</td>
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<td>Education outreach activities</td>
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<td>Lead hazard information pamphlet</td>
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<td>Pre-renovation disclosure</td>
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<td>4/22/08, 73 FR 21692, revised 5/6/10 75 FR 24802</td>
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<tr>
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### Table 2 - HUD Housing Assistance Programs Covered by Each Subpart of the Regulations Within 24 C.F.R. Part 35

This list was prepared by HUD on August 25, 1999. HUD indicated that the list of programs may not be complete and is subject to change. Also, under certain circumstances some housing is exempt. See 24 C.F.R. 35.115.

**Subpart G. Multifamily Mortgage Insurance**

This subpart applies to housing for which a HUD or FHA commitment is made on or after September 15, 2000 under the following programs:

- Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Nat. Hous. Act § 220, 12 U.S.C. 1715k(a) and (b))
- Multifamily Rental Housing for Moderate-Income Families (Nat. Hous. Act § 221(d)(3) and (4), 12 U.S.C. 1715(l)(d)(3) and (4))
- Existing Multifamily Rental Housing (Nat. Hous. Act § 223(f), 12 U.S.C. 1715n(f))
- Mark-to-Market Program (12 U.S.C. 1701)
- Supplemental Loan for Project Mortgage Insurance (12 U.S.C. 1715n)

**Subpart H. Project-Based Rental Assistance**

This subpart applies to housing that is receiving project-based rental assistance on or after September 15, 2000 under the following programs:

- Section 8 Project-Based Housing Assistance Programs (42 U.S.C. 1437f)
- The Rent Supplement Payment Program (12 U.S.C. 1701s)
- Rental Assistance Payments Program (Section 236 of the National Housing Act, 12 U.S.C. 1715z-1)
- Indian Housing Block Grant Program (25 U.S.C. 4101 et seq.)
- Shelter Plus Care Project- and Sponsor-Based Rental Assistance (Title IV of the McKinney Homeless Assistance Act, 42 U.S.C. 11403 et seq.)
- Supportive Housing for the Elderly or Direct Loans for Housing for the Elderly or Handicapped (Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q)
- Supportive Housing for Persons with Disabilities (42 U.S.C. 8013)
Subpart J. Rehabilitation—

This subpart applies to housing receiving assistance for rehabilitation under the following programs (the effective date for a project in the pipeline varies with the program; see 24 C.F.R. 35.900):

- Community Development Block Grant Program (42 U.S.C. 5301 et seq.)
- Home Investment Partnerships (HOME) (42 U.S.C. 12701-12840)
- HOPE for Homeownership of Single Family Homes (HOPE 3) (42 U.S.C. 12891-12898)
- Indian Housing Block Grant Program (25 U.S.C. 4101 et seq.)
- Indian Community Development Block Grant Program (42 U.S.C. 5301 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. 12901-12912)
- Homeownership of Multifamily Units (HOPE 2) (42 U.S.C. 12871-12880)
- Emergency Shelter Grants (42 U.S.C. 11371-11378)
- Supportive Housing (42 U.S.C. 11381-11389)
- Interest Reduction Payment (IRP) Grant program (12 U.S.C. 1715z-1)
- Flexible Subsidy-Capital Improvement Loan Program (CILP) (12 U.S.C. 1715z-1)
- Mark-to-Market Program (12 U.S.C. 1701)

Subpart K. Acquisition, Leasing, Support Services, or Operation—

This subpart applies to housing receiving assistance for acquisition (e.g., down payment assistance), leasing (e.g., homelessness prevention), support services (e.g., health, child care, or training), or operation (e.g., emergency shelter) under the following programs (the effective date for a project in the pipeline varies with the program; see 24 C.F.R. 35.1000):

- Community Development Block Grant (42 U.S.C. 5301 et seq.)
- Home Investment Partnerships (HOME) (42 U.S.C. 12701-12840)
- Homeownership of Multifamily Units (HOPE 2) (42 U.S.C. 12871-12880)
- HOPE for Homeownership of Single Family Homes (HOPE 3) (42 U.S.C. 12891-12898)
- Indian Community Development Block Grant Program (42 U.S.C. 5301 et seq.)
- Indian Housing Block Grant Program (25 U.S.C. 4101 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. 12901-12912)
- Permanent Housing for Handicapped Homeless Persons (42 U.S.C. 11381 et seq.)
- Supportive Housing Program (42 U.S.C. 11381-11389)

Subpart L. Public Housing—

This subpart applies to housing owned by public housing authorities and assisted under the United States Housing Act of 1937, except for Section 8 of that Act. Covered programs include the following:

- Public Housing Development (42 U.S.C. 1437b, 1437c and 1437g)
- Public Housing Operating Subsidy (42 U.S.C. 1437g)
- Public Housing Authority (PHA) Owned or Leased Projects Maintenance and Operation (42 U.S.C. 1437d and 1437g)
- Urban Revitalization Demonstration (HOPE VI)
- Public Housing Modernization (Comprehensive Grant Program; CGP) (42 U.S.C. 1437l)
- Public Housing Modernization (Comprehensive Improvement Assistance Program (42 U.S.C. 1437l)
• Homeownership and Opportunity for People Everywhere (HOPE 1) (42 U.S.C. 1437aaa et seq.)
• PHA-owned lower-income public housing projects, including Turnkey III, Mutual Help, conveyed Lanham Act and Public Works Administration projects
• Section 23 Leased Housing Bond-Financed projects [This subpart does not apply to projects under the Section 23 and Section 8 Housing Assistance Payments programs.]

Subpart M. Tenant-Based Rental Assistance-
This subpart applies to housing that is occupied by a family with a child of less than 6 years of age and receives tenant-based rental assistance under the following programs:
• Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)
• HOME Tenant-Based Rental Assistance Program (42 U.S.C. 12701-12840)
• Indian Housing Block Grant program (25 U.S.C. 4101 et seq.)
• Shelter Plus Care Tenant-Based Rental Assistance (42 U.S.C. 11403 et seq.)
• Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. 12901-12912).
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Disclosure of information concerning lead upon transfer of residential property

(a) Lead disclosure in purchase and sale or lease of target housing

(1) Lead-based paint hazards. Not later than 2 years after October 28, 1992, the Secretary and the Administrator of the Environmental Protection Agency shall promulgate regulations under this section for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The regulations shall require that, before the purchaser or lessee is obligated under any contract to purchase or lease the housing, the seller or lessor shall--

(A) provide the purchaser or lessee with a lead hazard information pamphlet, as prescribed by the Administrator of the Environmental Protection Agency under section 406 of the Toxic Substances Control Act [15 U.S.C.A. § 2686];
(B) disclose to the purchaser or lessee the presence of any known lead-based paint, or any known lead-based paint hazards, in such housing and provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor; and
(C) permit the purchaser a 10-day period (unless the parties mutually agree upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(2) Contract for purchase and sale. Regulations promulgated under this section shall provide that every contract for the purchase and sale of any interest in target housing shall contain a Lead Warning Statement and a statement signed by the purchaser that the purchaser has--

(A) read the Lead Warning Statement and understands its contents;
(B) received a lead hazard information pamphlet; and
(C) had a 10-day opportunity (unless the parties mutually agreed upon a different period of time) before becoming obligated under the contract to purchase the housing to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

(3) Contents of Lead Warning Statement. The Lead Warning Statement shall contain the following text printed in large type on a separate sheet of paper attached to the contract:

"Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."

(4) Compliance assurance. Whenever a seller or lessor has entered into a contract with an agent for the purpose of selling or leasing a unit of target housing, the regulations promulgated under this section shall require the agent, on behalf of the seller or lessor, to ensure compliance with the requirements of this section.

(5) Promulgation. A suit may be brought against the Secretary of Housing and Urban Development and the Administrator of the Environmental Protection Agency under section 20 of the Toxic Substances Control Act [15 U.S.C.A. § 2619] to compel promulgation of the regulations required under this section and the Federal district court shall have jurisdiction to order such promulgation.

(b) Penalties for violations

(1) Monetary penalty. Any person who knowingly violates any provision of this section shall be subject to civil money penalties in accordance with the provisions of section 3545 of this title.

(2) Action by Secretary. The Secretary is authorized to take such lawful action as may be
necessary to enjoin any violation of this section.

(3) Civil liability. Any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(4) Costs. In any civil action brought for damages pursuant to paragraph (3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(5) Prohibited act. It shall be a prohibited act under section 409 of the Toxic Substances Control Act [15 U.S.C.A. § 2689] for any person to fail or refuse to comply with a provision of this section or with any rule or order issued under this section. For purposes of enforcing this section under the Toxic Substances Control Act [15 U.S.C.A. § 2601 et seq.], the penalty for each violation applicable under section 16 of that Act [15 U.S.C.A. § 2615] shall not be more than $10,000.

(c) Validity of contracts and liens. Nothing in this section shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan, nor shall anything in this section create a defect in title.

(d) Effective date. The regulations under this section shall take effect 3 years after the date of the enactment of this title [October 28, 1992].
PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

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Subpart D—Lead-Based Paint Hazards

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745.88 Recognized test kits.
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745.225 Accreditation of training programs: target housing and child-occupied facilities.
745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.
745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.
745.228 Accreditation of training programs: public and commercial buildings, bridges and superstructures. [Reserved]
745.229 Certification of individuals and firms engaged in lead-based paint activities: public and commercial buildings, bridges and superstructures. [Reserved]
745.230 Work practice standards for conducting lead-based paint activities: public and commercial buildings, bridges and superstructures. [Reserved]
745.233 Lead-based paint activities requirements.
745.235 Enforcement.
§ 745.61 Scope and applicability.

(a) This subpart identifies lead-based paint hazards.

(b) The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(c) Nothing in this subpart requires the owner of property(ies) subject to these standards to evaluate the property(ies) for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.

§ 745.63 Definitions.

The following definitions apply to part 745.

Arithmetic mean means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2)). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Common area group means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

Concentration means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

Deteriorated paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dripline means the area within 3 feet surrounding the perimeter of a building.

Friction surface means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room.

Lead-based paint hazard means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in §745.65.

Loading means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

Mid-yard means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.
Play area means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children’s possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

Residential building means a building containing one or more residential dwellings.

Room means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.


Weighted arithmetic mean means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample’s result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 μg/ft², a composite sample (three subsamples) containing 100 μg/ft², and a composite sample (4 subsamples) containing 110 μg/ft² is 100 μg/ft². This result is based on the equation \( \frac{60 + (3\times100) + (4\times110)}{1 + 3 + 4} \).

Window trough means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window “well.”


§ 745.65 Lead-based paint hazards.

(a) Paint-lead hazard. A paint-lead hazard is any of the following:

1. Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in paragraph (b) of this section.

2. Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame.

3. Any chewable lead-based painted surface on which there is evidence of teeth marks.

4. Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(b) Dust-lead hazard. A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 μg/ft².
on floors or 250 μg/ft² on interior window sills based on wipe samples.

(c) **Soil-lead hazard.** A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 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 based on soil samples.

(d) **Work practice requirements.** Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations issued by EPA at 40 CFR part 745, subpart L and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 CFR part 35, subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

1. Two square feet of deteriorated lead-based paint per room or equivalent,
2. Twenty square feet of deteriorated paint on the exterior building, or
3. Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

**Subpart E—Residential Property Renovation**

**SOURCE:** 63 FR 29919, June 1, 1998, unless otherwise noted.

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2602 and 2606) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(b) Individuals performing renovations regulated in accordance with §745.82 are properly trained; renovators and firms performing these renovations are certified; and the work practices in §745.85 are followed during these renovations.

[73 FR 21758, Apr. 22, 2008]

§ 745.81 Effective dates.

(a) **Training, certification and accreditation requirements and work practice standards.** The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

1. **Training programs.** Effective June 23, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under §745.225. Training programs may apply for accreditation under §745.225 beginning April 22, 2009.

2. **Firms.**
   (i) Firms may apply for certification under §745.89 beginning October 22, 2009.

   (ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under §745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in §745.82(a) or (c).

3. **Individuals.** On or after April 22, 2010, all renovations must be directed by renovators certified in accordance with §745.90(a) and performed by certified renovators or individuals trained in accordance with §745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in §745.82(a) or (c).

4. **Work practices.**
   (i) On or after April 22, 2010 and before July 6, 2010 all renovations must be performed in accordance with the work practice standards in §745.85 and the associated record-keeping requirements in §745.86 (b)(6) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in §745.82(a). This does not apply to renovations in target housing for which
§ 745.82 Applicability.

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams-per square centimeter (mg/cm²) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit as defined in §745.83 and following the kit manufacturer’s instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(3) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) Renovation-specific pamphlet. Before December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: Protect Your Family From Lead in Your Home or Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools. After that date, Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools must be used exclusively.

(c) Pre-Renovation Education Rule. With the exception of the requirement to use the pamphlet entitled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

§ 745.83 Definitions.

For purposes of this part, the definitions in §745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jams, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable
cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA vacuum means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer’s instructions.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Minor repair and maintenance activities are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by §745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Painted surface means a component surface covered in whole or in part with paint or other surface coatings.

Pamphlet means the EPA pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term “pamphlet” also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to §745.326.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Recognized test kit means a commercially available kit recognized by EPA under §745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in
§ 745.84 Information distribution requirements.

(a) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(1) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) In addition to the requirements in paragraph (a)(1) of this section, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(1) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Comply with one of the following. (i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall...
describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet and a copy of the records required by §745.86(c) and (d), at no cost to the occupants, or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by §745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants.

(3) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(1)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet, information describing the general nature and locations of the renovation and the anticipated completion date, and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by §745.86(c) and (d) or obtain a copy from the renovation firm at no cost to the occupants by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a
§ 745.85 Work practice standards.

(a) Standards for renovation activities. Renovations must be performed by certified firms using certified renovators as directed in §745.89. The responsibilities of certified firms are set forth in §745.89(d) and the responsibilities of certified renovators are set forth in §745.90(b).

(1) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(A) Interior renovations. The firm must:

(1) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers.
that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling and walls.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system.

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(3) Prohibited and restricted practices. The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited.

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system.

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(4) Waste from renovations—(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(5) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(A) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Disable the sheeting as waste.
(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(b) Standards for post-renovation cleaning verification—(1) Interiors. (i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is still present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(2) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(3) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(4) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(1) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(2) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(3) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.
(2) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:

(1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.

(2) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(3) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in §745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard.

(d) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.


§ 745.86 Recordkeeping and reporting requirements.

(a) Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Records or reports certifying that a determination had been made that lead-based paint was not present on the components affected by the renovation, as described in §745.82(a). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor (certified pursuant to either Federal regulations at §745.226 or an EPA-authorized State or Tribal certification program).

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(2) Signed and dated acknowledgments of receipt as described in §745.84(a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A).

(3) Certifications of attempted delivery as described in §745.84(a)(2)(i) and (c)(1)(ii)(A).

(4) Records of notification activities performed regarding common area renovations, as described in §745.84(b)(3) and (b)(4), and renovations in child-occupied facilities, as described in §745.84(c)(2).

(5) Records of notification activities performed regarding child-occupied facilities, as described in §745.84(c)(2).

(6) Documentation of compliance with the requirements of §745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in §745.85(a), and that the certified renovator performed the post-
§ 745.86 renovation cleaning verification described in §745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in §745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(c)(1) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this subpart to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(2) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this subpart or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(3) The information required to be provided by paragraph (c) of this section may be provided by completing the sample form titled “Sample Renovation Recordkeeping Checklist” or a similar form containing the test kit information required by §745.86(b)(1)(ii) and the training and work practice compliance information required by §745.86(b)(6).
(d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by §745.85(c), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(1) The owner of the building; and, if different,

(2) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(3) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

§745.87 Enforcement and inspections.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).

(c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

(e) Lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

§745.88 Recognized test kits.

(a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.

(b) No other test kits will be recognized until they are tested through EPA’s Environmental Technology Verification Program or other equivalent EPA approved testing program.

(1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: http://www.epa.gov/etv/howtoapply.html.

(2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.

(4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.

(5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA’s website.

(6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) Response criteria—(1) Negative response criteria. For paint containing lead at or above the regulated level, 1.0
mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

(2) Positive response criteria. For paint containing lead below the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time.

§ 745.89 Firm certification.

(a) Initial certification. (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed “Application for Firms,” signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm’s application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm’s application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm’s application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm’s application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) Re-certification. To maintain its certification, a firm must be re-certified by EPA every 5 years.

(i) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed “Application for Firms” which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(ii) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm’s current certification expires. If the firm’s application is complete and timely, the firm’s current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(iii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm’s current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iv) If the firm fails to obtain re-certification before the firm’s current certification expires, the firm must not perform renovations or dust sampling.
until it is certified anew pursuant to paragraph (a) of this section.

(2) EPA action on an application. After EPA receives a firm’s application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm’s application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm’s application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm’s current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm’s application if it is not received or is not complete as of the date that the firm’s current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm’s most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed “Application for Firms,” signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm’s certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) Firm responsibilities. Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with §745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in §745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in §745.85.

(4) The pre-renovation education requirements of §745.84 have been performed.

(5) The recordkeeping requirements of §745.86 are met.

[73 FR 21764, Apr. 22, 2008]

§745.90 Renovator certification and dust sampling technician certification.

(a) Renovator certification and dust sampling technician certification. (1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under §745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust
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...sampling technician certification allows the certified individual to perform dust clearance sampling under §745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under sub-part Q of this part.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011 may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course October 4, 2011 may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under §745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by EPA under §745.225 or by a State or Tribal program that is authorized under subpart Q of this part. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year certification. Individuals who take a renovator refresher course that does not include hands-on training will be certified for 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will be certified for 5 years. Individuals who take the renovator refresher without hands-on training must, for their next refresher course, take a refresher course that includes hands-on training to maintain renovator certification.

(b) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with §745.85 at all renovations to which they are assigned. A certified renovator:

(1) Must perform all of the tasks described in §745.85(b) and must either perform or direct workers who perform all of the tasks described in §745.85(a).

(2) Must provide training to workers on the work practices required by §745.85(a) that they will be using in performing their assigned tasks.

(3) Must be physically present at the work site when the signs required by §745.85(a)(1) are posted, while the work area containment required by §745.85(a)(2) is being established, and while the work area cleaning required by §745.85(a)(5) is performed.

(4) Must regularly direct work being performed by other individuals to ensure that the work practices required by §745.85(a) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(8) Must prepare the records required by §745.86(b)(1)(ii) and (6).

(c) Dust sampling technician responsibilities. When performing optional dust clearance sampling under...
§ 745.85(c), a certified dust sampling technician:
(1) Must collect dust samples in accordance with §745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with §745.227(e)(8).
(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.


§ 745.91 Suspending, revoking, or modifying an individual’s or firm’s certification.

(a)(1) Grounds for suspending, revoking, or modifying an individual’s certification. EPA may suspend, revoke, or modify an individual’s certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator’s certification if the renovator fails to ensure that all assigned renovations comply with §745.85. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm’s certification. EPA may suspend, revoke, or modify a firm’s certification if the firm:
(1) Submits false or misleading information to EPA in its application for certification or re-certification.
(ii) Fails to maintain or falsifies records required in §745.86.

(ii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) Process for suspending, revoking, or modifying certification. (1) Prior to taking action to suspend, revoke, or modify an individual’s or firm’s certification, EPA will notify the affected entity in writing of the following:
(i) The legal and factual basis for the proposed suspension, revocation, or modification.
(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.
(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification.
(iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.

(2) If an individual or firm requests a hearing, EPA will:
(i) Provide the affected entity an opportunity to offer written statements in response to EPA’s assertions of the legal and factual basis for its proposed action.
(ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

(3) The Presiding Officer will:
(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.
(ii) Consider all relevant evidence, explanation, comment, and argument submitted.
(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:
(i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity’s certification before an opportunity for a hearing.
(ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified, or reinstated.

(7) Unless the decision and order issued under paragraph (b)(3)(iii) of this section specify otherwise:

(i) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) in order to make his or her certification current.

(ii) An individual whose certification has been revoked must take an initial renovator or dust sampling technician course in order to become certified again.

(iii) A firm whose certification has been revoked must reapply for certification after the revocation ends in order to become certified again. If the firm’s certification has been suspended and the suspension ends less than 5 years after the firm was initially certified or re-certified, the firm does not need to do anything to re-activate its certification.

[73 FR 21765, Apr. 22, 2008]

§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.

(a) Persons who must pay fees. Fees in accordance with paragraph (b) of this section must be paid by:

(1) Training programs—(i) Non-exempt training programs. All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: Renovator, dust sampling technician.

(ii) Exemption. No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or nonprofit organization. This exemption does not apply to the certification of firms or individuals.

(2) Firms. All firms applying to EPA for certification and re-certification to conduct renovations.

(b) Fee amounts—(1) Certification and accreditation fees. Initial and renewal certification and accreditation fees are specified in the following table:

<table>
<thead>
<tr>
<th>Training Program</th>
<th>Accreditation</th>
<th>Re-accreditation (every 4 years, see 40 CFR 745.225(f)(1) for details)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Renovator or Dust Sampling Technician Course</td>
<td>$560</td>
<td>$340</td>
</tr>
<tr>
<td>Refresher Renovator or Dust Sampling Technician Course</td>
<td>$400</td>
<td>$310</td>
</tr>
<tr>
<td>Renovation Firm</td>
<td>Certification</td>
<td>Re-certification (every 5 years see 40 CFR 745.89(b))</td>
</tr>
<tr>
<td>Firm</td>
<td>Combined Renovation and Lead-based Paint Activities Firm Application $300</td>
<td>$300</td>
</tr>
<tr>
<td></td>
<td>Combined Renovation and Lead-based Paint Activities Tribal Firm Application $20</td>
<td>$20</td>
</tr>
<tr>
<td>Tribal Firm</td>
<td>$20</td>
<td>$20</td>
</tr>
</tbody>
</table>
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(2) Lost certificate. A $15 fee will be charged for the replacement of a firm certificate.

(c) Certificate replacement. Firms seeking certificate replacement must:
(1) Complete the applicable portions of the “Application for Firms” in accordance with the instructions provided.
(2) Submit the application and a payment of $15 in accordance with the instructions provided with the application package.

(3) Accreditation or certification amendments. No fee will be charged for accreditation or certification amendments.

(d) Failure to remit fees. (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any firm or training program that does not remit fees described in paragraph (b) of this section in accordance with the procedures specified in 40 CFR 745.89.
(2) EPA will not replace a certificate for any firm that does not remit the $15 fee in accordance with the procedures specified in paragraph (c) of this section.

[74 FR 11869, Mar. 20, 2009, as amended at 76 FR 47939, Aug. 5, 2011]

Subpart F—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 745.100 Purpose.
This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 745.101 Scope and applicability.
This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:
(a) Sales of target housing at foreclosure.
(b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.
(c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.
(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under §745.107 and where no new information described in §745.107 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and or ratification of a new lease.

§ 745.102 Effective dates.
The requirements in this subpart take effect in the following manner:
(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.
(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 745.103 Definitions.
The following definitions apply to this subpart.
Agent means any party who enters into a contract with a seller or lessor,
including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser’s representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

1. A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

2. The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

1. A single-family dwelling, including attached structures such as porches and stoops; or

2. A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and
§ 745.107 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to §745.101. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

1. The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

2. The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

3. The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

4. The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or
leased. This requirement includes records or reports regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser’s or lessee’s offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 745.110 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 745.113 Certification and acknowledgment of disclosure.

(a) Seller requirements. Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women.

The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by §745.110(a); or

(ii) Waived the opportunity.

(6) When one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller’s obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.
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(b) Lessor requirements. Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

1. A Lead Warning Statement with the following language:

   Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

2. A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

3. A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

4. A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

5. When one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that:

   i. The agent has informed the lessor of his/her obligations under 42 U.S.C. 4852d; and

   ii. The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

6. The signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(c) Retention of Certification and Acknowledgment Information. (1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee’s or purchaser’s rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser’s or lessee’s legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

§ 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

1. Inform the seller or lessor of his/her obligations under §§ 745.107, 745.110, and 745.113.

2. Ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of §§ 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.
§ 745.118 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with §745.107 (disclosure requirements for sellers and lessors), §745.110 (opportunity to conduct an evaluation), §745.113 (certification and acknowledgment of disclosure), or §745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall not be more than $11,000 for all violations occurring after July 28, 1997; all violations occurring on or prior to that date are subject to a penalty not more than $10,000.


§ 745.119 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

Subparts G–K [Reserved]

Subpart L—Lead-Based Paint Activities

SOURCE: 61 FR 45813, Aug. 29, 1996, unless otherwise noted.

§ 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

(b) This subpart applies to all individuals and firms who are engaged in lead-based paint activities as defined in §745.223, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner’s immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level. This subpart applies only in those States or Indian Country that do not have an authorized State or Tribal program pursuant to §745.324 of subpart Q.

(c) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of this subpart regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.
Environmental Protection Agency

§ 745.223 Definitions.

The definitions in subpart A apply to this subpart. In addition, the following definitions apply.

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with §745.226, unless such projects are covered by paragraph (4) of this definition;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

Accredited training program means a training program that has been accredited by EPA pursuant to §745.225 to provide training for individuals engaged in lead-based paint activities.

Adequate quality control means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

Business day means Monday through Friday with the exception of Federal holidays.

Certified firm means a company, partnership, corporation, sole proprietorship, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to §745.226(f).

Certified inspector means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Certified abatement worker means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA...
pursuant to §745.226 to perform abatements.

Certified project designer means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to prepare abatement project designs, occupant protection plans, and abatement reports.

Certified risk assessor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Certified supervisor means an individual who has been trained by an accredited training program, as defined by this section, and certified by EPA pursuant to §745.226 to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

Containment means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

Course agenda means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

Course test means an evaluation of the overall effectiveness of the training which shall test the trainees’ knowledge and retention of the topics covered during the course.

Course test blueprint means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

Discipline means one of the specific types or categories of lead-based paint activities identified in this subpart for which individuals may receive training from accredited programs and become certified by EPA. For example, “abatement worker” is a discipline.

Distinct painting history means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

Documented methodologies are methods or protocols used to sample for the presence of lead in paint, dust, and soil.
Elevated blood lead level (EBL) means an excessive absorption of lead that is a confirmed 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.

Encapsulant means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

Encapsulation means the application of an encapsulant.

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

Guest instructor means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

Hands-on skills assessment means an evaluation which tests the trainees’ ability to satisfactorily perform the work practices and procedures identified in §745.225(d), as well as any other skill taught in a training course.

Hazardous waste means any waste as defined in 40 CFR 261.3.

Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Interim certification means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from EPA pursuant to §745.226. Interim certifications expire 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

Lead-based paint activities means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in this subpart.

Lead-based paint activities courses means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator pursuant to TSCA section 403.

Lead-hazard screen is a limited risk assessment activity that involves limited paint and dust sampling as described in §745.227(c).

Living area means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children’s bedrooms.

Local government means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under State law.

Multi-family dwelling means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Nonprofit means an entity which has demonstrated to any branch of the Federal Government or to a State, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.
Paint in poor condition means more than 10 square feet of deteriorated paint on exterior components with large surface areas; or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors); or more than 10 percent of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

Permanently covered soil means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal government.

Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

Recognized laboratory means an environmental laboratory recognized by EPA pursuant to TSCA section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk assessment means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Start date means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

Start date provided to EPA means the start date included in the original notification or the most recent start date provided to EPA in an updated notification.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

Training curriculum means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

Training manager means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

Training provider means any organization or entity accredited under §745.225 to offer lead-based paint activities courses.

Visual inspection for clearance testing means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.
§ 745.225 Accreditation of training programs: target housing and child occupied facilities.

(a) Scope. (1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after April 22, 2009.

(3) A training program must not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after June 23, 2008.

(4) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved terms of the application and all of the requirements and limitations specified in any accreditation documents issued to training programs.

(b) Application process. The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(1) A training program seeking accreditation shall submit a written application to EPA containing the following information:

(i) The training program’s name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(iii) The name and documentation of the qualifications of the training program manager.

(iv) The name(s) and documentation of qualifications of any principal instructor(s).

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (c) of this section. If a training program uses EPA-recommended model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part, the training program manager shall include a statement certifying that, as well.

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course.

(B) A copy of the course agenda for each course.

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.
(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(2) If a training program meets the requirements in paragraph (c) of this section, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the training program under paragraph (i) of this section. If a training program’s application is disapproved, the program may reapply for accreditation at any time.

(3) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(4) A training program applying for accreditation must submit the appropriate fees in accordance with §745.238.

(c) Requirements for the accreditation of training programs. A training program accredited by EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

(1) The training program shall employ a training manager who has:

   (i) At least 2 years of experience, education, or training in teaching workers or adults; and
   
   (ii) A bachelor’s or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

   (iii) Two years of experience in managing a training program specializing in environmental hazards; and

   (iv) Demonstrated experience, education, or training in the construction industry including: Lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall designate a qualified principal instructor for each course who has:

   (i) Demonstrated experience, education, or training in teaching workers or adults; and

   (ii) Successfully completed at least 16 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any EPA-accredited or EPA-authorized State or Tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

   (iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(3) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he has been designated the principal instructor.

(4) The following documents shall be recognized by EPA as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (c)(1) and (c)(2) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the record-keeping requirements contained in
paragraph (i) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements.

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(5) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(6) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (d)(1) of this section.

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (d)(2) of this section.

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (d)(3) of this section.

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (d)(4) of this section.

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (d)(5) of this section.

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (c)(7) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course.

(B) The training provider must track each student’s course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (i) of this section.

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA’s model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module.

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students to do not receive feedback on their test answers until after they have completed and submitted the test.

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The
(7) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees’ performance of the work practices and procedures associated with the course topics contained in paragraph (d) of this section.

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees’ knowledge and retention of the course topics.

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(8) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual.

(ii) The name of the particular course that the individual completed.

(iii) Dates of course completion/test passage.

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion.

(v) The name, address, and telephone number of the training program.

(vi) The language in which the course was taught.

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch.

(viii) For renovator course completion certificates, the expiration date of certification.

(9) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field.

(ii) Procedures for the training manager’s annual review of principal instructor competency.

(10) Courses offered by the training program must teach the work practice standards contained in §745.85 or §745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(11) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(12) The training manager shall allow EPA to audit the training program to verify the contents of the application for accreditation as described in paragraph (b) of this section.

(13) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide EPA with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered.

(ii) The training manager must provide EPA updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:
(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to EPA, an updated notification must be received by EPA at least 7 business days before the new start date.

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to EPA, an updated notification must be received by EPA at least 2 business days before the start date provided to EPA.

(iii) The training manager must update EPA of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.

(iv) The training manager must update EPA of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and telephone number.

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) telephone number, and address.

(F) Principal instructor’s name.

(G) Training manager’s name and signature.

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency’s Central Data Exchange (CDX). Written notification of lead-based paint activities course schedules can be accomplished by using either the sample form titled “Lead-Based Paint Training Notification” or a similar form containing the information required in paragraph (c)(13)(v) of this section. All written notifications must be delivered to EPA by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at http://www.epa.gov/lead. Hearing- or speech-impaired persons may reach the above telephone number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying EPA of such activities in accordance with the requirements of this paragraph.

(14) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling, or lead-based paint activities course. This notification must be received by EPA no later than 10 business days following course completion. Notifications for any e-learning renovator refresher course that does not include hands-on training must be submitted via the Central Data Exchange no later than the 10th day of the month and include all students trained in the previous month.

(ii) The notification must include the following:

(A) Training program name, EPA accreditation number, address, and telephone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

(1) Name.

(2) Address.

(3) Date of birth.
(4) Course completion certificate number.
(5) Course test score.
(6) For renovator or dust sampling technician courses, a digital photograph of the student.
(7) For renovator refresher courses, the expiration date of certification.

(E) Training manager’s name and signature.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled “Lead-Based Paint Training Course Follow-up” or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered to EPA by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLID at 1–800–424–LEAD (5323), or on the Internet at http://www.epa.gov/lead.

(d) Minimum training curriculum requirements. A training program accredited by EPA to offer lead-based paint courses in the specific disciplines listed in this paragraph (d) must ensure that its courses of study include, at a minimum, the following course topics.

(1) Inspector. Instruction in the topics described in paragraphs (d)(1)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.

(v) Paint, dust, and soil sampling methodologies.

(vi) Clearance standards and testing, including random sampling.

(vii) Preparation of the final inspection report.

(viii) Recordkeeping.

(2) Risk assessor. Instruction in the topics described in paragraphs (d)(2)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable Federal or State guidance or regulations pertaining to lead-based paint hazards.

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

(3) Supervisor. Instruction in the topics described in paragraphs (d)(3)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.

(vi) Development and implementation of an occupant protection plan and abatement report.
(vii) Lead-based paint hazard recognition and control.

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.

(xiii) Recordkeeping.

(4) **Project designer.**

(i) Role and responsibilities of a project designer.

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects.

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

(v) Clearance standards and testing for large scale abatement projects.

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(5) **Abatement worker.** Instruction in the topics described in paragraphs (d)(6)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Lead-based paint hazard recognition and control.

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(6) **Renovator.** Instruction in the topics described in paragraphs (d)(6)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA.

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vii) Interior and exterior containment and cleanup methods.

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.

(ix) Waste handling and disposal.

(x) Providing on-the-job training to other workers.

(xi) Record preparation.

(7) **Dust sampling technician.** Instruction in the topics described in paragraphs (d)(6)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.


(e) **Requirements for the accreditation of refresher training programs.** A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program accredited by EPA to offer
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refresher training must meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (d) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline.

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component. Renovators must take a refresher course that includes hands-on training at least every other recertification.

(3) Except for renovator and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course. Renovators must take a refresher course that includes hands-on training at least every other recertification.

(4) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (b) of this section. If so, EPA shall use the approval procedure described in paragraph (b) of this section. In addition, the minimum requirements contained in paragraphs (c)(1) through (5), (c)(6)(viii) and (c)(7) through (14), and (e)(1) through (3) of this section shall also apply.

(5) A training program seeking accreditation to offer refresher training courses only shall submit a written application to EPA containing the following information:

(i) The refresher training program’s name, address, and telephone number.

(ii) A list of courses for which it is applying for accreditation.

(iii) The name and documentation of the qualifications of the training program manager.

(iv) The name(s) and documentation of the qualifications of the principal instructor(s).

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (c) of this section, except for the requirements in paragraph (c)(6) of this section. If a training program uses EPA-developed model training materials, or training materials approved by a State or Indian Tribe that has been authorized by EPA under §745.324 to develop its refresher training course materials, the training manager shall include a statement certifying that, as well.

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program’s application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course.

(B) A copy of the course agenda for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training.

(B) A copy of the course test blueprint for each course.

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable).

(D) A copy of the quality control plan as described in paragraph (c)(9) of this section.

(viii) The requirements in paragraphs (c)(1) through (5), (c)(6)(viii) and (c)(7)
through (14) of this section apply to refresher training providers.

(ix) If a refresher training program meets the requirements listed in this paragraph, then EPA shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, EPA may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. EPA may also request additional materials retained by the refresher training program under paragraph (i) of this section. If a refresher training program’s application is disapproved, the program may reapply for accreditation at any time.

(f) Re-accreditation of training programs. (1) Unless re-accredited, a training program’s accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be reaccredited.

(2) A training program seeking re-accreditation shall submit an application to EPA no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, EPA cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(3) The training program’s application for re-accreditation shall contain:

(i) The training program’s name, address, and telephone number.

(ii) A list of courses for which it is applying for re-accreditation.

(iii) The name and qualifications of the training program manager.

(iv) The name(s) and qualifications of the principal instructor(s).

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students’ ability to learn.

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (c) and (e) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (i) of this section shall be followed.

(vii) A payment of appropriate fees in accordance with §745.238.

(4) Upon request, the training program shall allow EPA to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (f)(3) of this section.

(g) Suspension, revocation, and modification of accredited training programs. (1) EPA may, after notice and an opportunity for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to EPA and/or the student population.

(ii) Failed to submit required information or notifications in a timely manner.

(iii) Failed to maintain required records.

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation.

(v) Failed to comply with the training standards and requirements in this section.

(vi) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(vii) Made false or misleading statements to EPA in its application for accreditation or re-accreditation which EPA relied upon in approving the application.

(2) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(h) Procedures for suspension, revocation or modification of training program accreditation. (1) Prior to taking action
to suspend, revoke, or modify the accreditation of a training program, EPA shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive accreditation in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke or modify accreditation.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the accredited training program, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action, and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer appointed pursuant to paragraph (h)(2) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the accreditation of any training program prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend training program accreditation for the reasons listed in paragraph (g)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued pursuant to paragraph (g)(1) of this section, it shall be issued at the same time the emergency suspension notice is issued.

(ii) Notify the affected entity in writing of the grounds for the immediate suspension and why it is necessary to suspend the entity's accreditation before an opportunity for a suspension, revocation or modification hearing.

(iii) Notify the affected entity of the anticipated commencement date and duration of the immediate suspension.

(iv) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcripts or other verbatim record of oral testimony, and any documents filed by an accredited training program in a hearing under this section shall be available to the public, except as otherwise provided by section 14 of TSCA or 40 CFR part 2. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or 40 CFR part 2.

(6) The public shall be notified of the suspension, revocation, modification or reinstatement of a training program's accreditation through appropriate mechanisms.

(7) EPA shall maintain a list of parties whose accreditation has been suspended, revoked, modified or reinstated.

(i) Training program recordkeeping requirements. (1) Accredited training programs shall maintain, and make available to EPA, upon request, the following records:

(i) All documents specified in paragraph (c)(4) of this section that demonstrate the qualifications listed in
paragraphs (c)(1) and (c)(2) of this section of the training manager and principal instructors.

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials.

(iii) The course test blueprint.

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment.
(B) How the skills are graded.
(C) What facilities are used.
(D) The pass/fail rate.

(v) The quality control plan as described in paragraph (c)(9) of this section.

(vi) Results of the students’ hands-on skills assessments and course tests, and a record of each student’s course completion certificate.

(vii) Any other material not listed in paragraphs (i)(1)(i) through (i)(1)(vi) of this section that was submitted to EPA as part of the program’s application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee’s prior course completion certificate showing that each trainee was eligible to take the refresher course.

(ix) For course modules delivered in an electronic format, a record of each student’s log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(2) The training program must retain records pertaining to renovator, dust sampling technician, and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (i)(3) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months.

(ii) Records pertaining to renovator or dust sampling technician courses offered before April 22, 2010 must be retained until July 1, 2015.

(iii) Records pertaining to renovator or dust sampling technician courses offered on or after April 22, 2010 must be retained for a minimum of 5 years.

(3) The training program shall notify EPA in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(j) Amendment of accreditation. (1) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program’s most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(2) To amend an accreditation, a training program must submit a completed “Accreditation Application for Training Providers,” signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(3) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until EPA either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that EPA has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor(s) or at the new training location(s) until EPA either approves the amendment or if EPA does not disapprove the amendment within 30 days.
(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to EPA. The training provider may continue to provide training at the new permanent training location if EPA approves the amendment or if EPA does not disapprove the amendment within 30 days.

[76 FR 47939, Aug. 5, 2011, as amended at 81 FR 7995, Feb. 17, 2016]

§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

(a) Certification of individuals. (1) Individuals seeking certification by EPA to engage in lead-based paint activities must either:
   (i) Submit to EPA an application demonstrating that they meet the requirements established in paragraphs (b) or (c) of this section for the particular discipline for which certification is sought; or
   (ii) Submit to EPA an application with a copy of a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by EPA pursuant to subpart Q of this part.

   (2) Individuals may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

   (3) Following the submission of an application demonstrating that all the requirements of this section have been met, EPA shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

   (4) Upon receiving EPA certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in §745.227.

   (5) It shall be a violation of TSCA for an individual to conduct any of the lead-based paint activities described in §745.227 after March 1, 2000, if that individual has not been certified by EPA pursuant to this section to do so.

   (6) Individuals applying for certification must submit the appropriate fees in accordance with §745.238.

(b) Inspector, risk assessor or supervisor. (1) To become certified by EPA as an inspector, risk assessor, or supervisor, pursuant to paragraph (a)(1)(i) of this section, an individual must:
   (i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.
   (ii) Pass the certification exam in the appropriate discipline offered by EPA; and
   (iii) Meet or exceed the following experience and/or education requirements:

   (A) Inspectors. (1) No additional experience and/or education requirements.
   (2) [Reserved]

   (B) Risk assessors. (1) Successful completion of an accredited training course for inspectors; and
   (2) Bachelor’s degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associate’s degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

   (3) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

   (4) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction).

   (C) Supervisor: (1) One year of experience as a certified lead-based paint abatement worker; or
   (2) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work or construction).

   (2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in (b)(2)(iii) of this paragraph:

   (i) Official academic transcripts or diploma, as evidence of meeting the education requirements.
(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.  

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.  

(ii) Meet or exceed the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(4) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.  

(5) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (b)(1) of this section, an individual shall be issued a certificate by EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(6) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.  

(7) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from EPA.

(c) Abatement worker and project designer. (1) To become certified by EPA as an abatement worker or project designer, pursuant to paragraph (a)(1)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program.  

(ii) Meet or exceed the following additional experience and/or education requirements:  

(A) Abatement workers. (i) No additional experience and/or education requirements.  

(B) Project designers. (i) Successful completion of an accredited training course for supervisors.  

(ii) Bachelor’s degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or  

(iii) Four years of experience in building construction and design or a related field.

(2) The following documents shall be recognized by EPA as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements.  

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.  

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(3) The course completion certificate shall serve as an interim certification until certification from EPA is received, but shall be valid for no more than 6 months from the date of completion.

(4) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (c)(1) of this section, an individual shall be issued a certificate from EPA. To maintain certification, an individual must be re-certified as described in paragraph (e) of this section.

(d) Certification based on prior training. (1) Any individual who received training in a lead-based paint activity between October 1, 1990, and March 1, 1999 shall be eligible for certification by EPA under the alternative procedures contained in this paragraph. Individuals who have received lead-based paint activities training at an EPA-authorized State or Tribal accredited
training program shall also be eligible for certification by EPA under the following alternative procedures:

(i) Applicants for certification as an inspector, risk assessor, or supervisor shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets or exceeds the education and/or experience requirements in paragraph (b)(1)(iii) of this section.

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(D) Pass a certification exam administered by EPA for the appropriate discipline.

(ii) Applicants for certification as an abatement worker or project designer shall:

(A) Demonstrate that the applicant has successfully completed training or on-the-job training in the conduct of a lead-based paint activity.

(B) Demonstrate that the applicant meets the education and/or experience requirements in paragraphs (c)(1) of this section; and

(C) Successfully complete an accredited refresher training course for the appropriate discipline.

(2) Individuals shall have until March 1, 2000, to apply to EPA for certification under the above procedures. After that date, all individuals wishing to obtain certification must do so through the procedures described in paragraph (a), and paragraph (b) or (c) of this section, according to the discipline for which certification is being sought.

(e) Re-certification. (1) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by EPA in that discipline by EPA either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(2) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate.

(f) Certification of firms.

(1) All firms which perform or offer to perform any of the lead-based paint activities described in §745.227 after March 1, 2000, shall be certified by EPA.

(2) A firm seeking certification shall submit to EPA a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in §745.227 for conducting lead-based paint activities.

(3) From the date of receiving the firm's letter requesting certification, EPA shall have 90 days to approve or disapprove the firm's request for certification. Within that time, EPA shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

(4) The firm shall maintain all records pursuant to the requirements in §745.227.

(5) Firms may first apply to EPA for certification to engage in lead-based paint activities pursuant to this section on or after March 1, 1999.

(6) Firms applying for certification must submit the appropriate fees in accordance with §745.238.

(7) To maintain certification a firm shall submit appropriate fees in accordance with §745.238 every 3 years.

(g) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means.

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements.

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.
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(iv) Performed work requiring certification at a job site without having proof of certification.

(v) Permitted the duplication or use of the individual’s own certificate by another.

(vi) Performed work for which certification is required, but for which appropriate certification has not been received.

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at §745.227.

(viii) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(h) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities. (1) EPA may, after notice and opportunity for hearing, suspend, revoke, or modify a firm’s certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified.

(ii) Failed to comply with the work practice standards established in §745.227.

(iii) Misrepresented facts in its letter of application for certification to EPA.

(iv) Failed to maintain required records.

(v) Failed to comply with Federal, State, or local lead-based paint statutes or regulations.

(2) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(i) Procedures for suspension, revocation, or modification of the certification of individuals or firms.

(1) If EPA decides to suspend, revoke, or modify the certification of any individual or firm, it shall notify the affected entity in writing of the following:

(i) The legal and factual basis for the suspension, revocation, or modification.

(ii) The commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final EPA action to suspend, revoke, or modify certification.

(v) Any additional information, as appropriate, which EPA may provide.

(2) If a hearing is requested by the certified individual or firm, EPA shall:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA’s assertion of the legal and factual basis and any other explanations, comments, and arguments it deems relevant to the proposed action.

(ii) Provide the affected entity such other procedural opportunities as EPA may deem appropriate to ensure a fair and impartial hearing.

(iii) Appoint an official of EPA as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific matter.

(3) The Presiding Officer shall:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing;

(ii) Consider all relevant evidence, explanation, comment, and argument submitted; and

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final EPA action subject to judicial review.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it shall:

(i) Notify the affected entity of its intent to immediately suspend certification for the reasons listed in paragraph (h)(1) of this section. If a suspension, revocation, or modification notice has not previously been issued, it
§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

(a) Effective date, applicability, and terms. (1) Beginning on March 1, 2000, all lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(2) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(3) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); Regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and guidelines.

(4) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(b) Inspection. (1) An inspection shall be conducted only by a person certified by EPA as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(3) Paint shall be sampled in the following manner: (i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or
(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection.
(ii) Address of building.
(iii) Date of construction.
(iv) Apartment numbers (if applicable).
(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.
(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing.
(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable.
(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device.
(ix) Specific locations of each painted component tested for the presence of lead-based paint.
(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(c) Lead hazard screen. (1) A lead hazard screen shall be conducted only by a person certified by EPA as a risk assessor.

(2) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present, and

(B) Locate at least two dust sampling locations.

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead.

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows. In rooms, hallways or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust.

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (c)(1)(iii) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(3) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures.

(ii) All collected dust samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(4) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(5) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (d) of this section, including paragraphs (d)(11)(i) through (d)(11)(xv), and excluding paragraphs (d)(11)(xv) through (d)(11)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (c)(2)(i) of this section shall be included in the risk assessment report; and
(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(d) Risk assessment. (1) A risk assessment shall be conducted only by a person certified by EPA as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(2) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(3) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(4) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children age 6 years and under are most likely to come into contact with dust.

(6) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (d)(4) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(8) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present; and

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present.

(iii) Dripline/foundation areas where bare soil is present.

(9) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(10) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (f) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(11) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment.

(ii) Address of each building.

(iii) Date of construction of buildings.

(iv) Apartment number (if applicable).

(v) Name, address, and telephone number of each owner of each building.

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment.

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable.

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples.

(ix) Results of the visual inspection.

(x) Testing method and sampling procedure for paint analysis employed.
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(xi) Specific locations of each painted component tested for the presence of lead.

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples.

(xiv) Any other sampling results.

(xv) Any background information collected pursuant to paragraph (d)(3) of this section.

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(e) Abatement. (1) An abatement shall be conducted only by an individual certified by EPA, and if conducted, shall be conducted according to the procedures in this paragraph.

(2) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(3) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other Federal, State and local requirements.

(4) A certified firm must notify EPA of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (e)(4)(ii) of this section, EPA must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by EPA at least 5 business days before the start date of any lead-based paint abatement activities.

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by EPA as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to EPA change, an updated notification must be received by EPA on or before the start date provided to EPA. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period.

(iii) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to EPA an updated notification must be received by EPA at least 5 business days before the new start date included in the notification.

(B) For lead-based paint abatement activities beginning after the start date provided to EPA an updated notification must be received by EPA on or before the start date provided to EPA.

(iv) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to EPA.

(v) Updated notification must be provided to EPA when lead-based paint abatement activities are canceled, or
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when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by EPA on or before the start date provided to EPA, or if work has already begun, within 24 hours of the change.

(vi) The following must be included in each notification:

(A) Notification type (original, updated, cancellation).

(B) Date when lead-based paint abatement activities will start.

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgement).

(D) Firm’s name, EPA certification number, address, telephone number.

(E) Type of building (e.g., single-family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(F) Property name (if applicable).

(G) Property address including apartment or unit number(s) (if applicable) for abatement work.

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (e)(4)(ii) of this section.

(I) Name and EPA certification number of the project supervisor.

(J) Approximate square footage/acreage to be abated.

(K) Brief description of abatement activities to be performed.

(L) Name, title, and signature of the representative of the certified firm who prepared the notification.

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency’s Central Data Exchange (CDX). Written notification can be accomplished using either the sample form titled “Notification of Lead-Based Paint Abatement Activities” or similar form containing the information required in paragraph (e)(4)(vi) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1–800–424–LEAD (5323), or on the Internet at http://www.epa.gov/lead.

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification.

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying EPA of such activities according to the requirements of this paragraph.  

(5) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(6) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway or stairwell or totaling no more than 20 square feet on exterior surfaces; and
(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(7) If conducted, soil abatement shall be conducted in one of the following ways:
   (i) If the soil is removed: 
      (A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm.
      (B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.
   (ii) If soil is not removed, the soil shall be permanently covered, as defined in §745.223.

(8) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:
   (i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.
   (ii) Following the visual inspection and any post-abatement cleanup required by paragraph (e)(8)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.
   (iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures.
   (iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities.
   (v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:
      (A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.
      (B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are less than four rooms, hallways or stairwells within the residential dwelling or child-occupied facility then all rooms, hallways or stairwells shall be sampled.
      (C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable Federal, State and local requirements.
   (vi) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.
   (vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (e)(8)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a
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Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(1) Collected by persons certified by EPA as an inspector or risk assessor; and

(2) Analyzed by a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (c) through (e) of this section. If such sampling is conducted, the following conditions shall apply:

(1) Composite dust samples shall consist of at least two subsamples;

(2) Every component that is being tested shall be included in the sampling; and

(3) Composite dust samples shall not consist of subsamples from more than one type of component.

Determinations. (1) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(2) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in §745.227(b);

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is cause by...
impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame; and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust-lead hazard is present in a residential dwelling or child occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 μg/ft² for floors and 250 μg/ft² for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(i) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

**(e) Violators are subject to civil and criminal sanctions pursuant to section 16 of TSCA (15 U.S.C. 2615) for each violation.**

**§ 745.237 Inspections.**

EPA may conduct reasonable inspections pursuant to the provisions of section 11 of TSCA (15 U.S.C. 2610) to ensure compliance with this subpart.

**§ 745.238 Fees for accreditation and certification of lead-based paint activities.**

(a) **Purpose.** To establish and impose fees for certified individuals and firms engaged in lead-based paint activities and persons operating accredited training programs under section 402(a) of the Toxic Substances Control Act (TSCA).

(b) **Persons who must pay fees.** Fees in accordance with paragraph (c) of this section must be paid by:

1. **Training programs.** (i) All non-exempt training programs applying to EPA for the accreditation and re-accreditation of training programs in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

   (ii) **Exemptions.** No fee shall be imposed on any training program operated by a State, federally recognized Indian Tribe, local government, or non-profit organization. This exemption does not apply to the certification of firms or individuals.

2. **Firms and individuals.** All firms and individuals seeking certification and re-certification from EPA to engage in lead-based paint activities in one or more of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker.

   (c) **Fee amounts—(1) Certification and accreditation fees.** Initial and renewal certification and accreditation fees are specified in the following table:

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(2) Certification examination fee. Individuals required to take a certification exam in accordance with §745.226 will be assessed a fee of $70 for each exam attempt.

(3) Lost identification card or certificate. A $15 fee shall be charged for replacement of an identification card or certificate. (See replacement procedure in paragraph (e) of this section.)

(4) Accreditation amendment fees. No fee will be charged for accreditation amendments.

(d) Application/payment procedure—(1) Certification and re-certification—(i) Individuals. Submit a completed application (titled “Application for Individuals to Conduct Lead-based Paint Activities”), the materials described at §745.226, and the application fee(s) described in paragraph (c) of this section.

(ii) Firms. Submit a completed application (titled “Application for Firms”), the materials described at §745.226, and the application fee(s) described in paragraph (c) of this section.

(2) Accreditation and re-accreditation. Submit a completed application (titled “Accreditation Application for Training Programs”), the materials described at §745.225, and the application fee described in paragraph (c) of this section.

(3) Application forms. Application forms and instructions can be obtained from the National Lead Information Center at: 1–800–424–LEAD.

(e) Identification card replacement and certificate replacement. (1) Parties seeking identification card or certificate replacement shall complete the applicable portions of the appropriate application in accordance with the instructions provided. The appropriate applications are:

(i) Individual. “Application for Individuals to Conduct Lead-based Paint Activities.”

(ii) Firms. “Application for Firms.”

(iii) Training programs. “Accreditation Application for Training Programs.”

(2) Submit application and payment in the amount specified in paragraph (c)(3) of this section in accordance with the instructions provided with the application package.

(f) Adjustment of fees. (1) EPA will collect fees reflecting the costs associated with the administration and enforcement of subpart L of this part with the exception of costs associated with the accreditation of training programs operated by a State, federally recognized Indian Tribe, local government, and nonprofit organization. In order to do this, EPA will periodically adjust the fees to reflect changed economic conditions.

(2) The fees will be evaluated based on the cost to administer and enforce the program, and the number of applicants. New fee schedules will be published in the Federal Register.

(g) Failure to remit a fee. (1) EPA will not provide certification, re-certification, accreditation, or re-accreditation for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (d) of this section.

(2) EPA will not replace identification cards or certificates for any individual, firm, or training program which does not remit fees described in paragraph (c) of this section in accordance with the procedures specified in paragraph (e) of this section.


§ 745.239 Effective dates.

This subpart L shall apply in any State or Indian Country that does not have an authorized program under subpart Q, effective August 31, 1998. In such States or Indian Country:

(a) Training programs shall not provide, offer or claim to provide training or refresher training for certification without accreditation from EPA pursuant to §745.225 on or after March 1, 1999.

(b) No individual or firm shall perform, offer, or claim to perform lead-based paint activities, as defined in this subpart, without certification from EPA to conduct such activities pursuant to §745.226 on or after March 1, 2000.

(2) All lead-based paint activities shall be performed pursuant to the work practice standards contained in §745.227 on or after March 1, 2000.

[61 FR 45813, Aug. 29, 1996, as amended at 64 FR 42932, Aug. 6, 1999]
§ 745.320 Scope and purpose.

(a) This subpart establishes the requirements that State or Tribal programs must meet for authorization by the Administrator to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 and/or section 406 and establishes the procedures EPA will follow in approving, revising, and withdrawing approval of State or Tribal programs.

(b) For State or Tribal lead-based paint training and certification programs, a State or Indian Tribe may seek authorization to administer and enforce §§745.225, 745.226, and 745.227. The provisions of §§745.220, 745.223, 745.233, 745.235, 745.237, and 745.239 shall be applicable for the purposes of such program authorization.

(c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part, just the pre-renovation education provisions of subpart E of this part, or just the training, certification, accreditation, and work practice provisions of subpart E of this part. The provisions of §§745.324 and 745.326 apply for the purposes of such program authorizations.

(d) A State or Indian Tribe applying for program authorization may seek either interim approval or final approval of the compliance and enforcement portion of the State or Tribal lead-based paint program pursuant to the procedures at §745.327(a).

(e) State or Tribal submissions for program authorization shall comply with the procedures set out in this subpart.

(f) Any State or Tribal program approved by the Administrator under this subpart shall at all times comply with the requirements of this subpart.

(g) In many cases States will lack authority to regulate activities in Indian Country. This lack of authority does not impair a State’s ability to obtain full program authorization in accordance with this subpart. EPA will administer the program in Indian Country if neither the State nor Indian Tribe has been granted program authorization by EPA.

[61 FR 45825, Aug. 29, 1996, as amended at 73 FR 21767, Apr. 22, 2008]

§ 745.323 Definitions.

The definitions in subpart A apply to this subpart. In addition, the definitions in §745.223 and the following definitions apply:

*Indian Country* means (1) all land within the limits of any American Indian reservation under the jurisdiction of the U.S. government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or outside the limits of a State; and (3) all Indian allotments, the Indian titles which have not been extinguished, including rights-of-way running through the same.

*Indian Tribe* means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

§ 745.324 Authorization of State or Tribal programs.

(a) Application content and procedures.

(1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.

(2) Before developing an application for authorization, a State or Indian Tribe shall disseminate a public notice of intent to seek such authorization and provide an opportunity for a public hearing.

(3) A State or Tribal application shall include:

(i) A transmittal letter from the State Governor or Tribal Chairperson (or equivalent official) requesting program approval.
(ii) A summary of the State or Tribal program. This summary will be used to provide notice to residents of the State or Tribe.

(iii) A description of the State or Tribal program in accordance with paragraph (b) of this section.

(iv) An Attorney General's or Tribal Counsel's (or equivalent) statement in accordance with paragraph (c) of this section.

(v) Copies of all applicable State or Tribal statutes, regulations, standards, and other materials that provide the State or Indian Tribe with the authority to administer and enforce a lead-based paint program.

(4) After submitting an application, the Agency will publish a Federal Register notice that contains an announcement of the receipt of the State or Tribal application, the summary of the program as provided by the State or Tribe, and a request for public comments to be mailed to the appropriate EPA Regional Office. This comment period shall last for no less than 45 days. EPA will consider these comments during its review of the State or Tribal application.

(5) Within 60 days of submission of a State or Tribal application, EPA will, if requested, conduct a public hearing in each State or Indian Country seeking program authorization and will consider all comments submitted at that hearing during the review of the State or Tribal application.

(b) Program description. A State or Indian Tribe seeking to administer and enforce a program under this subpart must submit a description of the program. The description of the State or Tribal program must include:

(1)(i) The name of the State or Tribal agency that is or will be responsible for administering and enforcing the program, the name of the official in that agency designated as the point of contact with EPA, and addresses and phone numbers where this official can be contacted.

(ii) Where more than one agency is or will be responsible for administering and enforcing the program, the State or Indian Tribe must designate a primary agency to oversee and coordinate administration and enforcement of the program and serve as the primary contact with EPA.

(iii) In the event that more than one agency is or will be responsible for administering and enforcing the program, the application must also include a description of the functions to be performed by each agency. The description shall explain and how the program will be coordinated by the primary agency to ensure consistency and effective administration of the within the State or Indian Tribe.

(2) To demonstrate that the State or Tribal program is at least as protective as the Federal program, fulfilling the criteria in paragraph (e)(2)(i) of this section, the State or Tribal application must include:

(i) A description of the program that demonstrates that the program contains all of the elements specified in §745.325, §745.326, or both; and

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State's or Indian Tribe's assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

(3) To demonstrate that the State or Tribal program provides adequate enforcement, fulfilling the criteria in paragraph (e)(2)(ii) of this section, the State or Tribal application must include a description of the State or Tribal lead-based paint compliance and enforcement program that demonstrates that the program contains all of the elements specified at §745.327. This description shall include copies of all policies, certifications, plans, reports, and other materials that demonstrate that the State or Tribal program contains all of the elements specified at §745.327.

(4)(i) The program description for an Indian Tribe shall also include a map, legal description, or other information sufficient to identify the geographical extent of the territory over which the Indian Tribe exercises jurisdiction.
(ii) The program description for an Indian Tribe shall also include a demonstration that the Indian Tribe:
(A) Is recognized by the Secretary of the Interior.
(B) has an existing government exercising substantial governmental duties and powers.
(C) has adequate civil regulatory jurisdiction (as shown in the Tribal legal certification in paragraph (c)(2) of this section) over the subject matter and entities regulated.
(D) is reasonably expected to be capable of administering the Federal program for which it is seeking authorization.

(iii) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (b)(4)(ii)(A) and (B) of this section for another EPA program, the Indian Tribe need provide only that information unique to the lead-based paint program required by paragraphs (b)(4)(ii)(C) and (D) of this section.

(c) Attorney General’s statement. (1) A State or Indian Tribe must submit a written statement signed by the Attorney General or Tribal Counsel (or equivalent) certifying that the laws and regulations of the State or Indian Tribe provide adequate legal authority to administer and enforce the State or Tribal program. This statement shall include citations to the specific statutes and regulations providing that legal authority.
(2) The Tribal legal certification (the equivalent to the Attorney General’s statement) may also be submitted and signed by an independent attorney retained by the Indian Tribe for representation in matters before EPA or the courts pertaining to the Indian Tribe’s program. The certification shall include an assertion that the attorney has the authority to represent the Indian Tribe with respect to the Indian Tribe’s authorization application.
(3) If a State application seeks approval of its program to operate in Indian Country, the required legal certification shall include an analysis of the applicant’s authority to implement its provisions in Indian Country. The applicant shall include a map delineating the area over which it seeks to operate the program.

(d) Program certification. (1) At the time of submitting an application, a State may also certify to the Administrator that the State program meets the requirements contained in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.
(2) If this certification is contained in a State’s application, the program shall be deemed to be authorized by EPA until such time as the Administrator disapproves the program application or withdraws the program authorization. A program shall not be deemed authorized pursuant to this subpart to the extent that jurisdiction is asserted over Indian Country, including non-member fee lands within an Indian reservation.

(3) If the application does not contain such certification, the State program will be authorized only after the Administrator authorizes the program in accordance with paragraph (e) of this section.

(4) This certification shall take the form of a letter from the Governor or the Attorney General to the Administrator. The certification shall reference the program analysis in paragraph (b)(3) of this section as the basis for concluding that the State program is at least as protective as the Federal program, and provides adequate enforcement.

(e) EPA approval. (1) EPA will fully review and consider all portions of a State or Tribal application.
(2) Within 180 days of receipt of a complete State or Tribal application, the Administrator shall either authorize the program or disapprove the application. The Administrator shall authorize the program, after notice and the opportunity for public comment and a public hearing, only if the Administrator finds that:
(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and
(ii) The State or Tribal program provides adequate enforcement.
(3) EPA shall notify in writing the State or Indian Tribe of the Administrator’s decision to authorize the State
or Tribal program or disapprove the State’s or Indian Tribe’s application.

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.

(f) EPA administration and enforcement. (1) If a State or Indian Tribe does not have an authorized program to administer and enforce subpart L of this part in effect by August 31, 1998, the Administrator shall, by such date, establish and enforce the provisions of subpart L of this part as the Federal program for that State or Indian Country.

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by April 22, 2009, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.

(3) Upon authorization of a State or Tribal program, pursuant to paragraph (d) or (e) of this section, it shall be an unlawful act under sections 15 and 409 of TSCA for any person to fail or refuse to comply with any requirements of such program.

(g) Oversight. EPA shall periodically evaluate the adequacy of a State’s or Indian Tribe’s implementation and enforcement of its authorized programs.

(h) Reports. Beginning 12 months after the date of program authorization, the primary agency for each State or Indian Tribe that has an authorized program shall submit a written report to the EPA Regional Administrator for the Region in which the State or Indian Tribe is located. This report shall be submitted at least once every 12 months for the first 3 years after program authorization. If these reports demonstrate successful program implementation, the Agency will automatically extend the reporting interval to every 2 years. If the subsequent reports demonstrate problems with implementation, EPA will require a return to annual reporting until the reports demonstrate successful program implementation, at which time the Agency will extend the reporting interval to every 2 years.

The report shall include the following information:

(1) Any significant changes in the content or administration of the State or Tribal program implemented since the previous reporting period; and

(2) All information regarding the lead-based paint enforcement and compliance activities listed at §745.327(d) “Summary on Progress and Performance.”

(i) Withdrawal of authorization. (1) If EPA concludes that a State or Indian Tribe is not administering and enforcing an authorized program in compliance with the standards, regulations, and other requirements of sections 401 through 412 of TSCA and this subpart, the Administrator shall notify the primary agency for the State or Indian Tribe in writing and indicate EPA's intent to withdraw authorization of the program.

(2) The Notice of Intent to Withdraw shall:

(i) Identify the program aspects that EPA believes are inadequate and provide a factual basis for such findings.

(ii) Include copies of relevant documents.

(iii) Provide an opportunity for the State or Indian Tribe to respond either in writing or at a meeting with appropriate EPA officials.

(3) EPA may request that an informal conference be held between representatives of the State or Indian Tribe and EPA officials.

(4) Prior to issuance of a withdrawal, a State or Indian Tribe may request that EPA hold a public hearing. At this hearing, EPA, the State or Indian Tribe, and the public may present facts bearing on whether the State’s or Indian Tribe’s authorization should be withdrawn.

(5) If EPA finds that deficiencies warranting withdrawal did not exist or
were corrected by the State or Indian Tribe, EPA may rescind its Notice of Intent to Withdraw authorization.

(6) Where EPA finds that deficiencies in the State or Tribal program exist that warrant withdrawal, an agreement to correct the deficiencies shall be jointly prepared by the State or Indian Tribe and EPA. The agreement shall describe the deficiencies found in the program, specify the steps the State or Indian Tribe has taken or will take to remedy the deficiencies, and establish a schedule, no longer than 180 days, for each remedial action to be initiated.

(7) If the State or Indian Tribe does not respond within 60 days of issuance of the Notice of Intent to Withdraw or an agreement is not reached within 180 days after EPA determines that a State or Indian Tribe is not in compliance with the Federal program, the Agency shall issue an order withdrawing the State's or Indian Tribe's authorization.

(8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

[61 FR 45825, Aug. 29, 1996, as amended at 73 FR 21767, Apr. 22, 2008]

§ 745.325 Lead-based paint activities: State and Tribal program requirements.

(a) Program elements. To receive authorization from EPA, a State or Tribal program must contain at least the following program elements for lead-based paint activities:

1. Procedures and requirements for the accreditation of lead-based paint activities training programs.
2. Procedures and requirements for the certification of individuals engaged in lead-based paint activities.
3. Work practice standards for the conduct of lead-based paint activities.
4. Requirements that all lead-based paint activities be conducted by appropriately certified contractors.
5. Development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) Accreditation of training programs. The State or Indian Tribe must have either:

1. Procedures and requirements for the accreditation of training programs that establish:
   (i) Requirements for the accreditation of training programs including but not limited to:
      (A) Training curriculum requirements.
      (B) Training hour requirements.
      (C) Hands-on training requirements.
      (D) Trainee competency and proficiency requirements.
   (E) Requirements for training program quality control.
   (ii) Procedures for the re-accreditation of training programs.
   (iii) Procedures for the oversight of training programs.
   (iv) Procedures for the suspension, revocation, or modification of training program accreditations; or
2. Procedures or regulations, for the purposes of certification, for the acceptance of training offered by an accredited training provider in a State or Tribe authorized by EPA.

(c) Certification of individuals. The State or Indian Tribe must have requirements for the certification of individuals that:

1. Ensure that certified individuals:
   (i) Are trained by an accredited training program; and
   (ii) Possess appropriate education or experience qualifications for certification.
2. Establish procedures for re-certification.
3. Require the conduct of lead-based paint activities in accordance with work practice standards established by the State or Indian Tribe.
4. Establish procedures for the suspension, revocation, or modification of certifications.
5. Establish requirements and procedures for the administration of a third-party certification exam.

(d) Work practice standards for the conduct of lead-based paint activities. The State or Indian Tribe must have requirements or standards that ensure that lead-based paint activities are conducted reliably, effectively, and safely. At a minimum the State's or Indian Tribe's work practice standards
for conducting inspections, risk assessments, and abatements must contain the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) The work practice standards for the inspection for the presence of lead-based paint must require that:

(i) Inspections are conducted only by individuals certified by the appropriate State or Tribal authority to conduct inspections.

(ii) Inspections are conducted in a way that identifies the presence of lead-based paint on painted surfaces within the interior or on the exterior of a residential dwelling or child-occupied facility.

(iii) Inspections are conducted in a way that uses documented methodologies that incorporate adequate quality control procedures.

(iv) A report is developed that clearly documents the results of the inspection.

(v) Records are retained by the certified inspector or the firm.

(2) The work practice standards for risk assessment must require that:

(i) Risk assessments are conducted only by individuals certified by the appropriate State or Tribal authority to conduct risk assessments.

(ii) Risk assessments are conducted in a way that identifies and reports the presence of lead-based paint hazards.

(iii) Risk assessments consist of, at least:

(A) An assessment, including a visual inspection, of the physical characteristics of the residential dwelling or child-occupied facility;

(B) Environmental sampling for lead in paint, dust, and soil;

(C) Environmental sampling requirements for lead in paint, dust, and soil that allow for comparison to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section; and

(D) A determination of the presence of lead-based paint hazards made by comparing the results of visual inspection and environmental sampling to the standards for lead-based paint hazards established or revised by the State or Indian Tribe pursuant to paragraph (e) of this section.

(iv) The program elements required in paragraph (d)(2)(iii)(C) and (d)(2)(iii)(D) of this section shall be adopted in accordance with the schedule for the demonstration required in paragraph (e) of this section.

(v) The risk assessor develops a report that clearly presents the results of the assessment and recommendations for the control or elimination of all identified hazards.

(vi) The certified risk assessor or the firm retains the appropriate records.

(3) The work practice standards for abatement must require that:

(i) Abatements are conducted only by individuals certified by the appropriate State or Tribal authority to conduct or supervise abatements.

(ii) Abatements permanently eliminate lead-based paint hazards and are conducted in a way that does not increase the hazards of lead-based paint to the occupants of the dwelling or child-occupied facility.

(iii) Abatements include post-abatement lead in dust clearance sampling and conformance with clearance levels established or adopted by the State or Indian Tribe.

(iv) The abatement contractor develops a report that describes areas of the residential dwelling or child-occupied facility abated and the techniques employed.

(v) The certified abatement contractor or the firm retains appropriate records.

(e) The State or Indian Tribe must demonstrate that it has standards for identifying lead-based paint hazards and clearance standards for dust, that are at least as protective as the standards in §745.227 as amended on February 5, 2001. A State or Indian Tribe with such a section 402 program approved before February 5, 2003 shall make this demonstration no later than the first report submitted pursuant to §745.324(h) on or after February 5, 2003. A State or Indian Tribe with such a program submitted but not approved before February 5, 2003 may make this demonstration by amending its application or in its first report submitted pursuant to §745.324(h). A State or Indian Tribe submitting its program on
§ 745.326 Renovation: State and Tribal program requirements.

(a) Program elements. To receive authorization from EPA, a State or Tribal program must contain the following program elements:

(1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

(2) For renovation training, certification, accreditation, and work practice standards programs:

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs. A State and Tribal program is not required to include procedures and requirements for the dust sampling technician training discipline if the State or Tribal program requires dust sampling to be performed by a certified lead-based paint inspector or risk assessor.

(ii) Procedures and requirements for accredited initial and refresher training for renovators and dust sampling technicians and on-the-job training for other individuals who perform renovations.

(iii) Procedures and requirements for the certification of individuals and/or firms.

(iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.

(v) Work practice standards for the conduct of renovations.

(3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) Pre-renovation education. To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.

(2) Establish procedures for distributing the lead hazard information to owners and occupants of housing and child-occupied facilities prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools, developed by EPA under section 406(a) of TSCA, or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools, must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before June 23, 2008, must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to §745.324(h) on or after April 22, 2009.

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before June 23, 2008, must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to §745.324(h) of this part on or after April 22, 2009.

(iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after June 23, 2008, must demonstrate in its application that it meets the requirements of this section.

(c) Accreditation of training programs. To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:

(1) The State or Tribal program must establish accreditation procedures and requirements, including:
(i) Procedures and requirements for the accreditation of training programs, including, but not limited to:
   (A) Training curriculum requirements.
   (B) Training hour requirements.
   (C) Hands-on training requirements.
   (D) Trainee competency and proficiency requirements.
   (E) Requirements for training program quality control.
   (ii) Procedures and requirements for the re-accreditation of training programs.
   (iii) Procedures for the oversight of training programs.
   (iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or
   (2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this subpart.
   (d) Certification of individuals and/or renovation firms. To be considered at least as protective as the Federal program, the State or Tribal program must:
   (1) Establish procedures and requirements that ensure that individuals who perform or direct renovations are properly trained. These procedures and requirements must include:
      (i) A requirement that renovations be performed and directed by at least one individual who has been trained by an accredited training program.
   (ii) Procedures and requirements for accredited refresher training for these individuals.
   (iii) Procedures and requirements for individuals who have received accredited training to provide on-the-job training for those individuals who perform renovations but do not receive accredited training. A State and Tribal program is not required to include procedures and requirements for on-the-job training for renovation workers if the State or Tribal program requires accredited initial and refresher training for all persons who perform renovations.
   (2) Establish procedures and requirements for the formal certification and re-certification of renovation firms.
   (3) Establish procedures for the suspension, revocation, or modification of certifications.
   (e) Work practice standards for renovations. To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:
      (1) Renovations must be conducted only by certified renovation firms, using trained individuals.
      (2) Renovations are conducted using lead-safe work practices that are at least as protective to occupants as the requirements in §745.85.
      (3) Certified individuals and/or renovation firms must retain appropriate records.
   (f) Revisions to renovation program requirements. When EPA publishes in the Federal Register revisions to the renovation program requirements contained in subparts E and L of this part:
      (1) A State or Tribe with a renovation program approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to §745.324(h) but no later than 2 years after the effective date of the revisions.
      (2) A State or Tribe with an application for approval of a renovation program submitted but not approved before the effective date of the revisions to the renovation program requirements in subparts E and L of this part must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant to §745.324(h) of this part but no later than 2 years after the effective date of the revisions.
      (3) A State or Tribe submitting its application for approval of a renovation program on or after the effective date of the revisions must demonstrate
in its application that it meets the requirements of the new renovation program requirements in subparts E and L of this part.


§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

(a) Approval of compliance and enforcement programs. A State or Indian Tribe seeking authorization of a lead-based paint program can apply for and receive either interim or final approval of the compliance and enforcement program portion of its lead-based paint program. Indian Tribes are not required to exercise criminal enforcement jurisdiction as a condition for program authorization.

(1) Interim approval. Interim approval of the compliance and enforcement program portion of the State or Tribal lead-based paint program may be granted by EPA only once, and subject to a specific expiration date.

(i) To be considered adequate for purposes of obtaining interim approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application described at §745.324(a):

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraph (b) of this section. This demonstration shall include a statement that the State or Indian Tribe, during the interim approval period, shall carry out a level of compliance monitoring and enforcement necessary to ensure that the State or Indian Tribe addresses any significant risks posed by noncompliance with lead-based paint activity requirements.

(B) Present a plan with time frames identified for implementing in the field each element in paragraph (c) of this section. All elements of paragraph (c) of this section must be fully implemented no later than 3 years from the date of EPA’s interim approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. A statement of resources must be included in the State or Tribal plan which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) Any interim approval granted by EPA for the compliance and enforcement program portion of a State or Tribal lead-based paint program will expire no later than 3 years from the date of EPA’s interim approval. One hundred and eighty days prior to this expiration date, a State or Indian Tribe shall apply to EPA for final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program. Final approval shall be given to any State or Indian Tribe which has in place all of the elements of paragraphs (b), (c), and (d) of this section. If a State or Indian Tribe does not receive final approval for the compliance and enforcement program portion of a State or Tribal lead-based paint program by the date 3 years after the date of EPA’s interim approval, the Administrator shall, by such date, initiate the process to withdraw the State or Indian Tribe’s authorization pursuant to §745.324(i).

(2) Final approval. Final approval of the compliance and enforcement program portion of a State or Tribal lead-based paint program can be granted by EPA either through the application process described at §745.324(a), or, for States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(i) For the compliance and enforcement program to be considered adequate for final approval through the application described at §745.324(a), a State or Indian Tribe must, in its application:

(A) Demonstrate it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.
(B) Submit a statement of resources which identifies what resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(ii) For States or Indian Tribes which previously received interim approval as described in paragraph (a)(1) of this section, in order for the State or Tribal compliance and enforcement program to be considered adequate for final approval through a separate application addressing only the compliance and enforcement program portion of a State or Tribal lead-based paint program, a State or Indian Tribe must, in its application:

(A) Demonstrate that it has the legal authority and ability to immediately implement the elements in paragraphs (b) and (c) of this section.

(B) Submit a statement which identifies the resources the State or Indian Tribe intends to devote to the administration of its lead-based paint compliance and enforcement program.

(C) Agree to submit to EPA the Summary on Progress and Performance of lead-based paint compliance and enforcement activities as described at paragraph (d) of this section.

(D) To the extent not previously submitted through the application described at §745.324(a), submit copies of all applicable State or Tribal statutes, regulations, standards, and other material that provide the State or Indian Tribe with authority to administer and enforce the lead-based paint compliance and enforcement program, and copies of the policies, certifications, plans, reports, and any other documents that demonstrate that the program meets the requirements established in paragraphs (b) and (c) of this section.

(b) Standards, regulations, and authority. The standards, regulations, and authority described in paragraphs (b)(1) through (b)(4) of this section are part of the required elements for the compliance and enforcement portion of a State or Tribal lead-based paint program.

(1) Lead-based paint activities or renovation requirements. State or Tribal lead-based paint compliance and enforcement programs will be considered adequate if the State or Indian Tribe demonstrates, in its application at §745.324(b)(2), that it has established a lead-based paint program that contains all of the elements specified in §745.325 or §745.326, or both, as applicable.

(2) Authority to enter. State or Tribal officials must be able to enter, through consent, warrant, or other authority, premises or facilities where lead-based paint violations may occur for purposes of conducting inspections.

(i) State or Tribal officials must be able to enter premises or facilities where those engaged in training for lead-based paint activities or renovations conduct business.

(ii) For the purposes of enforcing a renovation program, State or Tribal officials must be able to enter a firm’s place of business or work site.

(iii) State or Tribal officials must have authority to take samples and review records as part of the lead-based paint inspection process.

(3) Flexible remedies. A State or Tribal lead-based paint compliance and enforcement program must provide for a diverse and flexible array of enforcement statutory and regulatory authorities and remedies. At a minimum, these authorities and remedies, which must also be reflected in an enforcement response policy, must include the following:

(i) The authority to issue warning letters, Notices of Noncompliance, Notices of Violation, or the equivalent;

(ii) The authority to assess administrative or civil fines, including a maximum penalty authority for any violation in an amount no less than $5,000 per violation per day;

(iii) The authority to assess the maximum penalties or fines for each instance of violation and, if the violation is continuous, the authority to assess penalties or fines up to the maximum amount for each day of violation, with all penalties assessed or collected being appropriate for the violation after consideration of factors as the State or Tribe determines.
Tribe determine to be relevant, including the size or viability of the business, enforcement history, risks to human health or the environment posed by the violation, and other similar factors;
(iv) The authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to recover penalties;
(v) The authority to suspend, revoke, or modify the accreditation of any training provider or the certification of any individual or firm;
(vi) The authority to commence an administrative proceeding or to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, without the necessity of a prior suspension or revocation of a trainer’s accreditation or a firm’s or individual’s certification;
(vii) The authority to apply criminal sanctions, including recovering fines; and
(viii) The authority to enforce its authorized program using a burden of proof standard, including the degree of knowledge or intent of the respondent that is no greater than it is for EPA under TSCA.

(4) Adequate resources. An application must include a statement that identifies the resources that will be devoted by the State or Indian Tribe to the administration of the State or Tribal lead-based paint compliance and enforcement program. This statement must address fiscal and personnel resources that will be devoted to the program.

(c) Performance elements. The performance elements described in paragraphs (c)(1) through (c)(7) of this section are part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program.

(1) Training. A State or Tribal lead-based paint compliance and enforcement program must implement a process for training enforcement and inspection personnel and ensure that enforcement personnel and inspectors are well trained. Enforcement personnel must understand case development procedures and the maintenance of proper case files. Inspectors must successfully demonstrate knowledge of the requirements of the particular discipline (e.g., abatement supervisor, and/or abatement worker, and/or lead-based paint inspector, and/or risk assessor, and/or project designer) for which they have compliance monitoring and enforcement responsibilities. Inspectors must also be trained in violation discovery, methods of obtaining consent, evidence gathering, preservation of evidence and chain-of-custody, and sampling procedures. A State or Tribal lead-based paint compliance and enforcement program must also implement a process for the continuing education of enforcement and inspection personnel.

(2) Compliance assistance. A State or Tribal lead-based paint compliance and enforcement program must provide compliance assistance to the public and the regulated community to facilitate awareness and understanding of compliance with State or Tribal requirements governing the conduct of lead-based paint activities or renovations. The type and nature of this assistance can be defined by the State or Indian Tribe to achieve this goal.

(3) Sampling techniques. A State or Tribal lead-based paint compliance and enforcement program must have the technological capability to ensure compliance with the lead-based paint program requirements. A State or Tribal application for approval of a lead-based paint program must show that the State or Indian Tribe is technologically capable of conducting a lead-based paint compliance and enforcement program. The State or Tribal program must have access to the facilities and equipment necessary to perform sampling and laboratory analysis as needed. This laboratory facility must be a recognized laboratory as defined at §745.223, or the State or Tribal program must implement a quality assurance program that ensures appropriate quality of laboratory personnel and protects the integrity of analytical data.

(4) Tracking tips and complaints. A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to process and react to tips and complaints or other information indicating a violation.

(5) Targeting inspections. A State or Tribal lead-based paint compliance and enforcement program must...
enforcement program must demonstrate the ability to target inspections to ensure compliance with the lead-based paint program requirements. Such targeting must include a method for obtaining and using notifications of commencement of abatement activities.

(6) Follow up to inspection reports. A State or Tribal lead-based paint compliance and enforcement program must demonstrate the ability to reasonably, and in a timely manner, process and follow-up on inspection reports and other information generated through enforcement-related activities associated with a lead-based paint program. The State or Tribal program must be in a position to ensure correction of violations and, as appropriate, effectively develop and issue enforcement remedies/responses to follow up on the identification of violations.

(7) Compliance monitoring and enforcement. A State or Tribal lead-based paint compliance and enforcement program must demonstrate, in its application for approval, that it is in a position to implement a compliance monitoring and enforcement program. Such a compliance monitoring and enforcement program must ensure correction of violations, and encompass either planned and/or responsive lead-based paint compliance inspections and development/issuance of State or Tribal enforcement responses which are appropriate to the violations.

(d) Summary on Progress and Performance. The Summary on Progress and Performance described below is part of the required elements for the compliance and enforcement program portion of a State or Tribal lead-based paint program. A State or Tribal lead-based paint compliance and enforcement program must submit to the appropriate EPA Regional Administrator a report which summarizes the results of implementing the State or Tribal lead-based paint compliance and enforcement program, including a summary of the scope of the regulated community within the State or Indian Tribe (which would include the number of individuals and firms certified in lead-based paint activities and the number of training programs accredited), the inspections conducted, enforcement actions taken, compliance assistance provided, and the level of resources committed by the State or Indian Tribe to these activities. The report shall be submitted according to the requirements at §745.324(h).

(e) Memorandum of Agreement. An Indian Tribe that obtains program approval must establish a Memorandum of Agreement with the Regional Administrator. The Memorandum of Agreement shall be executed by the Indian Tribe’s counterpart to the State Director (e.g., the Director of Tribal Environmental Office, Program or Agency). The Memorandum of Agreement must include provisions for the timely and appropriate referral to the Regional Administrator for those criminal enforcement matters where that Indian Tribe does not have the authority (e.g., those addressing criminal violations by non-Indians or violations meriting penalties over $5,000). The Agreement must also identify any enforcement agreements that may exist between the Indian Tribe and any State.

(f) Electronic reporting under State or Indian Tribe programs. States and tribes that choose to receive electronic documents under the authorized state or Indian tribe lead-based paint program, must ensure that the requirements of 40 CFR part 3—(Electronic reporting) are satisfied in their lead-based paint program.


§ 745.339 Effective date.

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce the pre-renovation education provisions of subpart E of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce all of subpart E of this part pursuant to this subpart effective June 23, 2008.

[73 FR 21769, Apr. 22, 2008]
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement
Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller’s Disclosure
(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
   (i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

   (ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):
   (i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

   (ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser’s Acknowledgment (initial)
(c) ______ Purchaser has received copies of all information listed above.
(d) ______ Purchaser has received the pamphlet Protect Your Family from Lead In Your Home.
(e) Purchaser has (check (i) or (ii) below):
   (i) _____ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
   (ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent’s Acknowledgment (initial)
(f) ______ Agent has informed the seller of the seller’s obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

<table>
<thead>
<tr>
<th>Seller</th>
<th>Date</th>
<th>Seller</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchaser</td>
<td>Date</td>
<td>Purchaser</td>
<td>Date</td>
</tr>
<tr>
<td>Agent</td>
<td>Date</td>
<td>Agent</td>
<td>Date</td>
</tr>
</tbody>
</table>
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement
Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor’s Disclosure
(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee’s Acknowledgment (initial)
(c) _____ Lessee has received copies of all information listed above.
(d) _____ Lessee has received the pamphlet Protect Your Family from Lead in Your Home.

Agent’s Acknowledgment (initial)
(e) _____ Agent has informed the lessor of the lessor’s obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor  Date  Lessor  Date
Lesse  Date  Lessee  Date
Agent  Date  Agent  Date
Declaración de Información sobre Pintura a Base de Plomo y/o Peligros de la Pintura a Base de Plomo

Declaración sobre los Peligros del Plomo
Las viviendas construidas antes del año 1978 pueden contener pintura a base de plomo. El plomo de pintura, pedazos de pintura y polvo puede representar peligros para la salud si no se maneja apropiadamente. La exposición al plomo es especialmente dañino para los niños jóvenes y las mujeres embarazadas. Antes de alquilar (rentar) una vivienda construida antes del año 1978, los arrendadores tienen la obligación de informar sobre la presencia de pintura a base de plomo o peligros de pintura a base de plomo conocidos en la vivienda. Los arrendatarios (inquilinos) también deben recibir un folleto aprobado por el Gobierno Federal sobre la prevención del envenenamiento de plomo.

Declaración del Arrendador
(a) Presencia de pintura a base de plomo y/o peligros de pintura a base de plomo (marque (i) ó (ii) abajo):
   (i) _____ Confirmando que hay pintura a base de plomo y/o peligro de pintura a base de plomo en la vivienda (explique).

   ____________________________________________

   (ii) _____ El arrendador no tiene ningún conocimiento de que haya pintura a base de plomo y/o peligro de pintura a base de plomo en la vivienda.

(b) Archivos e informes disponibles para el vendedor (marque (i) ó (ii) abajo):
   (i) _____ El arrendador le ha proporcionado al comprador todos los archivos e informes disponibles relacionados con pintura a base de plomo y/o peligro de pintura a base de plomo en la vivienda (anote los documentos abajo).

   ____________________________________________

   (ii) _____ El arrendador no tiene archivos ni informes relacionados con pintura a base de plomo y/o peligro de pintura a base de plomo en la vivienda.

Acuse de Recibo del Arrendatario o Inquilino (Inicial)
(c) _______ El arrendatario ha recibido copias de toda la información indicada arriba.
(d) _______ El arrendatario ha recibido el folleto titulado Proteja a Su Familia del Plomo en Su Casa.

Acuse de Recibo del Agente (Inicial)
(e) _______ El agente le ha informado al arrendador de las obligaciones del arrendador de acuerdo con 42 U.S.C. 4852d y está consciente de su responsabilidad de asegurar su cumplimiento.

Certificación de Exactitud
Las partes siguientes han revisado la información que aparece arriba y certifican que, según su entender, toda la información que han proporcionado es verdadera y exacta.

<table>
<thead>
<tr>
<th>Arrendador</th>
<th>Fecha</th>
<th>Arrendador</th>
<th>Fecha</th>
</tr>
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<tbody>
<tr>
<td>Arrendatario</td>
<td>Fecha</td>
<td>Arrendatario</td>
<td>Fecha</td>
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<tr>
<td>Agente</td>
<td>Fecha</td>
<td>Agente</td>
<td>Fecha</td>
</tr>
</tbody>
</table>

Lead Laws and Regulations - Page 152
Sample Forms

The forms on the next two pages are sample forms you can use to make documentation of compliance easier.

Confirmation of Receipt of Lead Pamphlet

I have received a copy of the pamphlet, Protect Your Family From Lead in Your Home, informing me of the potential risk of the lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

<table>
<thead>
<tr>
<th>Printed name of recipient</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Signature of recipient

Self-Certification Option (for tenant-occupied dwellings only) —

If the lead pamphlet was delivered but a tenant signature was not obtainable, you may check the appropriate box below.

- [ ] Refusal to sign — I certify that I have made a good faith effort to deliver the pamphlet, Protect Your Family From Lead In Your Home, to the rental dwelling unit listed below at the date and time indicated and that the occupant refused to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

- [ ] Unavailable for signature — I certify that I have made a good faith effort to deliver the pamphlet, Protect Your Family From Lead In Your Home, to the rental dwelling unit listed below and that the occupant was unavailable to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

<table>
<thead>
<tr>
<th>Printed name of person certifying lead pamphlet delivery</th>
<th>Attempted delivery date and time</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Signature of person certifying lead pamphlet delivery

Unit Address

Note Regarding Mailing Option — As an alternative to delivery in person, you may mail the lead pamphlet to the owner and/or tenant. Pamphlet must be mailed at least 7 days before renovation (Document with a certificate of mailing from the post office).
Sample Forms (continued)

**Renovation Notice** — *For use in notifying tenants of renovations in common areas of multi-family housing.*

The following renovation activities will take place in the following locations:

---

**Activity (e.g., sanding, window replacement)**

---

**Location (e.g., lobby, recreation center)**

The expected starting date is ________________ and the expected ending date is ________________. Because this is an older building built before 1978, some of the paint disturbed during the renovation may contain lead. You may obtain a copy of the pamphlet, *Protect Your Family From Lead in Your Home*, by telephoning me at ________________. Please leave a message and be sure to include your name, phone number and address. I will either mail you a pamphlet or slide one under your door.

---

**Date**

**Printed name of renovator**

---

**Signature of renovator**

---

**Record of Tenant Notification Procedures** — *Procedures Used For Delivering Notices to Tenants of Renovations in Common Areas*

**Project Address:**

---

**Street**

**(apt. #)**

---

**City**

**State**

**Zip Code**

---

**Owner of multi-family housing**

**Number of dwelling units**

---

**Method of delivering notice forms (e.g. delivery to units, delivery to mailboxes of units)**

---

**Name of person delivering notices**

---

**Signature of person delivering notices**

**Date of Delivery**

---
New York Public Health Law, Art. 13, Title 10 (Control of Lead Poisoning)

§ 1370. Definitions
When used in this title, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

1. "Dwelling" means a building or structure or portion thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings and shall, without limiting the foregoing, include child care facilities for children under six years of age, kindergartens and nursery schools.

2. "Area of high risk" means an area designated as such by the commissioner or his representative and consisting of one or more dwellings in which a condition conducive to lead poisoning of children is present.

3. "A condition conducive to lead poisoning" means: (i) paint or other similar surface-coating material containing lead in a condition accessible for ingestion or inhalation or where peeling or chipping of the paint or other similar surface-coating material occurs or is likely to occur; and (ii) other environmental conditions which may result in significant lead exposure.

4. "Program" means the lead poisoning prevention program in the department established pursuant to section thirteen hundred seventy-a of this title.

5. "Council" means the advisory council on lead poisoning prevention established pursuant to section thirteen hundred seventy-b of this title.

6. "Elevated lead levels" means a blood lead level greater than or equal to ten micrograms of lead per deciliter of whole blood or such blood lead level as may be established by the department pursuant to rule or regulation.

7. "Person" means any natural person.

§ 1370-a. Lead poisoning prevention program

1. The department shall establish a lead poisoning prevention program. This program shall be responsible for establishing and coordinating activities to prevent lead poisoning and to minimize risk of exposure to lead. The department shall exercise any and all authority which may be deemed necessary and appropriate to effectuate the provisions of this title.

2. The department shall:
   (a) promulgate and enforce regulations for screening children and pregnant women, including requirements for blood lead testing, for lead poisoning, and for follow up of children and pregnant women who have elevated blood lead levels;
   (b) enter into interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification and treatment activities and lead reduction activities with other federal, state and local agencies and programs;
   (c) establish a statewide registry of lead levels of children provided such information is maintained as confidential except for (i) disclosure for medical treatment purposes; (ii) disclosure of non-identifying epidemiological data; and (iii) disclosure of information from such registry to the statewide immunization information system established by section twenty-one hundred sixty-eight of this chapter; and
   (d) develop and implement public education and community outreach programs on lead exposure, detection and risk reduction.

3. The department shall identify and designate areas in the state with significant concentrations of children identified with elevated blood lead levels as communities of concern for purposes
of implementing a childhood lead poisoning primary prevention program, and may, within amounts appropriated, provide grants to implement approved programs. The commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, shall develop and implement a childhood lead poisoning primary prevention program to prevent exposure to lead-based paint hazards for the communities of concern in their jurisdiction. The department shall provide funding to the New York city department of health and mental hygiene or county health departments to implement the approved work plan for a childhood lead poisoning primary prevention program. The work plan and budget, which shall be subject to the approval of the department, shall include, but not be limited to: (a) identification and designation of an area or areas of high risk within communities of concern; (b) a housing inspection program that includes prioritization and inspection of areas of high risk for lead hazards, correction of identified lead hazards using effective lead-safe work practices and, appropriate over-sight of remediation work; (c) partnerships with other county or municipal agencies or community-based organizations to build community awareness of the childhood lead poisoning primary prevention program and activities, coordinate referrals for services, and support remediation of housing that contains lead hazards; (d) a mechanism to provide education and referral for lead testing for children and pregnant women to families who are encountered in the course of conducting primary prevention inspections and other outreach activities; and (e) a mechanism and outreach efforts to provide housing inspections for lead hazards upon request. The commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, shall also enter into an agreement or subcontract with a municipal government regarding inspection of the paint conditions in dwellings built prior to nineteen hundred seventy-eight for the area defined as the community of concern and may, when qualified staff exists, designate the local housing maintenance code enforcement agency in which the community of concern is located as an agency authorized to administer the provisions of this title pursuant to subdivision one of section thirteen hundred seventy-five of this title. A portion of grant funding received to support the local primary prevention plan may be used to reduce barriers to lead testing of children and pregnant women within the communities of concern, including the purchase of lead testing devices and supplies when the need for such resources is identified within the community. The commissioner, the commissioner of health of a county or part-county health district, a county health director or a public health director and, in the city of New York, the commissioner of the New York city department of health and mental hygiene, is authorized to enter into agreements, contracts, subcontracts or memoranda of understanding with, and provide technical and other resources to, local health officials, local building code officials, real property owners, and community organizations in such areas to create and implement policies, education and other forms of community outreach to address lead exposure, detection and risk reduction. Primary prevention plans shall target children less than six years of age living in the highest risk housing in the communities of concern identified. The plans shall also take into consideration the extent the weatherization assistance program and other such programs can be used in conjunction with lead-based paint hazard risk reduction. Funding provided for this program shall be used for the activities described in this section and shall not be used for other activities required by this title.

§ 1370-b. Advisory council on lead poisoning prevention

1. The New York state advisory council on lead poisoning prevention is hereby established in the department, to consist of the following, or their designees: the commissioner; the commissioner of labor; the commissioner of environmental conservation; the commissioner of housing and community renewal; the commissioner of children and family services; the commissioner of temporary and disability assistance; the secretary of state; and fifteen public members appointed by the governor. The public members shall have a demonstrated expertise or interest in lead poisoning prevention and at least one public member shall be representative of each of the following: local government; community groups; labor unions; real estate; industry; parents; educators; local housing authorities; child health advocates;
environmental groups; professional medical organizations and hospitals. The public members of the council shall have fixed terms of three years; except that five of the initial appointments shall be for two years and five shall be for one year. The council shall be chaired by the commissioner or his or her designee.

2. Members of the advisory council shall serve without compensation for their services, except that each of them may be allowed necessary and actual expenses which he or she shall incur in the performance of his or her duties under this article.

3. The council shall meet as often as may be deemed necessary to fulfill its responsibilities. The council shall have the following powers and duties:
   (a) To develop a comprehensive statewide plan to prevent lead poisoning and to minimize the risk of human exposure to lead;
   (b) To coordinate the activities of its member agencies with respect to environmental lead policy and the statewide plan;
   (c) To recommend the adoption of policies with regard to the detection and elimination of lead hazards in the environment;
   (d) To recommend the adoption of policies with regard to the identification and management of children with elevated lead levels;
   (e) To recommend the adoption of policies with regard to education and outreach strategies related to lead exposure, detection, and risk reduction;
   (f) To comment on regulations of the department under this title when the council deems appropriate;
   (g) To make recommendations to ensure the qualifications of persons performing inspection and abatement of lead through a system of licensure and certification or otherwise;
   (h) To recommend strategies for funding the lead poisoning prevention program, including but not limited to ways to enhance the funding of screening through insurance coverage and other means, and ways to financially assist property owners in abating environmental lead, such as tax credits, loan funds, and other approaches; and
   (i) To report on or before December first of each year to the governor and the legislature concerning the previous year's development and implementation of the statewide plan and operation of the program, together with recommendations it deems necessary and the most currently available lead surveillance measures, including the actual number and estimated percentage of children tested for lead in accordance with New York state regulations, including age-specific testing requirements, and the actual number and estimated percentage of children identified with elevated blood lead levels. Such report shall be made available on the department's website.

§ 1370-c. Screening by health care providers

1. The department is authorized to promulgate regulations establishing the means by which and the intervals at which children and pregnant women shall be screened for elevated lead levels. The department is also authorized to require screening for lead poisoning in other high risk groups.

2. Every physician or other authorized practitioner who provides medical care to children or pregnant women, shall screen children or refer them for screening for elevated lead levels at the intervals and using the methods specified in such regulations. Every licensed, registered or approved health care facility serving children including but not limited to hospitals, clinics and health maintenance organizations, shall ensure, by providing screenings or by referring for screenings, that their patients receive screening for lead at the intervals and using the methods specified in such regulations.

3. The health practitioner who screens any child for lead shall give a certificate of screening to the parent or guardian of the child.
4. The department shall establish a separate level of payment, subject to the approval of the director of the budget, for payments made by governmental agencies for screenings performed pursuant to this section by hospitals, as defined in section twenty-eight hundred one of this chapter.

§ 1370-d. Lead screening of child care or pre-school enrollees

1. Except as provided pursuant to regulations of the department, each child care provider, public and private nursery school and pre-school licensed, certified or approved by any state or local agency shall, prior to or within three months after initial enrollment of a child under six years of age, obtain from a parent or guardian of the child evidence that said child has been screened for lead.

2. Whenever there exists no evidence of lead screening as provided for in subdivision one of this section or other acceptable evidence of the child's screening for lead, the child care provider, principal, teacher, owner or person in charge of the nursery school or pre-school shall provide the parent or guardian of the child with information on lead poisoning in children and lead poisoning prevention and refer the parent or guardian to a primary care provider or the local health authority.

3. (a) If any parent or guardian to such child is unable to obtain lead testing, such person may present such child to the health officer of the county in which the child resides, who shall then perform or arrange for the required screening.
   (b) The local public health district shall develop and implement a fee schedule for households with incomes in excess of two hundred percent of the federal poverty level for lead screening pursuant to section six hundred sixty of this chapter, which shall vary depending on patient household income.

§ 1370-e. Reporting lead exposure levels

1. Every physician or authorized practitioner shall give notice of elevated lead levels as specified by the commissioner pursuant to regulation, to the health officer of the health district wherein the patient resides, except as otherwise provided.

2. The commissioner may, by regulation, provide that cases of elevated lead levels which occur (a) in health districts of less than fifty thousand population not having a full-time health officer, or (b) in state institutions shall be reported directly to the department or its district health officer.

3. Whenever an analysis of a clinical specimen for lead is performed by a laboratory or a physician or authorized practitioner, the director of such laboratory or such physician or authorized practitioner shall, within such period specified by the commissioner report the results and any related information in connection therewith to the local and state health officer to whom a physician or authorized practitioner is required to report such cases pursuant to this section.

4. The person in charge of every hospital, clinic, or other similar public or private institution shall give notice of every child with an elevated blood lead level coming under the care of the institution to the local or state health officer to whom a physician or authorized practitioner is required to report such cases pursuant to this section.

5. The notices required by this section shall be in a form and filed in such time period as shall be prescribed by the commissioner.

§ 1371. Manufacture and sale of lead painted toys and furniture

1. No person shall manufacture, sell or hold for sale a children's toy or children's furniture having paint or other similar surface-coating material thereon containing more than .06 of one per centum of metallic lead based on the total weight of the contained solids or dried paint film.
2. The commissioner of health may waive the provisions of this section in whole or in part upon a finding by the commissioner in a particular instance that there is no significant threat to the public health; with respect to miniatures the commissioner shall do so, on terms and conditions he or she shall establish, upon a final judicial or administrative finding that there is no immediate public health threat in that instance.

§ 1372. Use of leaded paint

No person shall apply paint or other similar surface-coating material containing more than .06 of one per centum of metallic lead based on the total weight of the contained solids or dried paint film to any interior surface, window sill, window frame or porch of a dwelling.

§ 1373. Abatement of lead poisoning conditions

1. Whenever the commissioner or his or her representative shall designate an area of high risk, he or she shall give written notice and demand, served as provided by this section, for the discontinuance of a paint condition conducive to lead poisoning in any designated dwelling in such area within a specified period of time.

2. Such notice and demand shall prescribe the method of discontinuance of a condition conducive to lead poisoning which may include the removal of paint containing more than one-half of one per centum of metallic lead based on the total weight of the contained solids or dried film of the paint or other similar surface-coating material from surfaces specified by the commissioner or his representative under such safety conditions as may be indicated and the refinishing of such surfaces with a suitable finish which is not in violation of section one thousand three hundred seventy-two of this title or the covering of such surfaces with such material or the removal of lead contaminated soils or lead pipes supplying drinking water as may be deemed necessary to protect the life and health of occupants of the dwelling.

3. In the event of failure to comply with a notice and demand, the commissioner or his or her representative shall conduct a formal hearing upon due notice in accordance with the provisions of section twelve-a of this chapter and on proof of violation of such notice and demand may order abatement of a paint condition conducive to lead poisoning upon such terms as may be appropriate and may assess a penalty not to exceed two thousand five hundred dollars for such violation, provided, however, that abatement shall not be ordered if the respondent proves by a preponderance of evidence at such hearing that a paint condition conducive to lead poisoning in the designated dwelling does not exist.

4. A notice required by this section may be served upon an owner or occupant of the dwelling or agent of the owner in the same manner as a summons in a civil action or by registered or certified mail to his last known address or place of residence.

5. The removal of a tenant from or the surrender by the tenant of a dwelling with respect to which the commissioner or his representative, pursuant to subdivision one of this section, has given written notice and demand for the discontinuance of a paint condition conducive to lead poisoning shall not absolve, relieve or discharge any persons chargeable therewith from the obligation and responsibility to discontinue such paint condition conducive to lead poisoning in accordance with the method of discontinuance prescribed therefor in such notice and demand.

§ 1374. Receivership

1. In the event of failure to comply with an order issued pursuant to this title and containing provision for such application, the officer issuing the order may apply to a court of competent jurisdiction in the county wherein the dwelling is located for an order appointing such officer or his designee receiver of the rents of such dwelling for the purpose of effectuating the provisions
2. An application for appointment of a receiver hereunder shall be on at least ten days' notice to the owner of the dwelling, effected in the same manner as in an action to foreclose a mortgage. A receiver appointed hereunder shall not have any right superior to those of any mortgagee or lienor of record who has not had at least ten days' notice, by personal service or registered or certified mail, of the application for appointment of a receiver.

3. A receiver appointed hereunder shall have the power to collect the accrued and accruing rents of the dwelling and shall apply such collected rents to costs and expenses incurred in connection with (a) removing, replacing, repainting and covering surfaces of the dwelling necessary to effectuate the provisions of the order of abatement, (b) interim operation and management of the dwelling, (c) administration of the receivership.

4. As soon as practicable after completion of his duties, the receiver shall render a full accounting to the court and, upon payment over of any surplus moneys to the owner or other persons as the court may approve or direct and upon the order of the court, he shall be relieved of any further responsibility or liability in connection with his receivership.

§ 1375. Enforcement agencies
1. The commissioner's designee having jurisdiction, county and city commissioners of health and local housing code enforcement agencies designated by the commissioner's designee having jurisdiction or county or city commissioner of health shall have the same authority, powers and duties within their respective jurisdictions as has the commissioner under the provisions of this title.

2. The commissioner or his representative and an official or agency specified in subdivision one of this section may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as may be necessary or proper in the enforcement of the provisions of this title.

3. Nothing contained in this title shall be construed to alter or abridge any duties and powers now or hereafter existing in the commissioner, county boards of health, city and county commissioners of health, the New York City department of housing preservation and development and the department of health, local boards of health or other public agencies or public officials, or any private party.

§ 1376-a. Sale of consumer products containing lead or cadmium
1. In the absence of a federal standard for a specific type of product, the commissioner shall establish the maximum quantity of lead or cadmium (and the manner of testing therefor) which may be released from glazed ceramic tableware, crystal, china and other consumer products. Such maximum quantity shall be based on the best available scientific data and shall insure the safety of the public by reducing its exposure to lead and cadmium to the lowest practicable level. The commissioner may amend such maximum quantity (and the manner of testing therefor) where necessary or appropriate for the safety of the public. Until such maximum quantity of lead or cadmium established by the commissioner is effective, no glazed ceramic tableware shall be offered for sale which releases lead in excess of 7 parts per million, or cadmium in excess of .5 parts per million.

2. The commissioner is hereby empowered to order the recall of or confiscation of glazed ceramic tableware, crystal, china or other consumer products offered for sale which do not meet the standards set forth in or pursuant to this section.

3. The commissioner of health may waive the provisions of this section in whole or in part upon a finding by the commissioner in a particular instance that there is no significant threat to the public health; with respect to miniatures the commissioner shall do so, on terms and conditions.
he or she shall establish, upon a final judicial or administrative finding that there is no immediate public health threat in that instance.
Subpart 67-1. Screening and Follow-up

§ 67-1.1 Definitions
The following definitions apply to this Part:

(a) "Anticipatory guidance" means providing parents or guardians of children under the age of six and pregnant women with information regarding the major causes of lead poisoning and means of preventing lead exposure. Such guidance shall be pertinent to the environment of the child or pregnant woman.

(b) "Certificate of lead screening" means documentation prepared by the health care provider who ordered the blood lead test for the child indicating the date the test was performed.

(c) "Child" shall refer to an individual from birth to less than eighteen years, unless otherwise specified.

(d) "Confirmed blood lead level" means a blood lead concentration measured on venous blood.

(e) "Elevated blood lead level" means a blood lead concentration equal to or greater than 10 micrograms per deciliter of whole blood.

(f) "Environmental management" means environmental investigation and exposure assessment, sampling for lead, environmental testing and reporting, notice and demand of discontinuance of conditions conducive to lead poisoning, environmental intervention and abatement, and enforcement in accordance with Subpart 67-2 of this Part.

(g) "Follow-up" means actions by local health units and health care providers which, depending on the blood lead level and exposure history of the child, shall include as appropriate: risk reduction education, follow-up testing, confirmatory testing, diagnostic evaluation, medical management, environmental management and case management, in accordance with generally accepted medical standards and public health guidelines.

(h) "Health care provider" means any health care practitioner who is authorized to order a blood lead test and any facility licensed pursuant to Article 28 of the Public Health Law.

(i) "Lead screening" means measuring lead concentration in whole blood to identify elevated blood lead levels.

§ 67-1.2 Lead screening and follow-up of children by health care providers

(a) Lead screening and follow-up of children by primary health care providers.

(1) At each routine well-child visit, or at least annually if a child has not had routine well-child visits, primary health care providers shall assess each child who is at least six months of age but under six years of age, for high dose lead exposure using a risk assessment tool based on currently accepted public health guidelines. Each child found to be at risk for high dose lead exposure shall be screened or referred for lead screening.

(2) Primary health care providers shall provide the parent or guardian of each child under six years of age anticipatory guidance on lead poisoning prevention as part of routine care.

(3) Primary health care providers shall screen or refer each child for blood lead screening, at or around one and two years of age, preferably as part of routine well child care.

(4) The Commissioner of Health may provide recommended alternative schedules for other high risk groups as deemed necessary.

(5) Results of blood lead analysis performed in a health care practitioner's office pursuant to Public Health Law Section 579(1) that is certified by the Centers for Medicare and Medicaid...
Services under regulations implementing the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) must be reported to the Commissioner of Health and to the local health officer in whose jurisdiction the subject of the test resides. Such results shall be reported within fourteen business days of the date of analysis and on such forms as prescribed by the Commissioner of Health. Such reports must include the subject's name, date of birth, race, gender, address, county of residence, type of sample (venous or fingerstick) and blood lead level; the health care practitioner ordering the test, facility identifiers, the date of sample collection, and the date of analysis.

(6) Each primary health care provider who screens a child for elevated blood lead levels shall explain the blood lead test results and provide documentation of lead screening to the parent or guardian of the child or other person authorized to consent for the medical care of the child.

(7) Primary health care providers shall provide or make reasonable efforts to ensure the provision of follow-up testing for each child with an elevated blood lead level in accordance with currently accepted medical standards and public health guidelines.

(8) Primary health care providers shall provide or make reasonable efforts to ensure the provision of risk reduction education and nutritional counseling for each child with an elevated blood lead level equal to or greater than 10 micrograms per deciliter of whole blood.

(9) Primary health care providers shall confirm blood lead levels equal to or greater than 10 micrograms per deciliter of whole blood obtained on a capillary specimen from a child using a venous blood sample.

(10) For each child who has a confirmed blood lead level equal to or greater than 15 micrograms per deciliter of whole blood, primary health care providers shall provide or make reasonable efforts to ensure the provision of a complete diagnostic evaluation; medical treatment, if necessary; and referral to the appropriate local or State health unit for environmental management. A complete diagnostic evaluation shall include at a minimum: a detailed lead exposure assessment, a nutritional assessment including iron status, and a developmental screening.

(11) Primary health care providers shall communicate and coordinate as appropriate with local health units to ensure that each child with an elevated blood lead level receives appropriate follow-up, as prescribed above in paragraphs (6) through (10) of this subdivision.

(b) Lead screening and follow-up of children by non-primary care providers.

(1) A health care provider that provides services to a child who is at least 6 months of age but under 6 years of age and who is not the child's ongoing primary care provider, such as a hospital inpatient facility, an emergency service if the child's condition permits, or other facility or practitioner which provides services to the child on a one-time or walk-in basis, shall inquire if the child has been appropriately assessed and screened for elevated blood lead levels in accordance with the schedule prescribed in paragraphs (1) and (3) of subdivision 67-1.2(a).

(2) If the child has not received such appropriate lead screening, the health care provider shall screen the child for elevated blood lead levels, or refer the child to the child's primary health care provider or, if the child's primary care provider is unavailable or the child has no primary health care provider, to another primary health care provider, or to the local health unit to obtain a blood lead test.

(3) If screening is performed, the blood lead test result shall be sent to the child's primary care provider or to the local health unit to enable appropriate follow-up in accordance with paragraphs (a)(6) through (11) of this section.
§ 67-1.3 Laboratory testing and specimen collection
(a) All blood lead tests shall be performed by (i) a clinical laboratory approved for toxicology-blood lead under Article 5, Title V of the Public Health Law; (ii) a health care practitioner's office pursuant to Public Health Law Section 579(1) that is certified by the Centers for Medicare and Medicaid Services under regulations implementing the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA); or (iii) an entity exempt from the requirements of Public Health Law Article 5, Title V pursuant to Section 579(3) of that Title, that holds a certificate of registration issued by the department and is authorized to conduct blood lead analyses.
(b) Venous blood is the preferred specimen for blood lead analysis and should be used for lead measurement whenever practicable.
(c) Fingerstick blood specimens are acceptable for lead screening if appropriate collection procedures are followed to minimize the risk of environmental lead contamination. Instructions regarding appropriate collection procedures for fingerstick specimens may be obtained from laboratories approved for toxicology-blood lead under Article 5, Title V of the Public Health Law.

§ 67-1.4 Lead screening status of children who enroll in preschool or child care
(a) Prior to or within three months of initial enrollment, each child care provider, public and private nursery school and preschool, licensed, certified or approved by any State or local agency shall obtain a written statement signed by a health care provider that documents lead screening for any child at least one year of age but under six years of age, and retain such documentation until one year after the child is no longer enrolled.
(b) When no documentation of lead screening exists, the child shall not be excluded from attending nursery school, preschool or childcare, however, the child care provider, principal, teacher, owner or person in charge of the nursery school or preschool shall provide the parent or guardian of the child with information on lead poisoning and lead poisoning prevention and refer the parent or guardian to the child's primary health care provider or, if the child's primary care provider is unavailable or the child has no primary health care provider, to another primary care provider or to the local health unit to obtain a blood lead test.
(c) Each child care provider, public and private nursery school and pre-school licensed, certified or approved by any State or local agency is exempt from the requirement to obtain, prior to or within three months of initial enrollment of children under six years of age, evidence that said children have been screened for elevated blood lead levels until April 1, 1994.

§ 67-1.5 Lead screening and follow-up of pregnant women by prenatal care providers
(a) Prenatal health care providers shall provide each pregnant woman anticipatory guidance on lead poisoning prevention during pregnancy, and shall assess each pregnant woman at the initial prenatal visit for high dose lead exposure using a risk assessment tool. A risk assessment tool shall be recommended by the State Commissioner of Health.
(b) Prenatal health care providers shall screen or refer for blood lead screening each pregnant woman found to be at risk for current high dose lead exposure.
(c) Prenatal health care providers shall provide each pregnant women, who has a confirmed blood lead level equal to or greater than 10 micrograms per deciliter of whole blood, risk reduction counselling in accordance with guidelines recommended by the State Commissioner of Health.
(d) Prenatal care providers shall refer each pregnant woman, who has a confirmed blood lead level equal to or greater than 10 micrograms per deciliter of whole blood and who may have...
been occupationally exposed to lead, to an occupational health clinic for individual guidance.
(e) Prenatal care providers shall provide anticipatory guidance to each woman at her
postpartum visit on the prevention of childhood lead poisoning.

§ 67-1.6 Role of local health units
(a) Local health units shall provide public and professional education and community outreach
on lead poisoning prevention.

(b) Local health units shall provide blood lead screening or arrange for blood lead screening for
each child who requires screening as provided in section 67-1.4 of this Part and whose parent
or guardian is unable to obtain a lead test for their child because the child is uninsured or the
child's insurance does not cover lead screening.
(c) Local health units shall establish a sliding fee schedule for blood lead screening of children
from families with incomes in excess of 200% of the federal poverty level, pursuant to section
606 of the Public Health Law, and shall collect fees for blood lead testing from third party
payors, when available.
(d) Local health units shall provide environmental management as required under this Part.
(e) Local health units shall provide data to identify exposure patterns and high risk populations
for strategic planning for lead poisoning prevention at the State and local level.
(f) Local health units shall institute measures to identify and track children with elevated blood
lead levels to assure appropriate follow-up.
(g) Local health units who serve as a child's primary health care provider shall carryout
activities in accordance with paragraphs (1) through (9) of section 67-1.2(a).

Subpart 67-2. Environmental Assessment and Abatement
§ 67-2.1 Purpose
The purpose of this regulation is to define requirements for the assessment and abatement of
conditions conducive to lead poisoning.

§ 67-2.2 Definitions
As used in this Subpart, the following words and terms shall have the stated meaning:
(a) Abatement includes all actions necessary to discontinue a condition conducive to lead
poisoning and may include encapsulation, replacement, enclosure, or removal.

(b) Accessible mouthable surfaces are those surfaces located within five feet of the floor or
ground that form a protruding corner or similar edge, or protrude one-half inch or more from a
flat wall surface, or are located so that a child may place his or her mouth on a protruding
surface.
(c) Area of high risk means an area designated as such by the Commissioner or his designated
representative and may consist of one or more dwellings in which a condition conducive to lead
poisoning of children exists.
(d) Approved laboratory means the New York State Department of Health's Wadsworth Center
for Laboratory and Research or a laboratory certified by the New York State Department of
Health pursuant to the department's Environmental Laboratory Approval Program.
(e) Child care facilities means any facility licensed by the State Department of Social Services
to offer or provide day care services or child care and any public or private schools attended by
children six years of age or younger.
(f) Commissioner means the State Commissioner of Health.

(g) Condition conducive to lead poisoning means:

1. the presence of lead paint or other similar surface coating on any accessible mouthable surface or any other surface in a condition accessible for ingestion or inhalation, where peeling, cracking, blistering, flaking, chipping or powdering of such paint or similar surface coating material occurs or is likely to occur; and/or
2. the presence of other environmental conditions which may result in significant lead exposure.

(h) Designated representative means the health commissioner or health officer of a city of 50,000 population or over, or the health commissioner or health officer of a county or part-county health district, the State regional health director or district director having jurisdiction, or any county health director having all the powers and duties prescribed in § 352 of the Public Health Law, or any individual so designated by the Commissioner pursuant to § 206(8) of the Public Health Law.

(i) Dwelling means all buildings or structures or portions thereof that are on or appurtenant to a property, which is occupied in whole or in part as the home, residence or sleeping place, of one or more human beings, including child care facilities for children under six years of age, kindergartens and nursery schools.

(j) Encapsulation means a method of abatement that makes lead paint inaccessible by covering or sealing surfaces with durable coatings specifically formulated to be elastomeric, long-lasting, and resistant to cracking, peeling, algae and fungus. Paint is not an encapsulant.

(k) Enclosure means a method of abatement that involves covering of surfaces with durable rigid materials affixed to the surface and sealed or caulked to prevent lead paint or other lead-containing material from such surfaces from becoming accessible to children.

(l) High efficiency particulate air (HEPA) filter means a filter capable of filtering at least 99.97% by weight, of particles 0.3 microns or greater in diameter from air passed through the filter.

(m) Lead paint means paint, plaster or other surface coating material containing more than one half of one percent of metallic lead based on the total weight of the contained solids or dried film of the paint or plaster or other similar surface coating material.

(n) Removal means a method of abatement that results in the dislocation, stripping or scraping of paint or plaster or other coating material from a surface.

(o) Replacement means a method of abatement that involves removing components such as doors, windows and trim that contain lead paint and installing new or deledged components.

(p) Risk reduction efforts mean any temporary action designed to reduce a child's exposure to lead and may include, but are not limited to: encapsulation, temporary relocation, clean-up of paint chips and dust and on-going maintenance of intact paint.

(q) X-ray fluorescence (XRF) analyzer means any instrument which measures lead concentrations in milligrams per square centimeter by measuring emission of x-ray photons activated by a radioactive source within the instrument.

(r) ug/dL means micrograms per deciliter.

§ 67-2.3 Environmental investigation
Whenever an area of high risk is designated or when a child has been referred for environmental
management in accordance with section 67-1.2(a) (9) of this Part, the Commissioner or his
designated representative shall coordinate follow-up activities as defined in section 67-1.1(e) and (f)
of this Part and required by section 67-1.6 of this Part. An assessment of conditions conducive to
lead poisoning shall be performed and should include an environmental investigation of:

(1) any dwelling;
(2) any child care facility; and
(3) any other area where the child spends a significant amount of time.

§  67-2.4  Sampling for lead
(a) Paint or other similar surface coating that is peeling, cracking, blistering, flaking, chipping
or powdering or is on an accessible mouthable surface may be sampled for lead by the
following methods:
(1) At least one gram of paint or other surface coating should be collected from each
surface for approved laboratory analysis;
(2) A portable X-ray fluorescence analyzer may be used to determine the presence of
lead paint. In conducting sampling by X-ray fluorescence the following determinations
shall apply:
  (i) Where substrate correction readings are obtained, a mean reading of 1.6
milligrams of lead per square centimeter or greater shall be considered as
satisfactory evidence of lead paint. A mean, substrate corrected reading of less
than 1.6 milligrams of lead per square centimeter but more than 0.4 milligrams of
lead per square centimeter shall be considered as inconclusive and in such case a
sample, as described in paragraph (1) of this Subdivision may be obtained. A
mean substrate corrected reading of less than 0.4 milligrams of lead per square
centimeter shall be considered as negative for lead paint.
  (ii) If substrate corrected readings cannot be obtained, a mean, uncorrected
reading of greater than 2.0 milligrams of lead per square centimeter shall be
considered as satisfactory evidence of lead paint. A mean reading of 2.0
milligrams of lead per square centimeter or less shall be considered as
inconclusive and in such case a sample, as described in paragraph (1) of this
subdivision, may be obtained.
(b) Any samples of painted surfaces, paint, water, dust, soil, food, consumer products and other
potential lead sources collected during an environmental investigation must be analyzed by an
approved laboratory as specified by the Commissioner. The sample results may be used to
evaluate possible sources of lead exposure.

§  67-2.5  Environmental testing and reporting
An approved laboratory shall examine paint and any other environmental samples according to
generally accepted scientific methods specified by the Commissioner and shall report the results of
all lead analyses to the designated representative in whose jurisdiction the samples were collected.

§  67-2.6  Notice and demand
Whenever the Commissioner or his designated representative determines that a condition conducive
to lead poisoning exists in a dwelling, a written notice and demand for discontinuance of such may
be issued in accordance with section 1373(2) of the Public Health Law.
(a) No person shall commence lead paint abatement in any designated area of high risk prior to
issuance of a written notice and demand. Risk reduction efforts may proceed prior to receipt of
a notice and demand.
Upon receipt of a notice and demand for discontinuance of conditions conducive to lead poisoning, the owner of a dwelling is required to abate such conditions. The extent of abatement and method(s) used shall be determined by the Commissioner or his designated representative, in accordance with applicable laws or rules and regulations.

It shall be the responsibility of the owner of the dwelling to comply with all federal, state and local laws governing building construction, housing, worker health and safety, and disposal of lead-containing wastes. The owner of the dwelling must provide, upon request, to the Commissioner or his designated representative, such documentation as shall show that the owner has fully complied with these laws.

Any vacancy or change in occupancy of the dwelling before abatement has been completed shall not relieve the owner of that dwelling from compliance with the notice or demand.

§ 67-2.7 Environmental intervention and abatement

The Commissioner or his designated representative shall require in the notice and demand, where necessary, pre-abatement and clean up actions as specified in subdivisions (a) and (b) of this section and any one or more of the actions listed in subdivision (c) through (j) of this section as part of an abatement of a dwelling:

(a) Pre-abatement actions: (1) furniture, rugs, carpets, bedding, drapes, dishware and food shall either be removed or covered with plastic sheets a minimum thickness of six mils and sealed; (2) room openings must be sealed with plastic sheets that have a minimum thickness of six mils and (3) floors or in place carpet must be covered with two sheets of plastic a minimum thickness of six mils thick, secured to the wall or baseboard with duct tape.

(b) Clean-up shall be performed daily and consist of misting debris with water and carefully sweeping and placing it in double four mil or six mil plastic bags, followed by wet dusting or wet mopping of all surfaces in the work area. Final clean-up shall be performed a minimum of 2 hours after completion of active abatement and shall include, but not be limited to, an HEPA filtered vacuuming of all interior surfaces, including window sills, followed by a wet mopping of all surfaces with a heavy duty household cleaning solution, followed by a second HEPA filtered vacuuming. In some instances the Commissioner or his designated representative may determine that an alternative wet vacuum system may be used in place of the HEPA filter.

(c) When necessary, relocation of occupants to temporary housing until the abatement work specified has been completed.

(d) Placarding of the dwelling with the statement that human habitation is prohibited until the Commissioner or his designated representative determines that the dwelling has been abated.

(e) Prohibition of the presence of children and pregnant women in part or all of a dwelling during abatement activities.

(f) Encapsulation of lead painted surfaces with materials approved as an encapsulant of lead paint by the United States Environmental Protection Agency or the United States Department of Housing and Urban Development, or the American Society for Testing and Materials or the Commissioner.

(1) after repair of water leaks caused by structured or plumbing deficiencies;

(2) in accordance with manufacturer's instructions; and

(3) after the removal of any chipping, peeling of flaking paint in accordance with subdivision (i) of this section.

(g) Enclosure of lead-containing surfaces with durable materials applied as follows:
(1) after repair of water leaks caused by structural or plumbing deficiencies.
(2) with materials that are fire resistant which may include gypsum board, aluminum, vinyl, plywood paneling a minimum of 5/32 inch thick good (1) grade, Formica, acrylic sheets, fiberglass, durable carpet, tile, Plexiglas; and
(3) after the removal of any chipping, peeling or flaking paint in accordance with subdivision (i) of this section.

(h) Replacement of building components with lead-free materials.

(i) Removal of lead-containing surface coating materials by one or more of the following methods after which a lead-free surface coating material shall be applied to the surface:
   (1) wet wire brushing or hand scraping with or without the aid of non-flammable solvent or wet abrasive compound;
   (2) machine sanding, using a sander equipped with a high efficiency particle air filter device, to feather edges and prepare surfaces for repainting or sealing;
   (3) when used with appropriate respiratory protection, a heat gun, which produces a temperature not exceeding 1,100 degrees F of, with hand scraping;
   (4) off-site paint removal;
   (5) other procedures acceptable to the Commissioner.

(j) Abatement of exterior surfaces by any of the methods described in subdivisions (a)-(i) of this section or by confined abrasive blasting using a wet-misting technique or simultaneous vacuuming system. In addition, plastic sheets, a minimum thickness of six mils, must be placed on the ground as close to the dwelling foundation as obstructions will allow a minimum of six feet for each story in height before blasting begins, and left in place until cleanup is complete. All seams must be sealed with tape and outer edges raised to trap liquid waste.

§ 67-2.8 Enforcement
When an owner of a dwelling fails to comply with a written notice and demand for discontinuance of a condition conducive to lead poisoning, the procedures for enforcement, including formal hearings, receivership and cooperation and assistance from those public officers, departments and agencies of the State and its political subdivisions, as provided in sections 1373, 1374 and 1375 of the Public Health Law, shall be followed.

Subpart 67-3. Reporting of Blood Lead Levels
§ 67-3.1 Laboratory reporting of blood lead levels for public health follow up

(a) For purposes of this Subpart, laboratory shall mean: (i) any laboratory that holds a permit issued in accordance with Public Health Law, Article 5, Title V and is authorized to conduct blood lead analyses; or (ii) an entity exempt from the requirements of Public Health Law Article 5, Title V pursuant to Section 579(3) of that Title, that holds a certificate of registration issued by the department and is authorized to conduct blood lead analyses.

(b) Laboratories shall report the results of all blood lead analyses performed on residents of New York State to the Commissioner of Health and to the local health officers in whose jurisdictions the subjects of the tests reside. If the laboratory reports electronically to the Commissioner of Health in accordance with subdivision (e) of this section, the Department of Health shall notify the appropriate local health officer of the test results and the laboratory shall be deemed to have satisfied the reporting requirements of this section.

(c) Whenever a laboratory refers a blood lead sample to another laboratory for analysis, the
laboratories may agree on which laboratory will report in compliance with this Subpart, but both laboratories will be accountable to insure that a report is made.

(d) All laboratories shall report electronically to the Commissioner of Health each blood lead analysis conducted. The report must include the subject's name, date of birth, race, gender, address, county of residence, type of sample (venous or fingerstick) and blood lead level; the health care practitioner ordering the test, laboratory identifiers, the date the sample was collected and the date of analysis. Reporting pursuant to this subdivision shall be done using an electronic telecommunication system consistent with the technical specifications established by the Department.

(e) Any laboratory not permitted in accordance with Public Health Law, Article 5, Title V to perform blood lead analysis which accepts a blood lead sample and refers the sample elsewhere for analysis shall transmit to the laboratory performing the analysis all of the information that is required by subdivision (d) above.

(f) Time limits for reporting and special notification requirements of blood lead levels in children.

(1) Laboratories shall report the results of all blood lead tests as specified in this Subpart within five business days of the date of analysis.

(2) In addition to any other reporting required by this Subpart, all laboratories shall notify the provider ordering the blood lead test of the results of any analysis in a child less than eighteen years of age which is equal to or greater than 45 mcg/dL (micrograms per deciliter) within 24 hours of the analysis.

(g) Nothing in this Subpart shall be construed to relieve any laboratory from reporting results of any blood lead analysis to the physician, or other health care provider that ordered the test or to any other entity as required by State, Federal, or local statutes or regulations or in accordance with accepted standards of practice except that reporting in compliance with this Subpart shall satisfy the blood lead reporting requirements of Public Health Law, Article 13, Title 10 and Part 22 of this Title.

§ 67-3.2 Reporting of elevated blood lead results by health care providers

(a) All health care providers shall assure that all of the information specified in section 67-3.1 of this Subpart is completed for all blood lead analyses ordered by the health care provider and that this information accompanies the sample to the testing laboratory.

(b) All health care providers shall notify the health officer having jurisdiction of the occurrence of any blood lead level above 45 mcg/dL (micrograms per deciliter) in a child less than eighteen years of age within 24 hours of having been notified of this result by the testing laboratory.

(c) For the purposes of this Subpart, health care provider shall mean any health care practitioner who is authorized to order a blood lead test and any facility licensed pursuant to Article 28 of the Public Health Law.

§ 67-3.3 Special effective dates

(a) Reporting the results of all blood lead tests at or above 10 mg/dl (microgram per deciliter) shall begin no later than 120 days after filing the notice of adoption of this Subpart with the Secretary of State.

(b) Reporting the results of all blood lead tests shall begin no later than 360 days after filing the notice of adoption of this Subpart with the Secretary of State.

§ 67-4.1 Purpose
This Subpart requires all school districts and boards of cooperative educational services, including those already classified as a public water system under Subpart 5-1 of this Title, to test potable water for lead contamination and to develop and implement a lead remediation plan, where applicable.

§ 67-4.2 Definitions
As used in this Subpart, the following terms shall have the stated meanings:
(a) Action level means 15 micrograms per liter (ug/L) or parts per billion (ppb). Exceedance of the action level requires a response, as set forth in this Subpart.
(b) Building means any structure, facility, addition, or wing of a school that may be occupied by children or students. The terms shall not include any structure, facility, addition, or wing of a school that is lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.
(c) Commissioner means the State Commissioner of Health.
(d) Department means the New York State Department of Health.
(e) Outlet means a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to a bubbler, drinking fountain, or faucets.
(f) Potable water means water that meets the requirements of Subpart 5-1 of this Title.
(g) School means any school district or board of cooperative educational services (BOCES).

§ 67-4.3 Monitoring
(a) All schools shall test potable water for lead contamination as required in this Subpart.
(b) First-draw samples shall be collected from all outlets, as defined in this Subpart. A first-draw sample volume shall be 250 milliliters (mL), collected from a cold water outlet before any water is used. The water shall be motionless in the pipes for a minimum of eight hours, but not more than 18 hours, before sample collection. First-draw samples shall be collected pursuant to such other specifications as the department may determine appropriate.
(c) Initial first-draw samples,
(1) For existing buildings in service as of the effective date of this regulation, schools shall complete collection of initial first-draw samples according to the following schedule:
   (i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;
   (ii) for any school serving children in any of the levels grades six through 12 that are not also serving students in any of the levels pre-kindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.
(2) For buildings put into service after the effective date of this regulation, initial first-draw samples shall be performed prior to occupancy; provided that if the building is put into service between the effective date of this regulation but before October 31, 2016, the school shall have 30 days to perform first-draw sampling.
(3) Any first-draw sampling conducted consistent with this Subpart that occurred after January 1, 2015 shall satisfy the initial first-draw sampling requirement.
(d) Continued monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section again in 2020 or at an earlier time as determined by the commissioner. Schools shall continue to collect first-draw samples at least every five years thereafter or at an earlier time as determined by the commissioner.
(e) All first-draw samples shall be analyzed by a laboratory approved to perform such analyses by the department's Environmental Laboratory Approval Program (ELAP).

§ 67-4.4 Response
If the lead concentration of water at an outlet exceeds the action level, the school shall:
(a) prohibit use of the outlet until:
   (1) a lead remediation plan is implemented to mitigate the lead level of such
       outlet; and
   (2) test results indicate that the lead levels are at or below the action level;
(b) provide building occupants with an adequate supply of potable water for drinking and
    cooking until remediation is performed;
(c) report the test results to the local health department as soon as practicable, but no more
    than one business day after the school received the laboratory report; and
(d) notify all staff and all persons in parental relation to students of the test results, in writing,
    as soon as practicable but no more than 10 business days after the school received the
    laboratory report; and, for results of tests performed prior to the effective date of this Subpart,
    within 10 business days of this regulation's effective date, unless such written notification has
    already occurred.

§ 67-4.5 Public notification
(a) List of lead-free buildings. By October 31, 2016, the school shall make available on its
    website a list of all buildings that are determined to be lead-free, as defined in section 1417 of
    the Federal Safe Drinking Water Act.
(b) Public notification of testing results and remediation plans.
   (1) The school shall make available, on the school's website, the results of all lead
       testing performed and lead remediation plans implemented pursuant to this Subpart, as
       soon as practicable, but no more than six weeks after the school received the laboratory
       reports.
   (2) For schools that received lead testing results and implemented lead remediation
       plans in a manner consistent with this Subpart, but prior to the effective date of this
       Subpart, the school shall make available such information, on the school's website, as
       soon as practicable, but no more than six weeks after the effective date of this Subpart.

§ 67-4.6 Reporting
(a) As soon as practicable but no later than November 11, 2016, the school shall report to the
    department, local health department, and State Education Department, through the department's
    designated statewide electronic reporting system:
    (1) completion of all required first-draw sampling;
    (2) for any outlets that were tested prior to the effective date of this regulation, and for
        which the school wishes to assert that such testing was in substantial compliance with
        this Subpart, an attestation that:
        (i) the school conducted testing that substantially complied with the testing
            requirements of this Subpart, consistent with guidance issued by the department;
        (ii) any needed remediation, including re-testing, has been performed;
        (iii) the lead level in the potable water of the applicable building(s) is currently
            below the action level; and
        (iv) the school has submitted a waiver request to the local health department, in
            accordance with section 67-4.8 of this Subpart; and
    (3) a list of all buildings that are determined to be lead-free, as defined in section 1417
(b) As soon as practicable, but no more than 10 business days after the school received the
    laboratory reports, the school shall report data relating to test results to the department, local
    health department, and State Education Department, through the department's designated
    statewide electronic reporting system.
<table>
<thead>
<tr>
<th>Law</th>
<th>Date enacted</th>
<th>Agency</th>
<th>Summary of provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Code § 173.13</td>
<td>1960, later amendments</td>
<td>DHMH</td>
<td>Banned use of lead paint in homes and schools effective Jan. 1, 1960. Requires DHMH to inspect and order abatement when a person under age 18 has a blood lead level of ≥ 15 μg/dL. Owners have 5 days to abate. Applies to any dwelling.</td>
</tr>
<tr>
<td>Admin. Code § 27-2126 (now §27-2056.14)</td>
<td>1972 (Local Law 50)</td>
<td>HPD, DHMH</td>
<td>Mandates that whenever a landlord failed to remove a DHMH lead violation, DHMH — within 16 days of the complaint or inspection (whichever occurred first) — must request HPD to correct, and HPD must do so within 18 days thereafter. Together with Health Code § 173.13, requires City to assure correction of all lead paint violations in the home of any lead-poisoned child, within 34 days after discovery of lead poisoning. <em>Repealed and recodified by Local Law 1 of 2004 as § 27 2056.14</em></td>
</tr>
<tr>
<td>Admin. Code § 27-2013(h)</td>
<td>1982 (Local Law 1)</td>
<td>HPD</td>
<td>Required owners to safely remove or cover all lead paint in units where children under 7 reside, in multiple dwellings, before children are lead poisoned. Lead paint violations must be removed within 24 hours. Rebuttable presumption that peeling paint in pre-1960 buildings contains lead. Landlords on notice of all lead hazards, whether or not they inspect, as long as they know a child resides there. <em>Repealed by Local Law 38 of 1999, reinstated by Court of Appeals July 1, 2003, repealed by Local Law 1 of 2004</em></td>
</tr>
<tr>
<td>Health Code § 173.14</td>
<td>1993</td>
<td>DHMH</td>
<td>Safe practices for work involving lead-based paint or paint of unknown lead content. Until 1999, applied only when HPD or DHMH cited violations, although by court order were supposed to apply to all lead work. From 1999-2003, continued to apply to DHMH violations (under § 173.13) but only applied to HPD violations when landlords have not removed them within 21 days (the “2 tiered” system). Beginning 2004, applies to all lead work.</td>
</tr>
<tr>
<td>Admin Code §§ 27-2056.1 et seq.</td>
<td>1999 (Local Law 38)</td>
<td>HPD</td>
<td>Repealed Local Law 1 of 1982. Required owners to send notice once a year asking if children under 6 resided in dwelling unit, and if notice was returned in the affirmative, inspect once a year for peeling paint. Continued presumption of lead paint in pre-1960 buildings. Applied only to multiple dwellings. Had to remove lead violations within 21-60 days. Could use lesser “interim controls” rather than Health Code § 173.14 rules during 1st 15 days after violation. <em>Struck down by Court of Appeals July 1, 2003.</em></td>
</tr>
<tr>
<td>28 RCNY Chpt. 11</td>
<td>1999, 2004</td>
<td>HPD</td>
<td>Implementing regulations for Local Law 2004, including safe work practices <em>(formerly implementing regs for Local Law 38)</em></td>
</tr>
</tbody>
</table>
A Chronology of Key Legal Developments on Childhood Lead Poisoning in New York City

1960 - Health Code § 173.13, promulgated by the NYC Board of Health in late 1959, bans the use of lead paint on the interior surfaces (and readily accessible exterior surfaces) of dwellings, day care centers and schools in New York City — some 10 years before the rest of the state and 18 years before the federal ban. Also gives Department of Health (“DoH”) power to order the owner to remove lead paint when a person in the residence was lead poisoned.

1970 - amendment to the Health Code, codified as § 173.13(d)(2), mandates that when DoH receives a report that a child’s lead poisoning had already occurred, DoH must inspect and order the owner immediately to remove or permanently cover all lead paint in the dwelling; if the owner failed to comply within 5 days, DoH has to request the Department of Housing Preservation and Development (“HPD”) to correct the lead paint conditions.

1970 - New York state enacts Public Health Law Title X (PHL § 1370 et seq.), banning the application of leaded paint on the interior surfaces, window sills and frames, and porches of dwellings. Dwellings included child care facilities, kindergartens and nursery schools. The manufacture or sale of lead painted children’s toys and furniture also banned.


1972 - Council enacts Local Law 50 (Admin. Code § 27-2126), mandating that whenever a landlord fails to remove a DoH lead violation, DoH — within 16 days of the complaint or inspection (whichever occurs first) — must request HPD to correct, and HPD must do so within 18 days thereafter. Together, § 27-2126 and Health Code § 173.13 thus require the City to assure the correction of all lead paint violations in the home of any lead-poisoned child, in 1- and 2-family homes as well as in multiple dwellings, within 34 days after discovery of lead poisoning. 1978 - federal Consumer Product Safety Commission issues national ban on use of lead paint in all homes.

1982 - Council enacts Local Law 1 of 1982 (Admin. Code § 27-2013(h)), requiring the owner of a multiple dwelling (i.e., a building with 3 or more dwelling units) occupied by a child under age seven to eliminate all lead paint on specified interior surfaces “in a manner approved by the department” in the child’s apartment. Unless extended by agency, owners expected to correct cited violations within 24 hours. Unlike the prior laws, LL1/1982 is a primary prevention measure that did not require a child’s poisoning nor a City inspection to trigger the duty to abate lead paint. Landlords had to abate wherever lead paint existed — whether or not the City cited the violation.


1989 - Justice Leland DeGrasse issues interim decision in NYCCELP v. Koch directing City to properly enforce City lead laws, including 1) work practice regulations for safe abatement, 2) relocation regulations for families when lead paint can’t be safely abated while family in residence, 3) mandate to inspect and order removal of all lead paint, not just intact, and to inspect all buildings in response to complaints, not just pre-1960. Affirmed by Appellate Division in 1991.

1993 - City held in contempt of court by Judge DeGrasse for failing to comply with any of his orders in NYCCELP v. Koch

1993 - To comply with NYCCELP v. Koch orders, Board of Health promulgates Health Code § 173.14, which are safe work practices for lead abatement work in response to DoH or HPD violations

1995 - City held in contempt of court again in NYCCELP v. Koch, by Justice Lou York, for failing to promulgate regulations to inspect intact lead paint and post-1960 buildings. Court certifies case as a class action on behalf of
all children under age 7 in NYC multiple dwellings with lead hazards. Appellate Division affirms 1997.

1996 - Juarez v. Wavecrest Management decision from NY Court of Appeals, based on Local Law 1 of 1982, holds that landlords are charged with notice of lead hazards in dwellings they rent to families with young children, and cannot wait until City inspects before being charged with duty to make the dwelling free of lead hazards.

1997 - City held in contempt in NYCCELP v. Koch for 3d time, because safety procedures (Health Code § 173.14) had been made applicable only to violations cited by DoH and HPD (rather than all lead hazards), 2) still failed to provide for relocation during lead abatements, and 3) because City had sought to weaken Health Code § 173.13 to limit inspections — in the case of already lead poisoned children — to only peeling paint. Affirmed by Appellate Division in 1998.

1997 - City held in contempt in NYCCELP v. Koch for a fourth time, for failing to pay contempt fines from first contempt order. Threatens to put HPD commissioner in jail. Appellate Division affirms in 1998.

1997 - Councilmember Stanley Michels introduces Intro 956, a comprehensive new lead poisoning prevention bill; it never gets a hearing and dies when that council’s term ends.

1998 - Councilmember Michels reintroduces his bill as Intro 205. It, too, never gets a hearing, and dies when council ends in 2001.

1998 - City publishes proposed rules to comply with the many orders in NYCCELP v. Koch.

1999 - City enacts Local Law 38, which eliminates the legal basis for NYCCELP v. Koch by revoking Local Law 1 of 1982, and weakening Local Law 50. Also undercuts the principle laid down in Juarez v. Wavecrest.

1999 - NYCCELP and other organizations sue to invalidate Local Law 38 as enacted in violation of state environmental review laws. NYCCELP v. Vallone.


2002 - Appellate Division reverses Justice York in NYCCELP v. Vallone, holds Local Law 38 is valid. NYCCELP obtains permission to take further appeal to New York Court of Appeals.

July 1, 2003 - New York Court of Appeals reversed Appellate Division in NYCCELP v. Vallone, Local Law 38 declared invalid, Local Law 1 of 1982 revived.

December 15, 2003 - City Council passed Intro 101A by vote of 44-5

December 19, 2003 - Mayor vetoes Intro 101A

February 4, 2004 -- City Council by vote of 44-5 overrides Mayor’s veto of Intro 101, becomes Local Law 1 of 2004

April 9, 2004 - Landlord and finance organizations sue to invalidate Local Law 1 of 2004.

August 2, 2004 – Local Law 1 of 2004 goes into effect


February 3, 2005 - Appellate Division affirms dismissal of legal challenges to Local Law 1 of 2004.

Oct 1, 2006 - “Applicable age” reduced to under 6 years, by Board of Health Resolution
Enforcement Scheme for Health Code Violation Where Child is Lead Poisoned (rev. 8/2/04)

1. Health care provider finds child with Pb at 15 ug/dL or above
   24 hours. (Health Code § 11.03)

2. Health Care Provider Reports to DHMH

3. PHS from DHMH Inspects Home

4. DHMH serves Order to Abate on Landlord
   16 days (Admin.Code § 27-2056.14)

5. Landlord Fails to Correct

6. DHMH Refers to HPD
   5 days (Health Code § 173.13(d)(4))

7. HPD Corrects Using DHMH Safety Standards for Lead Based Paint Abatement
   Health Code §173.14

8. Landlord Corrects Using DHMH Safety Standards for Lead Based Paint Abatement
   Health Code §173.14

   18 days (Admin.Code § 27-2056.14)

Abbreviations:
DHMH - Department of Health and Mental Hygiene
HPD - Department of Housing Preservation and Development
PHS - Public Health Sanitarian
ug/dL - micrograms of lead per deciliter of blood
Pb - lead

Flow Chart — NY Health Code § 173.13(d) violations
Flow Chart — Former NYC Local Law 38 violations

Enforcement Scheme For Former Local Law 38 Lead Violations
(rev. 2/15/06)
(numbers in italics and braces { } indicate maximum total elapsed time from tenant's initial complaint)

Tenant Complaint to HPD
10 days (15 in heat season) {15}

HPD Inspection
20 days {35}

HPD issues Violation and Serves on Landlord
21 days {56}

Landlord Fails to Remove Violation

Landlord Removes Violation using "Interim Controls"
15 days (could be extended to 39 days) {95}

Landlord Fails to Remove Violation

Landlord Removes Violation using Health Code Safety Procedures
5 days {100}

Landlord Files Certification to HPD (with dust test results, if required)
30 days {130}

HPD reinspection

Fails

Passes

30 days {160}

HPD Issues Notice of Invalidity
60 days {220}

HPD Corrects Violation

Violation Cleared
Flow Chart — NYC Local Law 1 (of 2004) violations

Tenant Complaint to HPD

10 days {10}

HPD Inspection
§ 27-2056.9 (b)

10 days {20}

HPD issues Violation and Serves on Landlord
§§ 27-2056.9 (a), 27-2115(l)(1)

21 days (can be extended an additional 14 - 28 days) {69}

Landlord Fails to Remove Violation

Landlord Removes Violation using Health Code Safety Procedures
§ 27-2115(l)(1)

5 days {74}

Landlord Files Certification to HPD (with dust test results)
§ 27-2115(l)(2)

14 days {88}

HPD reinspection
§ 27-2115(l)(3)

Fails

Passes

45 days {133}

HPD Corrects Violation
§ 27-2115(l)(1)

Violation Cleared

Enforcement Scheme For
Local Law 1 of 2004 Lead Violations
(rev. 8/2/04)
(numbers in italics and braces {} indicate maximum total elapsed time from tenant's initial complaint)
§ 173.13 Lead Paint

(a) (1) Lead-based paint prohibited. No person shall possess, sell, hold for sale or give away paint or other similar surface-coating material which is intended or packaged in a form suitable for use in or around the household or otherwise for consumer use within the meaning of 15 U.S.C. Section 2057 et seq. and Code of Federal Regulations (C.F.R.) Part 1303 or its successor regulations, containing more than 0.009 percent of metallic lead, based upon the total non-volatile content of the paint or other similar surface-coating material.

           (2) Notice that dry sanding and scraping are prohibited. Any place where paint and paint removal products are sold, or where sanding equipment is sold or rented for use in the City of New York, shall prominently post, or otherwise distribute to purchasers of paint and sanding equipment, a notice, in a form provided or approved by the Department, warning that dry sanding and scraping is prohibited as a method of removal of lead-based paint or paint of unknown lead content in any dwelling, day care center or school, and is a public nuisance pursuant to §17-181 of the Administrative Code of the City of New York.

           (3) Enforcement by Department of Consumer Affairs. The provisions of paragraph (2) of this subdivision may be enforced by agents and employees of the Department and the Department of Consumer Affairs, or successor agency. Any violation of paragraph (2) issued by the Department of Consumer Affairs may be adjudicated at any tribunal authorized to hear such agency's violations.

           (b) No person shall manufacture, sell, hold for sale, give away or leave toys, children's furniture or any other articles or things intended for use by children which have a paint or other similar surface-coating material containing more than 0.009 percent of metallic lead based on the total non-volatile content of the paint or other similar surface-coating material.

           (c) No person shall use a paint or other similar surface-coating material containing more than 0.009 percent of metallic lead, based on the total non-volatile content of the paint or other similar surface-coating material on the interior or exterior surfaces of a dwelling. As used in this section, dwelling means any building or structure or portion thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. This subsection shall also apply to places where children reside, or are boarded, or where they receive regular care and/or education, such as child care services, schools and children's institutions.

           (d) Orders for abatement or remediation.

                   (1) Generally. When the Department finds that there is lead-based paint, or dust with a lead content in excess of the clearance levels specified in §173.14(e) of this Code, on the interior of any dwelling, or concentrations of lead in the paint on the exterior of a dwelling, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any dwelling or other premises, including but not limited to, child care services, schools, and recreational facilities primarily used or occupied by children under the age of six years when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency found in 40 C.F.R. Part 745, or successor regulations, and further determines that such concentrations may be dangerous to health.

                   (2) In a dwelling where a child with an elevated blood lead level resides. When the Department finds that there is a child under 18 years of age with a blood lead level of fifteen (15) micrograms per deciliter or higher residing in any dwelling and further finds that the interior of such dwelling has lead-based paint that is (a) peeling, (b) on a friction, impact or chewable surface or (c) on any surface of the dwelling that, in the Department's determination, is a lead-based paint hazard because of its condition, location or accessibility to children, the Department shall order the abatement of any such condition in a manner and under such safety conditions as it may specify.

                   (3) Objections to Department orders. An owner or other person to whom an order issued pursuant to this subdivision is directed shall notify the Department that he or she objects to such order no later than three (3) days after service of the order. In deciding whether objections to an order issued pursuant to §173.13(d)(2) have merit, the Department may rely on the results of its lead-based paint sampling, provided such results are obtained in accordance with the methodology identified within the definition of "lead-based paint" in §173.14(b) of this Code and the Department has a reasonable belief that such reliance will be more protective of the health of a child with an elevated blood lead level.

                   (4) Failure to comply with Department orders. In the event that the Department determines that the owner or other person having the duty or liability to comply with an order issued pursuant to this subdivision fails to substantially comply therewith within five (5) days after service thereof, the Department shall in accordance with §27-2056.14 of the Administrative Code, request the Department of Housing Preservation and Development to execute such order pursuant to the provisions of §17-147 of the Administrative Code.

                   (5) Definitions. Except as otherwise provided, all terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.
Lead Laws and Regulations

6173.14 Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint.

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      (1) Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a day care service or kindergarten pursuant to §§47.44 or 47.12 of this Code or 17-911 of the Administrative Code, or work ordered by HPD in accordance with §27-2055.11(h)(1) of the Administrative Code, or work performed pursuant to §27-2055.11(a)(2)(ii) of the Administrative Code
         (A) Posting
         (B) Pre-cleaning and protecting movable items
         (C) Sealing vents
         (D) Affixing doorway entrance flap
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         (F) Sealing openings
         (G) Restricting occupants
         (H) Hazardous materials
         (I) Clean-up and lead-contaminated dust clearance testing procedures
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         (A) Postings
         (B) Pre-cleaning and protecting movable items
         (C) Covering floors
         (D) Sealing openings
         (E) Restricting occupants
         (F) Hazardous materials
         (G) Clean-up and lead-contaminated dust clearance testing
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         (2) Scope of authority
         (3) Actions authorized
      (a) Declaration pursuant to Administrative Code §17-145
      (b) Modification by the Commissioner
(a) Purpose, scope, and applicability. This section establishes work practices and safety standards for abatement and other reduction of lead-based paint hazards, and other work that disturbs surfaces covered with lead-based paint or paint of unknown lead content, and the minimum qualifications of persons who conduct such activities, in premises where young children reside, or attend day care or kindergarten, and is intended to reduce the exposure of such children to the lead-based paint hazards associated with such work.

(b) Definitions. When used in this Article, or in 4445.12 or 44.44 of this Code, the following terms shall have the following meanings:

Abatement shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (i) the removal of lead-based paint hazards, the permanent encapsulation or encapsulation of lead-based paint, and the replacement of components or fixtures painted with lead-based paint; and (ii) all preparation, cleanup, disposal and post-abatement clearance testing associated with such measures. Abatement shall not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement shall not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

Administrative Code shall mean the Administrative Code of the City of New York.

CER shall mean this Code of Federal Regulations.

Chewable surface shall mean a protruding interior window sill (i) in a dwelling unit in a multiple dwelling where a child under six years of age resides, which is readily accessible to such child, or (ii) such surface in a day care service, or kindergarten in an elementary school that is readily accessible to a child under six years of age. Chewable surface shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, day care service or kindergarten, such as a rail or stair. (i) where there is evidence that such other edge or protrusion has been chewed and where an occupant of the dwelling unit has notified the owner that a child under six years of age resides in that multiple dwelling, or (ii) where the operator of a day care service or kindergarten has observed that a child under six years of age has ingested or chewed such edge or protrusion.

Child of applicable age. When used in Article 13 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, the term "child of applicable age" shall mean a child who is less than six years of age.

Common area shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

Contractor shall mean any person or firm engaged to perform work that disrupts lead-based paint pursuant to this section.

Deteriorated subsurface shall mean an unstable or unsealed painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, torn or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

Disrupt shall mean any action taken which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to, wet sanding or scraping or routine painting and maintenance activities.

Dwelling shall mean any building or structure or portion thereof, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. For the purpose of the investigations and orders issued by the Commissioner pursuant to §722.13 of this Code, dwelling shall include exterior, yard or other areas of the building, and shall also include any structure in which a child with a blood lead level equal to or in excess of 15 micrograms per deciliter spends more than five hours per week.

Dwelling unit shall mean any residential accommodation in a multiple dwelling or private dwelling.

Encapsulation shall mean the application of a coating or covering that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bond between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. Only encapsulants approved by the New York State Department of Health, or by another federal or state agency or jurisdiction which the Department or HPD has designated as acceptable may be used for performing encapsulation.
Enclosure shall mean the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

EPA shall mean the U.S. Environmental Protection Agency or successor agency.

Pigment shall mean a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which EPA has issued a certificate of approval pursuant to 40 CFR 745.2250 or successor regulation.

Friction surface shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and sills, doors, and hinges.

HEPA vacuum shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodispersive particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

HUD shall mean the Department of Housing Preservation and Development of the City of New York.

HUD shall mean the U.S. Department of Housing and Urban Development.

Impact surface shall mean any interior painted surface that shows evidence, such as markings, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

Lead-based paint, for the purposes of this Code, shall mean paint or other similar surface coating material containing 0.1 milligram of lead per square centimeter (mg/cm2) or greater as determined by laboratory analysis, or by an x-ray fluorescence (XRF) analyzer. If an XRF analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the Performance Characteristic Sheets (PCS) published by the United States Environmental Protection Agency (EPA) for the specific XRF instrument used. XRF readings shall be classified as positive, negative, or inconclusive in accordance with the United States Department of Housing and Urban Development (HUD) "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997), and the PCS published by the EPA and HUD for the specific XRF instrument used. XRF results which fall within the inconclusive zone, as determined by the PCS shall be confirmed by laboratory analysis of paint chips, results shall be reported in mg/cm2 and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in mg/cm2. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, laboratory analysis may be reported in percent by weight. In such cases, lead-based paint shall mean any paint or other similar surface coating material containing more than 0.5% of metallic lead, based on the non-volatile content of the paint or other similar surface coating material. In the absence of a PCS for a specific XRF instrument or a particular fraction of such instrument, substrate correction, classification of XRF readings, and determinations of inconclusive readings shall be performed in accordance with the manufacturer's instructions for the specific XRF instrument used.

Lead-based paint hazard shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated substrates, friction surfaces, or impact surfaces that would result in adverse human health effects.

Lead-contaminated clearance dust test shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with this Code or § 27-2056.11 of the Administrative Code.

Owner shall mean the owner, operator, managing agent or other person in control of the premises, dwelling, or dwelling unit subject to this section.

Peeling shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

Permanent shall mean an expected design life of at least 20 years.

Remediation shall mean the reduction or elimination of a lead-based paint hazard through the use of scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the Department.
Removal shall mean a method of abatement that completely eliminates lead-based paint from surfaces.

Replacement shall mean a strategy or method of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

Stabilization shall mean repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated and applying a new protective coating or paint.

Substrate shall mean the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Turnover shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling.

Underlying defect shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

Wet sanding or wet scraping shall mean a process of removing loose paint in which the painted surface is sanded or scraped by water to minimize the dispersal of paint chips and airborne dust.

Work shall mean any activity that disturbs paint in accordance with Article 14 of subchapter 2 of Title 27 of the Administrative Code or as otherwise ordered by the Department to remediate lead-based paint hazards.

Work area shall mean that part of a building where lead-based paint or paint of unknown lead content is being disturbed.

(c) Administrative requirements

(1) Filing procedures

(A) Time for filing. No less than twenty-four and no more than ninety-six hours prior to the commencement of work ordered by the Commissioner and not less than ten days prior to commencement of work that will disturb lead-based paint pursuant to § 27-2056.11 (a)(2)(i)(B) of the Administrative Code, an owner shall file with the Department a notice of the commencement of the work. Such notice shall be signed by the owner or by a representative of the firm performing the work. Where work is required to commence in a lesser period of time than that specified herein for the filing of a notice of commencement of work, then such filing shall be made as soon as practicable but prior to the commencement of work.

(B) Content of notice. Such notice shall be in a form satisfactory to or prescribed by the Department and shall set forth at a minimum the following information:

(i) The address of the building and the specific location of the lead-based paint work within the building.

(ii) The name, address, telephone number and other contact information of the owner of the premises in which the lead-based paint work is to be performed.

(iii) The name, address, telephone number and EPA certification number of the firm that will be responsible for performing the work.

(iv) The date and time of commencement of the work, working or shift hours, and the expected date of completion.

(v) A complete description and identification of the surfaces and structures, and other areas subject to the work.

(vi) Any changes in the information contained in the notice required by this section shall be filed with the Department prior to commencement of work, or if work has already commenced, within twenty-four hours of any change.

(C) Training and certification

(A) Abatement. All work conducted as part of an abatement as defined in this section shall be performed by firms and workers certified to perform lead-based paint activities in accordance with regulations issued by EPA at Subpart L of 40 CFR Part 745, or successor rule, for the abatement of lead-based paint hazards.

(B) Other than abatement work.

(ii) Other work to remediate lead-based paint hazards that is ordered by the Department or HHD, or work that disturbs large amounts of lead-based paint. All work ordered by the Department, or by the HHD in accordance with § 27-2056.11 (a)(1) of the Administrative Code, or work that disturbs over 100 square feet per room conducted in accordance with § 17-911 of the Administrative Code, or § 445.12 or 47.44 of this Code, or § 27-2056.11 (a)(2)(i) of the Administrative Code, shall be performed by firms and trained workers meeting the following requirements:
(a) **Firm requirements.** Firms conducting such work shall be certified to perform lead abatement by the EPA in accordance with subpart I of 40 CFR Part 745, or successor rule, for the abatement of lead hazards.

(b) **Worker requirements.** Workers conducting such work shall be trained at a minimum, in accordance with the regulations issued by HUD at 24 CFR 35.1330(a)(4), or successor rule.

(c) **Clearance dust testing requirements.** No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. All personnel performing lead-contaminated clearance dust testing upon completion of work shall be trained, at a minimum, in accordance with regulations issued by HUD at 24 CFR 35.1340(b)(1), or successor rule.

(ii) **Work not ordered by the Department or HPD that disturbs a small amount of paint in a multiple dwelling or in a day care facility or a kindergarten.** Work which is not ordered by the Department and disturbs between two and 100 square feet per room, which is not performed in accordance with §7.1911 of 28 CFR 35.1330(a)(4) of the Administrative Code, or §§45.12 and 47.44 of this Code, shall be performed by workers trained in accordance with the following requirements:

(a) **Worker requirements.** Workers conducting such work shall be trained under regulations issued by HUD at 24 CFR 35.1330(a)(4), or successor rule.

(b) **Clearance dust testing requirements.** No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. Personnel performing lead-contaminated clearance dust testing after completion of work performed in accordance with §7-2056.11(a)(2)(i) of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 CFR 35.1340(b)(1), or successor rule.

(iii) **Work not ordered by the Department or HPD, which is performed in a dwelling unit upon turnover.** No person shall perform a lead-contaminated dust clearance test in relation to such work unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work. Personnel performing lead-contaminated clearance dust testing after completion of work performed on turnover in accordance §7-2056.8 of the Administrative Code shall be trained in accordance with regulations issued by HUD at 24 CFR 35.1340(b)(1), or successor rule.

(v) **Records to be kept.** An owner shall keep a record of the following information for all lead-based paint remediation work subject to the provisions of this Code or Title 27 of the Administrative Code:

(i) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work.

(ii) A copy of all training certificates, required pursuant to subsection (c)(2), of this section, for the firm and personnel who performed work and clearance dust testing.

(iii) The location of the work performed in each room including a description of such work and invoices for payment for such work.

(iv) Results of lead-contaminated dust clearance tests analyzed by an independent laboratory certified by the state of New York.

(v) Checklists completed pursuant to §17.14 (c)(1)(b) and (c)(2)(F) when occupants are allowed temporary access to a work area.
(C) **Seal surfaces.** All surfaces whose paint has been disturbed shall be sealed and finished with appropriate materials. Underlying surface substrates shall be dry and protected from future moisture before applying a new protective coating or paint, and all paints and coatings shall be applied in accordance with the manufacturer’s recommendations.

(D) **Repair underlying conditions.** Violations or conditions that cause or may cause paint to peel and which are readily observable and identifiable as to source, including but not limited to water leaks, shall be corrected as part of any lead-based paint remediation work.

(E) **Adjust painted doors and windows.** All painted windows and painted doors in the work area, including cabinet doors, shall be adjusted to ensure that they are properly hung, so that no painted surfaces bind or stick in a manner that movement of such windows and doors causes abrasion or friction of the surfaces.

(F) **Work area preparation completed before commencing remediation.** Work intended to remediate lead-based paint hazards shall not commence until work area preparation required by this section has been completed.

(G) **Relocation.** An owner shall request that an occupant temporarily relocate from a unit pending completion of work where it appears that work cannot be performed safely with occupants in residence. The owner shall offer a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards to such occupants for temporary relocation. Unreasonable refusal by such occupants to relocate pursuant to such offer shall constitute a refusal of access pursuant to §§27-2009 and 27-2056.4(b) of the Administrative Code and, where applicable, 9 NYCRR §7524.3(c). Relocation shall not be required provided that the work can be done safely with occupants in residence, and provided further that at the end of each day of work, the work area is properly cleaned as specified in §173.14(e)(1)(ii); occupants have safe access to areas adequate for sleeping, use of bathroom and kitchen facilities and safe access to entry-exit pathways; and the work does not create other safety hazards, as specified herein.

(H) **Occupant protection.**

(1) **Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a day care service or kindergarten pursuant to §47.44 or 45.12 of this Code or §17-911 of the Administrative Code, or work ordered by HPD in accordance with §27-
205.11(g)(1) of the Administrative Code, or work performed pursuant to §27-205.11 (g)(2)(i) of the Administrative Code:

(A) Postings. The following information shall be conspicuously posted no later than twenty-four hours prior to beginning work and shall remain in place until the work area has been cleared for re-occupancy:

(i) Notice of commencement of work. Information on the notice submitted to the Department pursuant to subparagraph (i) of subdivision (c) of this section shall be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(ii) Warning sign. A warning sign of at least 8-1/2" by 11" reading in letters at least one inch high, as follows: WARNING: LEAD WORK AREA -- POISON -- NO SMOKING OR EATING. Such information shall be posted adjacent to the work area.

(B) Pre-cleaning and protecting moveable items. All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with two layers of six-mil disposable polyethylene sheeting before work begins. Such sheeting shall be taped together with waterproof tape, and taped to the floors or bottom of the walls or baseboards, so as to form a continuous barrier to the penetration of dust.

(C) Sealing vents. Forced-air systems within the room where work that disturbs lead-based paint is occurring shall be turned off and covered with two layers of six-mil polyethylene sheeting and waterproof tape to prevent lead contamination and lead dispersal to other areas.

(D) Affixing doorway entrance flap. After all movable objects have been removed, the work area shall be sealed off from non-work areas by taping with waterproof tape, two layers of disposable, six-mil polyethylene sheeting over every entrance or doorway to the work area, as follows: To deter the dispersal of lead dust, one sheet shall be taped along all sides of the doorway and a slit shall be cut along the middle of the sheeting, leaving intact at least six inches of sheeting on the top and six inches of sheeting on the bottom of the doorway. A second sheet of polyethylene large enough to cover the doorway, shall be attached to the top of the doorway in the room or area where work is being conducted and shall act as a flap opening into the work area.

(E) Covering floors. The floor of the work area shall be covered with at least two sheets of disposable six-mil polyethylene sheeting. Such sheeting shall be taped together with waterproof tape, and taped to the bottom of the walls or baseboard, so as to form a continuous barrier to the penetration of dust to the floor. The furniture and non-moveable furnishings, such as counters, cabinets, and radiators in the work area shall be removed or covered with such taped sheeting.

(F) Sealing openings. All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with 1173.14(a)(1)(C) of this Code, shall be sealed with two layers of six-mil polyethylene sheeting and waterproof tape to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(G) Instructing occupants. Occupants shall be instructed by the owner and contractor to avoid entering work areas in which work is ongoing until final clearance levels have been achieved.

(H) Hazardous materials. All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(I) Clean-up and lead-contaminated dust clearance testing procedures.

(i) Daily clean-up. At the completion of work each day, the work area shall be thoroughly wet-mopped or HEPA vacuums. No polyethylene sheeting, drop cloths, or other materials that are potentially hazardous to young children or infants shall be accessible outside the work area. In addition, any work area and other adjoining area exposed to lead or lead-contaminated materials shall be cleaned as follows:

(a) Large debris. Large demolition-type debris (e.g., door, windows, trim) shall be wrapped in six-mil polyethylene, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(b) Small debris. Small debris shall be HEPA-vacuumed or wet swept and collected. Before wet sweeping occurs, the affected surfaces shall be sprayed with a fine mist of water to keep surface dust from becoming airborne. Dry sweeping is prohibited. The swept debris and all disposable clothing and equipment shall be placed in double four-mil or single six-mil plastic bags which shall be sealed and stored along with other contaminated debris in the work area and shall be properly disposed of in a lawful manner.

(c) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area shall be examined visually to ensure that no
lead debris has escaped containment. Any such debris shall be wet swept and HEPA vacuumed, collected and disposed of as described above.

(c) Supply stores. Upon finishing work for the day, all rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each workday in sealed containers or removed from the premises, in a lawful manner.

(ii) Final clean-up. Final cleaning shall be conducted as follows, in the following sequence:

(a) The final cleaning process shall start no sooner than one (1) hour after lead-based paint disturbance activities have been completed, but before recapturing, if necessary.

(b) First, all polyethylene sheeting shall be sprayed with water mist and swept prior to removal. Polyethylene sheeting shall be removed by starting with upper-level polyethylene, such as that on windows, cabinets and counters, folding the corners, ends to the middle, and placing in double four-mil or single six-mil plastic bags. Plastic bags shall be sealed and properly disposed of in a lawful manner.

(c) Second, all surfaces in the work area shall be HEPA vacuumed. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(d) Third, all surfaces in the work area shall be washed with a detergent solution. Washing shall begin with the ceiling and proceed down the walls to the floor. Wash water shall be properly disposed of in a lawful manner.

(e) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process shall be HEPA vacuumed again. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(f) Fifth, all surfaces shall be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed. If all visible dust and debris have not been removed, affected surfaces shall be re-cleaned.

(iii) Final inspection. After final clean-up, and re-painting if necessary, has been completed, a final inspection shall be made by a third party retained by the owner who is independent of the owner and the contractor. The final clearance evaluation shall take place at least one (1) hour after the final cleaning and shall include a visual inspection and surface dust testing. Three wipe samples shall be collected and tested from each room or area where work has been conducted; one wipe sample each shall be taken from a window sill, a window well and the floor. In addition, wipe samples shall be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(vi) Clearance for permanent re-occupancy after completion of work. Dust lead levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Areas where every sample result is below the following dust lead levels may be cleared for permanent re-occupancy:

- Floors: 40 micrograms of lead per square foot.
- Window Sills: 250 micrograms of lead per square foot.
- Window Wells: 400 micrograms of lead per square foot.

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed, and dust test samples have been collected, in compliance with §173.14(e)(1) and (ii). The owner shall provide a copy of all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit. Copies of lead-contaminated dust wipe clearance test results shall be submitted to the Department whenever abatement or remediation of lead-based paint hazards has been ordered by the Department or Commissioner.

(v) Temporary access to work areas when occupants not relocated. When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day provided that at the end of each workday:

(i) Any work area to be accessed is to be properly cleaned as specified in the daily clean-up requirements of §173.14(e)(1) and the final clean-up requirements of §173.14(e)(1)(ii) through (ed) and (ii); and

(ii) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in floor) or covered vents; and

(iii) Floor coverings containing leaded dust and debris and hazardous materials are removed.

(iv) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor.

(v) Work areas are prepared in accordance with the requirements above when work recommences and
**(vi)** At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed, in accordance with §3.19 of this Code, by the person responsible for overseeing the work.

**(vii)** Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the work required by clauses (vi)(v). Nothing herein shall extend the time for compliance with any order issued pursuant to this Code or for correction of any violation of the Administrative Code.

**(3)** Work that disturbs between two (2) and 190 square feet of lead-based paint per room that is being performed in accordance with §§17-911, and 22-2056.11(a)(1)(D) of the Administrative Code, or §§45.12 or 47.44 of the Health Code.

**(A)** Postings and warning sign. A warning sign shall be posted in accordance with subparagraph (1)(a)(ii) of subdivision (c) of this section and caution tape shall be placed across the entrance to the work area.

**(B)** Pre-cleaning and protecting movable items. All floors, movable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all movable items shall then be moved out of the work area or otherwise covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

**(C)** Covering floors. The floor of the work area shall be covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

**(D)** Sealing openings. Where applicable, forced air systems in the work area shall be turned off and any openings in the work area shall be sealed with polyethylene or equivalent sheeting to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

**(E)**Instructing occupants. Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clean up has been completed. The owner shall provide temporary relocation of the occupants of a dwelling or a dwelling unit to appropriate housing when work cannot be performed safely.

**(F)** Hazardous materials. All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer’s label, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

**(G)** Clean-up and load-contaminated dust clearance testing. Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with §173.14(c)(1)(D) of this Code.

**(H)** Temporary access to work areas when occupants are not relocated. When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day provided that:

**(i)** Any work area to be accessed is to be properly cleaned as specified in the daily clean-up requirements of §173.14(c)(1)(D) and the final clean-up requirements of §173.14(e)(1)(Q)(b) through (e)(1)(Q)(i), and

**(ii)** There are no safety hazards (including, but not limited to, exposed electrical wiring or holes in the floor) or covered vents.
(iii) Floor coverings containing leaded dust and debris and hazardous materials are removed.
(iv) Floors in the work area are re-covered with a non-slip floor covering securely taped to the floor.
(v) Work areas are prepared in accordance with the requirements above when work recommences; and
(vi) At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed, in accordance with §3.19 of this Code, by the person responsible for overseeing the work.
(vii) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeatedly the work required by clauses (i)-(vi). Nothing herein shall extend the time for compliance with any order issued pursuant to this Code or for correction of any violation of the Administrative Code.

(3) Work performed to remediate lead-based paint hazards on turnover in accordance with §27-2056.8 of the Administrative Code.

(A) Preparation and work. The procedures described in §173.14(e)(4)(A) through (D) of this Code shall be followed.

(B) Clean-up. At the completion of work, the work area shall be thoroughly wet-mopped or HEPA-vacuumed and a visual examination shall be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris shall be wet-mopped or HEPA-vacuumed. All rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each workday in sealed containers or removed from the premises, in a lawful manner.

(C) Clearance dust testing. Clearance testing for lead-contaminated dust shall be conducted in accordance with §173.14(e)(4)(T) of this Code.

(1) Investigation of unsafe lead work practices by the Department.

(1) Authority to inspect. The Department may inspect any premises where work that is subject to this section is in progress or has been completed.

(2) Scope of authority. Such inspection may include but not be limited to premises where abatement or remediation of lead-based paint hazards is being conducted, where any work which may disturb lead-based paint or paint of unknown lead content is being conducted, or which is the subject of a complaint to the Department pursuant to §17-185 of the Administrative Code, and any areas affected by the emission or release of leaded dust or debris.

(3) Actions authorized. If the Department determines that such work is not being conducted in accordance with the provisions of this section, or other applicable law, the Department may order that such work be stopped immediately; that the premises be cleared of uncontaminated leaded dust and debris; that the conditions or work practices constituting a departure from the provisions of this section be corrected; and that the owner and any persons performing such work submit a work plan prior to resuming work, to demonstrate their ability and willingness to comply with the provisions of this Code or other applicable law.

(2) Declaration pursuant to Administrative Code §17-145. The existence of a lead-based paint condition or lead-based paint hazard pursuant to §173.13 of this Code, or a failure to comply with this section is hereby declared to constitute a public nuisance and a condition dangerous to life and health, pursuant to §17-145 of the Administrative Code. Every person obligated to
Comply with the provisions of this section or §173.11 of this Code is hereby ordered to state or remediate such nuisance by complying with any order or direction issued by the Department.

(b) Modification by the Commissioner. When the strict application of any provision of this section or §173.11 of this Code presents practical difficulties or unusual hardships, the Commissioner or designee may modify the application of such provision consistent with the general purposes of these sections. When granting a modification the Commissioner or designee may impose such conditions as are necessary in the opinion of the Commissioner or designee to prevent lead contamination and to protect the health and safety of any persons likely to be exposed to lead as a consequence of such modification.
NYC Local Law 1 of 2004 - Outline

I. Lead-based paint Hazard - Defined
   A. Any condition causing exposure to lead paint or lead dust through peeling paint, lead on chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces. and
   B. Multiple dwelling (i.e., 3 or more units), and
   C. Child of applicable age (i.e. under age 6)

II. Violation in a Dwelling Unit
   A. Lead paint that is peeling or on a deteriorated surface
   B. Dwelling unit in a multiple dwelling
   C. Child of applicable age residing in unit
   D. Classified as a Class C immediately hazardous violation
      1. Note that HPD not required to inspect post ’60 buildings

III. Lead Paint
   A. 1.0 mg/cm² by X-Ray Fluorescence testing ("XRF"), or (if cannot be measured by XRF)
   B. 0.5 % by weight
   C. Rebuttable presumption in pre-1960 building if peeling

IV. Owner's Investigation for Children in premises
   A. Must inquire if child of applicable age upon initial signing and renewal of lease.
   B. Must also send yearly notice to tenant inquiring if child of applicable age resides there between Jan. 1 and Jan. 16 each year.
   C. If tenant does not respond by February 15 to annual notice, landlord must make reasonable attempts to investigate whether a child of applicable age resides in the premises between February 16 and March 1, if no response, must notify DHMH.
   D. If tenant notifies landlord that no child of applicable age lives in premises, landlord has no obligation to inspect for and correct lead hazards, and cannot be cited for lead violations
   E. If landlord does not otherwise have knowledge of a child of applicable age and the tenant fails to notify the landlord, presumption will not apply in a personal injury action.

V. Owners Responsible to Remediate (whether or not cited by HPD) where,
   A. Lead hazards
   B. Multiple dwelling unit or common area
   C. Child of applicable age
   D. Pre- 1960 building (or pre-1978 if presence of lead paint known)
      1. Note: Landlord must also prevent the reasonably foreseeable occurrence of a lead-based paint hazard.

VI. Landlord Inspection for Hazards
   A. Applicability
      1. Pre-1960 building, or pre 1978 if known lead paint.
      2. Multiple dwelling, and
      3. Tenant has returned inquiry notice for child of applicable age, or landlord knows of child of applicable age through an investigation or other means.
   B. When
      1. Once a year, and also
      2. More often if necessary, such
a. if in the exercise of reasonable care, an owner knows or should know of a condition that’s reasonably foreseeable to cause a lead paint hazard
b. when tenant complains of a lead hazard, or
c. when City issues an order to correct a lead paint hazard

C. How - Investigation in dwelling unit and common areas for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces.

VII. HPD Inspections responding to a lead paint complaint
A. Applicability
   1. Pre-1960 building, and
   2. Multiple dwelling, and
   3. Child of applicable age, and
   4. Tenant has complained.
B. When - Within 10 days of complaint (if unable to gain access, must return in 5 days)
C. How - XRF inspection of condition (if no XRF available, can rely on presumption)
D. HPD must leave a pamphlet to be developed by DHMH on lead hazards, and phone numbers for screening.

VIII. HPD Inspections for any violation in a pre-1960 building
1. Must ask occupant if child of applicable age resides in unit
2. If child of applicable age resides in premises, must perform a room by room inspection of lead paint hazards and log whether paint is peeling or intact.
3. Must look for peeling paint, underlying defect, but only on surfaces that aren’t obstructed by furniture or furnishings.
4. If presumed violation is found, HPD must conduct an XRF inspection within 10 days

IX. HPD enforcement
A. Violations issued 10 days after inspection
B. HPD must send notice to tenant as well
C. Landlord has 21 days to repair using EPA certified workers following safe work practices, can be extended extra 42 days, tenant must be notified of extension and reasons for it.
D. Landlord must certify correction by mail within 5 days after the date set for completion
   1. Sworn statement that violation corrected in compliance with safe work practice regulations
   2. If contractor or agent did work, they must also give sworn statement
   3. Must include dust wipe test results
E. Copy of certification must be sent to tenant within 12 days of receipt of certification.
F. If Landlord fails to certify correction, presumed that condition uncorrected, and HPD must step in and correct in 45 days
   1. Landlord is subject to a civil penalty of $250 a day, up to $10,000 maximum
      a. Defenses to the civil penalty upon showing:
         (1) condition didn’t exist at the time the violation was placed
         (2) landlord faced serious technical difficulties, was unable to obtain the necessary materials, funds or labor, or was unable to gain access to the dwelling
         (3) landlord was unable to obtain a license or permit necessary to perform the repairs
         (4) condition was caused by negligence, neglect, or abuse not in the employ or subject to the direction of the owner (predecessor’s actions not exempted)
G. If Landlord does certify correction
   1. HPD must reinspect within 14 days
a. If certification false, HPD must step in and correct within 45 days of day of inspection
b. For false certifications, Owner subject to civil penalties between $1000 to $3000 plus may be charged with a misdemeanor.

X. Owner's Duties Upon Turnover:
A. In a pre-1960 multiple dwelling, or a pre-1960 non-multiple dwelling not occupied by owner or owner’s family.
B. Must correct underlying defects.
C. Must perform dust wipe tests at completion.
D. Make bare floors, window sills and window wells smooth enough so that dust can be removed by normal cleaning.
E. Remove or permanently cover lead paint on all friction surfaces on doors and door frames, and windows.
F. Must replace window channels or slides on all friction surfaces on windows if lead paint present.
G. Failure to do so is Class C violation.

XI. Work Practices
A. When there is no notice of violation, but disturbing lead paint or paint of unknown content.
   1. Must be in pre-1960 building (or pre 1978 where there’s known lead paint)
   2. Child of applicable age resides
   3. Includes common areas
   4. Must use workers trained in lead-safe work practices given by or on behalf of HPD, or EPA, or HUD
   5. Must follow work practices that will be no less protective than Health Code §173.14
   6. Dust clearance tests must be performed at completion
   7. Landlord must provide temporary relocation when the work cannot be performed safely
   8. For work disturbing more than 100 square feet of paint, or removal of 2 or more windows with lead paint, owner must use EPA certified firm and notify DHMH within 10 days prior to commencement of work.
B. When notice of violation issued
   1. All of the above, plus must use EPA certified firm to perform work.
C. Work practices requirements don’t apply when work disturbs surfaces less than 2 square feet of peeling paint per room or 10% of the total surface area of peeling paint on a type of component with a small surface area (i.e., window sill or door frame).
D. Dry scraping and dry sanding of lead-based paint or paint of unknown lead content prohibited

XIII. Dust Clearance Tests
A. Persons performing clearance tests must be 3rd parties, independent of the owner and individual or firm performing the work
B. Must have successfully completed a course approved or administered by DHMH, EPA, or HUD.
C. Dust tests sent to laboratory must include a sworn certification that test was performed in compliance with all applicable rules and regulations.
D. When performing work in response to a violation, all clearance test results must be filed with HPD
E. Copy of results must be given to the tenant by the owner and with clear explanation

XIV. Applicability to Condominium and Cooperative Owners
A. LL 1 does not apply to a dwelling unit in a condominium or co-op where:
   1. Unit is occupied by the proprietary leaseholder (or family), or
2. Owner of condominium unit (or family)

B. Responsibility for compliance with LL 1 may be re-allocated between tenant shareholder or condo owner and cooperative corporation or condominium

XV. Response to a lead poisoned child

A. DHMH notified in 24 hours by health care provider.

B. DHMH will conduct an investigation for potential sources of lead poisoning when there is a child under 18 years with a blood lead level of 15µg/dl or higher. DHMH will inspect:
   1. Child’s residence, and if necessary, other locations (such as school, babysitter, relative’s home)

C. DHMH serves notice of violation and order to abate, landlord must correct w/in 5 days using work practices in Health Code §173.14

D. If landlord fails to abate
   1. DHMH must refer to HPD within 16 days of report of child’s poisoning.
   2. HPD to correct violations w/in 18 days of referral date.

E. Audit and inspection by HPD following order to abate
   1. DHMH must notify HPD of all orders to abate
   2. Within 45 days of department’s request, landlord must provide HPD all records owner is required to maintain under LL 1
   3. Upon receiving records, HPD must
      I. Find units in building where uncorrected lead-based paint hazards may exist where a child of applicable age resides.
      II. HPD within 10 days must attempt to inspect such units for any lead paint violations.

4. If owner fails to provide records,
   I. HPD must attempt to inspect units where child of applicable age resides for lead hazards within 45.
   II. Owner’s failure to comply to record requirement is a class C violation and liable or a civil penalty of up to $1000
LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2004

No. 1

Introduced by Council Members Perkins, Lopez, Quinn, Reed, Boyland, Rivera, Brewer, Jackson, Liu, Yassky, Barron, Reyna, Clarke, Sanders Jr., Recchia Jr., Vann, Katz, Gerson, Gioia, Baez, DeBlasio, Serrano, Foster, Monserrate, Jennings Jr., Seabrook, Addabbo Jr., Moskowitz, Koppell, Martinez, Gonzalez, Espada Jr., Gentile, Avella, Comrie Jr., Weprin, Nelson, James, the Speaker (Council Member Miller) and the Public Advocate (Ms. Gotbaum).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to childhood lead poisoning prevention, including the avoidance and remediation of lead-based paint hazards in housing and day care facilities, the repeal of local law number 38 for the year 1999 and the repeal of subdivision h of section 27-2013 and section 27-2126 of such code.

Be it enacted by the Council as follows:

Section 1. This local law shall be known and may be cited as the New York City Childhood Lead Poisoning Prevention Act of 2003.

§2. Local law number 38 for the year 1999 is hereby REPEALED.
§3. Local Law number 1 for the year 1982 is hereby REPEALED.
§4. Local law number 50 for the year 1972 is hereby REPEALED.
§5. Subchapter 2 of chapter 2 of title 27 of the administrative code of the city of New York is amended by adding a new article 14 to read as follows:

Article 14
Lead Poisoning Prevention and Control

§27-2056.1 Statement of Findings and Purposes.
§27-2056.2 Definitions.
§27-2056.3 Owners’ Responsibility to Remediate.
§27-2056.4 Owners’ Responsibility to Notify Occupants and Investigate.
§27-2056.5 Presumption.
§27-2056.6 Violation in a Dwelling Unit.
§27-2056.7 Audit and Inspection by Department following Commissioner’s order to abate.
§27-2056.8 Violation in a Dwelling Unit Upon Turnover.
§27-2056.9 Department Inspections.
§27-2056.10 Department Implementation and Enforcement.
§27-2056.11 Work Practices.
§27-2056.12 Reporting.
§27-2056.13 Transmittal of Violations to the Department of Health and Mental Hygiene.
§27-2056.14 Request to the Department from the Department of Health and Mental Hygiene to Execute an Order Pursuant to § 17-147 of the Administrative Code.
§27-2056.15 Waiver of Benefit Void.
§27-2056.16 Exemption for Emergency Conditions.
§27-2056.17 Record Keeping Requirements.
§27-2056.18 Application of this article based on age of child.
§27-2056.1 Statement of findings and purposes. The council finds that lead poisoning from paint containing lead is a preventable childhood disease and a public health crisis. The council further finds that the hazard in
dwellings that may occur from paint containing lead is subject to many factors, such as the age of a building and its maintenance. The Council also finds and declares that City government must focus on primary prevention as the essential tool to combat childhood lead poisoning and to achieve the goal of preventing children from suffering the adverse health and other effects of exposure to lead-based paint. The pursuit of primary prevention, which means eliminating lead hazards before children are exposed, has been recommended by the United States Centers for Disease Control and Prevention and promoted by leading experts in the field as a critical course of action to protect the health of young children. The Council, therefore, declares that resources must be directed to primary prevention, including identifying children who are most at risk.

The council recognizes that it cannot legislate a single maintenance standard for all dwellings to eliminate this hazard. Instead, the council by enacting this article makes it the responsibility of every owner of a multiple dwelling to investigate dwelling units for lead-based paint hazards and to address such hazards on a case-by-case basis as the conditions may warrant, taking such actions as are necessary to prevent a child from becoming lead poisoned. Having established this responsibility, the council finds that sufficient information exists to guide owners in making determinations about the existence of lead-based paint hazards. See, e.g., United States environmental protection agency, “Identification of Dangerous Levels of Lead; Final Rule” Federal Register, Vol. 66, No. 4 (January 5, 2001); United States department of housing and urban development, “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (June 1995, revised 1997).

The New York city department of health and mental hygiene has reported for the year 2001 that among children tested, 5,638 were newly identified with elevated blood lead levels of 10 micrograms per deciliter or above. The New York city department of health and mental hygiene has reported for the year 2001 that among children tested, 653 were newly identified at or above the department’s environmental intervention blood lead level, which is a blood lead level equal to or exceeding 20 micrograms per deciliter in a single test or two reported blood lead levels between 15 and 19 micrograms per deciliter at least three months apart, and has also reported an overall incidence of 931 children tested with blood lead levels equal to or exceeding 20 micrograms per deciliter. When a child is identified with environmental intervention blood lead levels, the city is obligated to investigate potential sources of the lead poisoning, incurring the expense of an environmental investigation and often times also incurring the expense of medical treatment and remedial education, if necessary. The council finds that these blood lead levels among New York city children constitute a severe health crisis and has established as its goal the elimination of childhood lead poisoning by the year 2010.

In addition, the department of health and mental hygiene has reported for the year 2001 that only 29% of children in New York city are tested both at age one and age two for the disease of lead poisoning even though the testing of all children at age one and age two is mandatory under state law. The council finds that improved screening among these children is critical since children at these ages are at greatest risk for lead poisoning. The council declares that it is reasonable and necessary to increase the rate of blood-lead testing. This local law requires the department of health and mental hygiene to report to the council on progress toward increasing screening rates and reducing the incidence rates of children newly identified with elevated blood lead levels.

The council further finds that the administration and enforcement of the City’s lead poisoning prevention programs can be better coordinated. While it is intended that the department of housing preservation and development remain the agency responsible for the implementation and enforcement of this article, it is also intended that the department of health and mental hygiene shall have a significant role in the promulgation and interpretation of rules and in the development of necessary procedures pursuant to this article.

§27-2056.2 Definitions. Whenever used in this article the following terms shall have the following meanings:

(1) “Chewable surface” shall mean a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides and which is readily accessible to such child. “Chewable surface” shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child of applicable age who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.

(2) “Common area” shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

(3) “Deteriorated subsurface” shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.
(4) “Friction Surface” shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

(5) “Impact Surface” shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

(6) “Lead-based paint hazard” shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(7) “Lead-based paint” shall mean paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (June 1995, revised 1997) and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material containing more than 0.5% of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

(8) “Lead-contaminated dust” shall mean dust containing lead at a mass per area concentration of 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the department of health and mental hygiene.

(9) “Lead-contaminated dust clearance test” shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with section 27-2056.11 of this article.

(10) “Peeling” shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

(11) “Remediation” or “Remediate” shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of health and mental hygiene.

(12) “Rule” or “rules” shall mean a rule or rules promulgated pursuant to section 1043 of the New York city charter.

(13) “Turnover” shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling unit.

(14) “Underlying defect” shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

(15) “Window” shall mean the non-glass parts of a window, including but not limited to any window sash, window well, window jamb, window sill, or window molding.

§27-2056.3 Owners' Responsibility to Remediate. The existence of a lead-based paint hazard in any multiple dwelling where a child of applicable age resides is hereby declared to constitute a condition dangerous to life and health. An owner shall take action to prevent the reasonably foreseeable occurrence of such a condition and shall expeditiously remediate such condition and any underlying defect, when such underlying defect exists, consistent with the work practices established pursuant to section 27-2056.11 of this article, except where lead-contaminated
dust is present in such multiple dwelling and the department of health and mental hygiene has made a determination pursuant to paragraph six of subdivision c of section 27-2056.10 of this article.

§27-2056.4. Owners’ Responsibility to Notify Occupants and to Investigate.  a. In any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred sixty where a child of applicable age resides, and in any dwelling unit in a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight where a child of applicable age resides and the owner has actual knowledge of the presence of lead-based paint, and in common areas of such multiple dwellings, the owner shall cause an investigation to be made for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces. Such investigation shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause a lead-based paint hazard, or an occupant makes a complaint concerning a condition that is likely to cause a lead-based paint hazard or requests an inspection, or the department issues a notice of violation or orders the correction of a violation that is likely to cause a lead-based paint hazard.  The owner shall ascertain whether a child resides therein pursuant to the requirements of this section.

b. No occupant in a dwelling unit in such multiple dwelling shall refuse or unreasonably fail to provide accurate and truthful information regarding the residency of a child of applicable age therein, nor shall an occupant refuse access to the owner at a reasonable time and upon reasonable prior notice to any part of the dwelling unit for the purpose of investigation and repair of lead-based paint hazards.

c. All leases offered to tenants or prospective tenants in such multiple dwellings must contain a notice, conspicuously set forth therein, which advises tenants of the obligations of the owner and tenant as set forth in this section. Such notice must be in a manner approved by the department, the content of which shall, at a minimum, be in English and Spanish. The owner of such multiple dwelling shall provide the occupant of such multiple dwelling with the pamphlet described in subdivision b of section 17-179 of this code.

d. (1) The owner of such a multiple dwelling shall provide to an occupant of a dwelling unit at the signing of a lease, including a renewal lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, a notice in English and Spanish, the form and content of which shall be approved by the department of health and mental hygiene, inquiring whether a child of applicable age resides or will reside therein. If there is a lease, such notice shall be included in such lease or be attached as a rider to such lease. Such notice shall be completed by the owner at the time of such signing of a lease, including a renewal lease, if any, or such agreement to lease, or at such commencement of occupancy.

(2) Where an occupant has responded to the notice provided by the owner pursuant to paragraph one of subdivision d of this section by indicating that no child of applicable age resides therein, during the period between the date of such response and the delivery of the notice provided by the owner pursuant to subdivision e of this section during the immediately following year the occupant shall have the responsibility to inform the owner of any child of applicable age that comes to reside therein during such period. In the event such occupant fails to inform the owner of such child as required by this paragraph, and the owner does not otherwise have actual knowledge that such child is residing in the dwelling unit, the presumption provided for in section 27-2056.5 of this article shall not apply in any action to recover damages for personal injury caused by contact with or exposure to lead-based paint or lead-contaminated dust.

e. (1) Each year, an owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall, no earlier than January first and no later than January sixteenth, except as provided for in subparagraph iii of paragraph two of this subdivision, present to the occupant of each dwelling unit in such multiple dwelling a notice inquiring as to whether a child of applicable age resides therein. Such notice, the form and content of which shall be approved by the department of health and mental hygiene, shall be presented as provided for in paragraph two of this subdivision, and shall be in English and Spanish.

(2) The owner may present the notice required by paragraph one of this subdivision by delivering said notice by any one of the following methods:

(i) by first class mail, addressed to the occupant of the dwelling unit;
(ii) by hand delivery to the occupant of the dwelling unit;
(iii) by enclosure with the January rent bill, if such rent bill is delivered after December fifteenth but no later than January sixteenth; or
(iv) by delivering said notice in conjunction with the annual notice required pursuant to section 17-123 of this code and the rules of the department of health and mental hygiene pertaining to the installation of window guards.

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(3) (i) Upon receipt of such notice the occupant shall have the responsibility to deliver by February fifteenth of that year, a written response to the owner indicating whether or not a child of applicable age resides therein. If, subsequent to delivery of such notice, the owner does not receive such written response by February fifteenth, and does not otherwise have actual knowledge as to whether a child of applicable age resides therein, then the owner shall at reasonable times and upon reasonable notice inspect occupant’s dwelling unit to ascertain the residency of a child of applicable age and, when necessary, conduct an investigation in order to make that determination. Where, between February sixteenth and March first of that year, the owner has made reasonable attempts to gain access to a dwelling unit to determine if a child of applicable age resides in that dwelling unit and was unable to gain access, the owner shall notify the department of health and mental hygiene of that circumstance.

(ii) Where an occupant has responded to the notice provided by the owner pursuant to subparagraph (i) of this paragraph by indicating that no child of applicable age resides therein, during the period between the date of such response and the delivery of the notice provided by the owner pursuant to this subdivision during the immediately following year the occupant shall have the responsibility to inform the owner of any child of applicable age that comes to reside therein during such period. In the event such occupant fails to inform the owner of such child as required by this paragraph, and the owner does not otherwise have actual knowledge that such child is residing in the dwelling unit, the presumption provided for in section 27-2056.5 of this article shall not apply in any action to recover damages for personal injury caused by contact with or exposure to lead-based paint or lead contaminated dust.

(4) For calendar year two thousand four, an owner shall be deemed to have satisfied the provisions of paragraphs one through three of this subdivision if such owner delivers or has already delivered to each dwelling unit where a child under six years of age resides a notice identical or substantially similar to that required to have been delivered in calendar year two thousand three, (i) in the same manner as was required in calendar year two thousand three, and (ii) during the same periods of time in calendar year two thousand four as such notice was required to have been delivered during calendar year two thousand three.

f. The owner shall inform the occupant in writing of the results of an investigation undertaken pursuant to this section and shall provide a copy of any such report received or generated by an investigation. The owner shall retain a copy of each investigation report, for ten years from the date of such report and such report shall be made available to the department on request and shall be transferred by the owner to the owner’s successor in title.

g. Any owner who violates the provisions of this section, or the rules promulgated hereunder, shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars or imprisonment for up to six months or both. In addition, any violation of this section shall subject the owner to a civil penalty of not more than one thousand five hundred dollars per violation.

h. The department may, at its discretion, perform sample audits to determine compliance with the requirements of this section.

§27-2056.5 Presumption. a. In any multiple dwelling erected prior to January 1, 1960, it shall be presumed that the paint or other similar surface-coating material in any dwelling unit where a child of applicable age resides or in the common areas is lead-based paint. The presumption established by this section may be rebutted by the owner of the dwelling or dwelling unit by submitting to the department a sworn written statement by the owner supported by lead-based paint testing or sampling results, a sworn written statement by the person who performed the testing if performed by an employee or agent of the owner, and such other proof as the department may require. Testing performed to rebut the presumption may only be performed by a person who has been certified as an inspector or risk assessor in accordance with subparts L and Q of part 745 of title 40 of the code of federal regulations or any successor regulations. The determination as to whether such proof is adequate to rebut the presumption established by this section shall be made by the department.

b. The owner of a dwelling or a dwelling unit may apply to the department to have such dwelling or dwelling unit exempted from the presumption contained in subdivision a of this section when either (i) an inspection for lead-based paint in such dwelling or dwelling unit, performed in accordance with section 745.227 of title 40 of the code of federal regulations, or any successor regulation, has determined that there is no lead-based paint present in such dwelling or dwelling unit, or (ii) substantial alterations have been made to such dwelling or dwelling unit and such alterations have resulted in the removal or permanent covering of all lead-based paint in that dwelling or dwelling unit. The department shall by rule determine the requirements needed to qualify for such an exemption. Sections 27-2056.4, 27-2056.8 and 27-2056.9 of this article shall not apply to any dwelling or dwelling unit that has been granted an exemption by the department.
§27-2056.6 Violation in a Dwelling Unit. The existence of lead-based paint in any dwelling unit in a multiple dwelling where a child of applicable age resides shall constitute a class C immediately hazardous violation if such paint is peeling or is on a deteriorated subsurface.

§27-2056.7 Audit and inspection by department following commissioner’s order to abate. a. When the department of health and mental hygiene issues a commissioner’s order to abate pursuant to section 173.13 of the New York city health code or a successor rule that addresses lead-based paint hazards in a specific dwelling unit in a multiple dwelling, the department, within fifteen days of such order, shall notify the owner of the multiple dwelling where the dwelling unit is located that the owner shall, within forty-five days of the department’s notice, provide to the department all records required to be maintained under this article. Upon the department’s receipt of those records and a determination that there may exist uncorrected lead-based paint hazards in dwelling units where a child of applicable age resides, the department within ten days shall attempt to inspect such units to determine whether there are any violations of section 27-2056.6 of this article.

b. If the owner does not provide to the department the records as mandated by subdivision a of this section, the department shall within forty-five days of such failure attempt to inspect dwelling units where a child of applicable age resides to determine whether there are any violations of section 27-2056.6 of this article in such units.

c. The department is not required to undertake the procedures specified in this section in a particular multiple dwelling if it has done so in such building during the prior twelve month period.

d. Any owner who fails to comply with the provisions of this section in accordance with the rules of the department shall be liable for a class C immediately hazardous violation, and a civil penalty in an amount not to exceed one thousand dollars.

§27-2056.8 Violation in a Dwelling Unit Upon Turnover a. Upon turnover of any dwelling unit in a multiple dwelling erected prior to January 1, 1960 or a dwelling unit in a private dwelling erected prior to January 1, 1960 where each dwelling unit is to be occupied by persons other than the owner or the owner’s family, the owner shall within such dwelling unit have the responsibility to:

1. remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;
2. make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;
3. provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and
4. provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

b. All work performed pursuant to this section shall be performed pursuant to the safe work practices promulgated pursuant to section 27-2056.11(a)(3) of this article.

c. Any owner who fails to comply with the provisions of subdivision a of this section, or the rules of the department of health and mental hygiene or the department promulgated pursuant to section 27-2056.11(a)(3) shall be liable for a class C immediately hazardous violation.

§27-2056.9 Department Inspections. a. When entering a dwelling unit in a multiple dwelling constructed prior to January 1, 1960 for the purpose of investigating the existence of any violation of this code, the department shall make diligent efforts to ascertain whether a child of applicable age resides therein and shall request from the occupant an acknowledgement as to whether such a child resides in the dwelling unit. Whenever a child of applicable age resides in a dwelling unit, the department shall immediately perform a room-by-room inspection of the dwelling unit and record for each room in a report of such inspection whether the paint or other similar surface-coating material in each room is peeling or intact. For each room where peeling paint is found, the department shall also inspect for evidence of an underlying defect and shall indicate on the inspection report the peeling paint’s location within the room, the condition of the subsurface below it, and the location of any underlying defect. When performing such inspection, the department need only inspect those portions of the dwelling unit where furniture or other furnishings do not obstruct the view of a surface, except when there is visible evidence that causes the department to believe that the obstructed surface has peeling paint. Where, upon conducting an inspection, the department determines the existence of a condition constituting a violation of this article, the department shall serve a notice of violation within ten additional days.

b. In any dwelling unit in a multiple dwelling erected prior to January 1, 1960 where a child of applicable age resides, the department shall conduct an inspection pursuant to subdivision a of this section no later than ten days after the department’s receipt of a complaint describing peeling paint, or a deteriorated subsurface or underlying defect in the dwelling unit. The department shall make diligent efforts to ascertain whether a child of applicable
The department shall be required to make a reasonable attempt to gain access to such dwelling unit within five days of such attempt. If the department is unable to gain access to that dwelling unit during this additional time period, the department shall provide written notice to the occupant of such dwelling unit that no further attempts at access shall be made unless a new complaint is submitted.

c. Each inspector who performs an inspection pursuant to subdivision b of this section shall use an x-ray fluorescence analyzer during the course of that inspection to determine whether lead-based paint is present in such dwelling unit except that, for reasons beyond the control of the department, such x-ray fluorescence analysis is unable to be performed during such inspection, the department shall rely on the presumption set forth in subdivision a of section 27-2056.5 of this article. Where peeling paint is found during an inspection of a dwelling unit performed pursuant to subdivision a of this section, the department shall within ten days thereafter perform another inspection of such dwelling unit using an x-ray fluorescence analyzer to determine whether lead-based paint is present in such dwelling unit. Where, upon conducting an inspection, the department determines the existence of a condition constituting a violation of this article, the department shall serve a notice of violation within ten additional days.

d. The pamphlet developed by the department of health and mental hygiene pursuant to section 17-179 of this code shall be left at the premises of the dwelling unit at the time of an inspection made by the department pursuant to this section.

e. The department shall develop a pamphlet listing the work practices to be established pursuant to section 27-2056.11 of this article. Such pamphlet shall be delivered by the department in conjunction with all notices of violation issued pursuant to paragraph one of subdivision l of section 27-2115 of this code. Failure to include such pamphlet with such notices of violation shall not render null and void the service of such notices of violation. Such pamphlet shall also be made available to any member of the public upon request.

f. Notwithstanding any other provision of law, failure by the department or the department of health and mental hygiene to comply with any time period provided in this article or section 27-2115 of this chapter relating to responsibilities of the department and the department of health and mental hygiene, shall not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to this article or section, and shall not provide a basis for defense or mitigation of an owner’s liability for civil penalties for violation of such article.

§27-2056.10 Department Implementation and Enforcement. a. The department shall provide appropriate training for lead-based paint inspection and supervisory personnel. Department personnel who conduct a visual inspection pursuant to this article shall receive training which at a minimum, shall be the training approved by the United States department of housing and urban development for performance of visual inspections. Department personnel who perform lead-based paint inspections using XRF machines shall receive training required by the United States environmental protection agency pursuant to section 745.226(b) of title 40 of the code of federal regulations or successor regulations. Training of all inspection and supervisory personnel shall also include background information pertaining to applicable state and local lead-based paint laws and guidance on identifying violations in a multiple dwelling, and require that the individual has successfully demonstrated knowledge of the requirements of this article. The department shall provide for the continuing education of inspection and supervisory personnel.

b. The department, with the approval of the department of health and mental hygiene, shall promulgate a comprehensive written procedure to guide department personnel in implementing and enforcing this article. Where feasible, such procedures shall establish a uniform method for the department of health and mental hygiene and the department, following the method implemented by the department of health and mental hygiene, to describe violations and identify their location in a dwelling or dwelling unit. Such procedures shall include a methodology and a form to be used by department personnel when conducting an inspection to carry out and record an inspection pursuant to section 27-2056.9 of this article.

c. The department shall promulgate rules for the implementation and enforcement of this article and to effect compliance with all applicable provisions of this article, rules promulgated thereunder, and all applicable city, state or federal laws, rules or regulations. Such rules shall be subject to the approval of the department of health and mental hygiene prior to their promulgation and shall include, but not be limited to, establishing:
(1) uniform specifications and procedures to govern testing, including a standardized format for reporting such testing results, whenever paint or a similar surface-coating material is tested for its lead content, whether by or on behalf of an owner or an agency of the city of New York;

(2) procedures by which an owner shall comply with section 27-2056.4 of this article, including the form and content of the annual notice;

(3) procedures by which an owner shall submit rebuttal documentation to the department pursuant to 27-2056.5 of this article;

(4) procedures by which an owner may apply to the department to postpone the date by which a violation shall be corrected pursuant to subdivision l of section 27-2115 of this code, including, but not limited to, the stabilization of the paint which is the subject of the violation where an owner requests a second postponement of time to correct a violation in accordance with subdivision l of section 27-2115 of this code; and

(5) procedures to implement and to enforce compliance with paragraph two of subdivision l of section 27-2115 of this code, which shall include, but not be limited to, the requirement that an owner certify to:

(i) the correction of a violation of this article of the code, and

(ii) compliance with the rules promulgated by the department pursuant to section 27-2056.11 of this code; and

(6) procedures to be established by the department of health and mental hygiene to order or provide for the expeditious cleanup and removal of lead-contaminated dust when the department of health and mental hygiene determines that there is lead-contaminated dust in a dwelling unit where a child of applicable age resides, such child has an elevated blood level, and the department of health and mental hygiene determines that the source of that lead-contaminated dust is not a condition of the dwelling in which such dwelling unit is located.

§27-2056.11 Work Practices.

a. The department shall promulgate rules, with the approval of the department of health and mental hygiene, establishing work practices to which an owner shall be subject in each of the following circumstances:

(1) where an owner is performing work in order to comply with a notice of violation or order to correct issued by the department pursuant to this article, which shall be no less stringent than the safety standards required by the commissioner of health and mental hygiene whenever such commissioner shall order the abatement of lead-based paint hazards pursuant to section 173.13 of the health code or a successor rule. Such rules shall provide for temporary relocation provided by the owner of the occupants of a dwelling or dwelling unit to appropriate housing when work cannot be performed safely. Such rules shall provide that all such work be performed only by firms which have received certification to perform lead abatement under the regulations issued by the United States environmental protection agency at subpart L of part 745 of title 40 of the code of federal regulations, or any successor regulations.

(2) where an owner, other than in response to an order to correct or notice of violation issued by the department or the department of health and mental hygiene, is performing work that will disturb lead-based paint or paint of unknown lead content in a dwelling unit where a child of applicable age resides or in the common area of the multiple dwelling in which such dwelling unit is located, where such multiple dwelling was erected prior to January first, nineteen hundred sixty, or where the owner has actual knowledge of the presence of lead-based paint and such multiple dwelling was erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight.

(i) Except as provided in subparagraph (ii) of this paragraph, such rules shall incorporate work practices that are no less protective of public health than those set forth in subdivisions d and e of section 173.14 of the health code and those parts of subdivision b of such section applicable thereto or a successor rule, and shall include a requirement that lead-contaminated dust clearance testing be performed at the completion of such work. Such rules shall require that such work be performed by a person who has, at a minimum, successfully completed a course on lead-safe work practices given by or on behalf of the department or, by the United States environmental protection agency or an entity authorized by it to give such course, or by the United States department of housing and urban development or an entity authorized by it to give such course. Such rules shall require temporary relocation provided by the owner of the occupants of a dwelling or dwelling unit to appropriate housing when work cannot be performed safely.

(ii) Where such work will disturb more than one hundred square feet of lead-based paint or paint of unknown lead content in a room in a multiple dwelling, or will involve the removal of two or more windows with lead-based paint or paint of unknown lead content, such rules shall incorporate work practices that are no less protective of public health than those set forth in subdivisions d and e of section 173.14 of the health code and those parts of subdivision b of such section applicable thereto, or a successor rule, and shall include a requirement that lead-
contaminated dust clearance testing be performed at the completion of such work. Such rules shall also require temporary relocation provided by the owner of the occupants of a dwelling or dwelling unit to appropriate housing when work cannot be performed safely. Such rules shall require, in addition, that all such work be performed only by firms which have received certification to perform lead abatement under the regulations issued by the United States environmental protection agency at subpart L of part 745 of title 40 of the code of federal regulations for the abatement of lead hazards, or any successor regulations. Such rules shall also provide that not less than ten days prior to the commencement of such work the owner of the premises, or the firm, shall file with the department of health and mental hygiene a notice of commencement so that the department of health and mental hygiene may, at its discretion, perform sample audits of such notices to determine that the firms performing the work are properly certified. Such notice shall be signed by the owner or by a representative of the firm, and shall be in a form satisfactory to or prescribed by the department of health and mental hygiene, and shall set forth at a minimum the following information:

(a) The address of the multiple dwelling and the specific location of the work within the multiple dwelling.
(b) The name, address and telephone number of the owner of the multiple dwelling in which the work is to be performed.
(c) The name, address and telephone number of the firm which will be responsible for performing the work.
(d) The date and time of commencement of the work, working or shift hours, and the expected date of completion; and
(e) Identification of the surfaces and structures, and surface area, subject to the work.

The rules shall also provide that any changes in the information contained in the notice shall be filed with the department of health and mental hygiene prior to commencement of work, or if work has already commenced, within twenty-four hours of any change. The rules shall provide that a copy of the notice of commencement shall be posted at the work site.

(iii) The provisions of this paragraph shall not apply where such work disturbs surfaces of less than (a) two square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

(3) Where an owner is performing work on turnover pursuant to 27-2056.8 of this article. Such rules shall include, but not be limited to, requiring lead-contaminated dust clearance tests at the completion of such work.

b. No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third-party, who is independent of the owner and any individual or firm that performs the work, and has successfully completed a course approved or administered by the department of health and mental hygiene or by the United States environmental protection agency or the United States department of housing and urban development and obtained a certificate or other document issued by or acceptable to the department of health and mental hygiene.

c. The department, with the approval of the department of health and mental hygiene, shall promulgate rules requiring that all lead-contaminated dust clearance tests submitted to a laboratory for analysis include a sworn certification that such test was performed in compliance with all applicable rules and regulations and shall include any additional information that the department shall determine is necessary for the administration and enforcement of this section.

d. Where an owner is performing work pursuant to paragraph (1) of subdivision a of this section, all lead-contaminated dust clearance test results shall be filed with the department, and a copy shall be provided by the owner to the occupant of the dwelling unit. Where an owner is performing work pursuant to paragraphs (2) and (3) of subdivision a of this section, a copy of all lead-contaminated dust clearance test results shall be provided to the occupant of the dwelling unit. Copies of lead-contaminated dust clearance test results provided to the occupant of the dwelling unit pursuant to this subparagraph shall be in a form satisfactory to or prescribed by the department of health and mental hygiene that provides a sufficiently clear explanation of the meaning of such results.

§27-2056.12 Reporting. a. Within four months after the close of the first fiscal year after which this article takes effect and for every fiscal year thereafter, the commissioner shall provide to the council a written report on the department's implementation of this article during the preceding year. Such report shall include, at a minimum, an analysis of the department's program, a detailed statement of revenue and expenditures and statistical section designed to provide a detailed explanation of the department's enforcement including, but not limited to, the following:

(1) the number of complaints for peeling paint in pre-1960 dwelling units where a child of applicable age resides, disaggregated by city or non-city ownership of the building which is the subject of the complaint;
§27-2056.13 Transmittal of Violations to the Department of Health and Mental Hygiene. The department shall send a notice which shall be addressed to the dwelling unit in the multiple dwelling, when a dwelling unit is identified, for which a violation of this article was issued. Such notice shall include a telephone number for the department of health and mental hygiene. The department shall also refer to the department of health and mental hygiene the address of the unit in the multiple dwelling for which such violation was issued, the name of the complainant, if any, and the complainant’s telephone number, if available. The department of health and mental hygiene, pursuant to section 17-179 of this code, shall refer to appropriate medical providers any person who requests assistance in blood lead screening, testing, diagnosis or treatment, and upon the request of a parent or guardian, arrange for blood lead screening of any child who requires screening and whose parent or guardian is unable to obtain a lead test because the child is uninsured or the child’s insurance does not cover such screening.

§27-2056.14 Inspections by Department of Health and Mental Hygiene and Removal of Health Code Violations by Department of Housing Preservation and Development. Whenever a report has been made to the department of health and mental hygiene of a person under eighteen years of age with an elevated blood lead level of fifteen micrograms per deciliter or higher residing in any dwelling unit, the department of health and mental hygiene shall conduct such investigation as may be necessary to identify potential sources of the elevated blood lead level, including but not limited to, an inspection of the dwelling unit where such person resides. If the department of health and mental hygiene issues an order to correct any violation, the department of health and mental hygiene shall notify the department of each dwelling unit to correct such violations, and the average amount spent per dwelling unit to correct such conditions; and

§27-2056.15 Waiver of Benefit Void. a. No owner may seek to have an occupant of a dwelling unit waive the benefit or protection of any provision of this article. Any agreement by the occupant of a dwelling unit purporting to waive the benefit or protection of any provision of this article is void. Any owner who violates this section, or the rules promulgated hereunder, shall be guilty of a misdemeanor punishable by a fine of up to five hundred dollars or imprisonment for up to six months or both. In addition, any owner who violates this section shall be liable for a civil penalty of not more than five hundred dollars per violation.

b. Notwithstanding any other provision of this article, nothing herein shall be construed to alter existing or future agreements which allocate responsibility for compliance with the provisions of this article between a tenant shareholder and a cooperative corporation or between the owner of a condominium unit and the board of managers of such condominium.
c. The provisions of this article, other than section 27-2056.14, shall not apply to a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of record on the proprietary lease for such dwelling unit or the owner of record of such condominium unit, as is applicable, or the shareholder’s or record owner’s family.

§27-2056.16 Exemption for Emergency Conditions. For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety or to protect property from further major damage, such as when a property has been damaged by a natural disaster, fire, structural collapse, cascading water, lack of utilities or other emergency conditions, occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable and the requirements of this article shall not apply. This exemption applies only to repairs immediately necessary to respond to the emergency. The requirements of this article shall apply to any work undertaken subsequent to or above and beyond such emergency actions.

§27-2056.17 Record Keeping Requirements. The owner of any multiple dwelling or dwelling that performs any work pursuant to this article shall retain all records relating to such work for a period of no less than ten years from the completion date of such work. The owner shall make any such records required to be retained by this section available to the department upon the department’s request, and shall transfer such records to the owner’s successor in title.

§27-2056.18 Application of this article based on age of child. For the purposes of this article, the term “applicable age” shall mean “under seven years of age” for at least one calendar year from the effective date of this section. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of this article should apply to children of age six, and based on this determination, may redefine “applicable age” for the purposes of some or all of the provisions of this article to mean “under six years of age,” but no lower.

§6. Section 27-2115 of the administrative code of the city of New York is amended by adding a new subdivision t to read as follows:

(l)(1) Notwithstanding any other provision of law, when the department serves a notice of violation to correct and certify a condition that constitutes a violation of article fourteen of subchapter two of this chapter, the notice of violation shall specify the date by which the violation shall be corrected, which shall be twenty-one days after service of the notice of violation, and the procedure by which the owner, for good cause shown pursuant to this subdivision, may request a postponement. The notice of violation shall further specify that the violation shall be corrected in accordance with the work practices established in accordance with section 27-2056.11 of this code. The notice of violation shall be served by personal delivery to a person in charge of the premises or to the person last registered with the department as the owner or agent, or by registered or certified mail, return receipt requested, or by certified mail with proof of delivery, to the person in charge of the premises or to the person last registered with the department as the owner or agent; provided that where a managing agent has registered with the department, such notice of violation shall be served on the managing agent. Service of the notice of violation shall be deemed completed three days from the date of mailing. Notification, in a form to be determined by the department, of the issuance of such violation shall be sent simultaneously by regular mail to the occupant at the dwelling unit that is the subject of such notice of violation. The department may postpone the date by which a violation shall be corrected upon a showing, made within the time set for correction in the notice, that prompt action to correct the violation has been taken but that full correction cannot be completed within the time provided because of serious technical difficulties, inability to obtain necessary materials, funds or labor, inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as may be necessary to make the required repair. Such postponement shall not exceed fourteen days from the date of correction set forth in the notice of violation. The department may require such other conditions as are deemed necessary to insure correction of the violations within the time set for the postponement. The department may grant one additional postponement of no more than fourteen days for the reasons authorized by this section so long as the paint or other condition which is the subject of the violation has been stabilized. The department is also authorized to promulgate rules establishing criteria for a postponement of the time to correct for a longer period of time where such postponement is requested because of one or more substantial capital improvements will be made that will, when completed, significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling unit including, but not limited to, a requirement that the paint which is the subject of the violation is stabilized. The department shall provide to the owner and the occupant a written statement signed and dated by the person making
such decision setting forth the reasons for each postponement of the date by which a violation shall be corrected or the reason for the denial of such application for a postponement. Said written statement shall be part of the records of the department.

(2) Notwithstanding any other provision of law, the notice of violation shall direct that the correction of each violation cited therein shall be certified to the department. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent. Such certification shall include a statement that the violation was corrected in compliance with paragraph one of subdivision a of section 27-2056.11 of this code and shall include a copy of the lead-contaminated dust clearance test results. All certifications shall be delivered to the department and acknowledgment of receipt thereof obtained or shall be mailed to the department by certified or registered mail, return receipt requested, no later than five days after the date set for correction, and shall include the date when each violation was corrected. Such certification of correction shall be supported by a sworn statement by the person who performed the work if performed by an employee or agent of the owner. A copy of such certification shall be mailed to the complainant by the department not more than twelve full calendar days from the date of receipt of such certification by the department. Failure to file such certification shall establish a prima facie case that such violation has not been corrected.

(3) Whenever the department shall issue a notice of violation to correct a condition that constitutes a violation of section 27-2056.6 of article fourteen of subchapter two of this chapter, the department shall within fourteen days after the date set for the correction of such violation conduct a final inspection to verify that the violation has been corrected. Where, upon conducting an inspection, the department determines that a violation has not been corrected, the department shall correct such violation within forty-five additional days of such inspection or in such shorter time as is practicable.

(4) Notwithstanding any other provision of law, the department shall not remove a violation from its records nor shall it be deemed that such violation has been corrected unless the records of the department contain written verification that the department has conducted a final inspection of the premises and that such inspection verifies that the violation has been corrected, and copies of lead-contaminated dust clearance test results whenever such tests are required by applicable law, rule or regulation. A copy of the report of the final inspection of a dwelling unit and the status of the violation shall be mailed or delivered to the occupant and the owner.

(5) Notwithstanding any other provision of law, a person making a false certification of correction of a violation issued pursuant to article 14 of subchapter 2 of this chapter, in addition to any other civil penalty, shall be subject to a civil penalty of not less than one thousand dollars nor more than three thousand dollars for each false certification made, recoverable by the department in a civil action brought in a court of competent jurisdiction. If the person making such false certification is an employee of the owner then such owner shall be responsible for such civil penalty. In addition, any such person making a false certification of correction shall be guilty of a misdemeanor punishable by a fine of up to one thousand dollars or imprisonment for up to one year or both.

(6) Notwithstanding any other provision of law, a person who violates article fourteen of subchapter two of this chapter by failing to correct such violation in accordance with paragraph one of subdivision a of section 27-2056.11 of this code shall be subject to a civil penalty of two hundred fifty dollars per day for each violation to a maximum of ten thousand dollars from the initial date set for correction in the notice of violation until the date the violation is corrected and certified to the department, and in addition to any civil penalty shall, whenever appropriate, be punished under the provisions of article three of subchapter five of this code. There shall be a presumption that the condition constituting a violation continues after the service of the notice of violation. The owner shall be responsible for the correction of all violations noticed pursuant to article fourteen of subchapter two of this chapter, but in an action for civil penalties pursuant to this subdivision may in defense or mitigation of such owner’s liability for civil penalties show:

(i) That the condition which constitutes the violation did not exist at the time the violation was placed; or

(ii) That he or she began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of serious technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit wherein the violation exists, or such other portion of the building as might be necessary to make the repair, provided that a postponement was granted pursuant to this subdivision; or

(iii) That he or she was unable to obtain a permit or license necessary to correct the violation, provided that diligent and prompt application was made therefor; or

(iv) That the violation giving rise to the action was caused by the act of negligence, neglect or abuse of another not in the employ or subject to the direction of the owner, except that the owner shall be precluded from showing in
defense or mitigation of such owner's liability for civil penalties evidence of any acts occurring, undertaken, or performed by any predecessor in title prior to the owner taking control of the premises. Where the aforesaid allegations are made by way of mitigation of penalties, the owner shall show, by competent proof, pertinent financial data and efforts made to obtain necessary materials, funds or labor or to gain access, or to obtain a permit or license and such other evidence as the court may require.

If the court finds that sufficient mitigating circumstances exist, it may remit all or part of any penalties arising from the violations, but may condition such remission upon a correction of the violation within a time period fixed by the court.

(7) Notwithstanding any other provision of law, failure by the department to comply with any time period provided in this section relating to responsibilities of the department shall not render null and void any notice of violation issued by the department or the department of health and mental hygiene pursuant to such article or section, and shall not provide a basis for defense or mitigation of an owner's liability for civil penalties for violation of such article

§7. Title 17 of the administrative code of the city of New York is amended by adding new sections 17-179, 17-180, 17-181, 17-185, and 17-186, to read as follows:

§17-179 Department Screening, Diagnosis, and Treatment. a. The department shall refer to appropriate medical providers any person who requests assistance in blood lead screening, testing, diagnosis or treatment, and upon the request of a parent or guardian, arrange for blood lead screening of any child who requires screening and whose parent or guardian is unable to obtain a lead test because the child is uninsured or the child's insurance does not cover such screening.

b. The department shall develop a pamphlet explaining the hazards associated with lead-based paint and describing the procedures to be used in order for a violation of sections 27-2056.6 and 27-2056.7 of this code to be corrected. The pamphlet shall include appropriate telephone numbers to obtain lead poisoning screening, diagnosis and treatment information and to report unsafe lead-based paint work practices. Such pamphlet shall be made available in accordance with section 27-2056.9 of this code. Such pamphlet shall also be made available to any member of the public upon request.

§17-180 Training of Department Personnel. The department, in conjunction with the department of housing preservation and development, shall provide training for lead-based paint inspection and supervisory personnel. No department personnel shall conduct an inspection for lead-based paint pursuant to the health code unless that individual has received such training. At a minimum, such training shall (1) be equivalent to the training required under regulations issued by the United States environmental protection agency for the certification of lead-based paint inspectors and supervisors, (2) include background information pertaining to applicable state and local lead-based paint laws and guidance on identifying violations in a multiple dwelling, and (3) require that the individual has successfully demonstrated knowledge of the responsibilities of a certified inspector or certified supervisor, as the case may be, and the requirements of sections 173.13 and 173.14 of the health code or successor rules. The department shall provide for the continuing education of inspection and supervisory personnel.

§17-181 Lead-based paint; dry scraping and dry sanding prohibited. The dry scraping or dry sanding of lead-based paint or paint of unknown lead content in any dwelling, day care center or school is hereby declared to constitute a public nuisance and a condition dangerous to life and health. For the purpose of this section, dry scraping and dry sanding shall mean the removal of paint or similar surface-coating material by scraping or sanding without using water misting to reduce dust levels or other method approved by the department. The department shall promulgate such additional rules as necessary for the enforcement of this section.

§17-185 Inspection by the Department of Unsafe Work Practices. The department shall promulgate rules requiring the department to respond to complaints regarding unsafe lead-based paint work practices.

§17-186 Lead poisoning prevention in children. a. The department shall develop a brochure which, at a minimum, advises all appropriate medical providers of their obligations to screen and test children for lead poisoning according to all relevant federal, state and local laws, rules and regulations. Such pamphlet shall be distributed to all appropriate medical providers on an annual basis, starting on September 15, 2004.

b. The department shall develop a pamphlet regarding lead poisoning prevention in children. Such pamphlet shall, at a minimum, be printed in English and Spanish and shall include, at a minimum: (i) the manner in which children are most likely poisoned by lead; (ii) the effects of lead poisoning on a child’s health; (iii) the intervals at which a child is required by New York state law to be tested for blood lead levels; (iv) the appropriate telephone numbers to obtain lead poisoning screening, diagnosis and treatment information; (v) the steps a parent or
guardian may take to protect his or her child from lead poisoning; and (vi) the requirement of landlords to inspect and repair lead-based paint hazards.

c. At a minimum, the department shall distribute the pamphlet produced pursuant to paragraph b of this section with each birth certificate furnished to the parent or guardian of a child pursuant to section 17-168 of this title. Such pamphlet shall also be made available to any member of the public upon request.

§ 8. Subdivision 1 of subsection a of section § 11-243 of the administrative code of the city of New York is amended to read as follows:

1. “Alteration” and “improvement”: a physical change in an existing dwelling other than painting, ordinary repairs, normal replacement of maintenance items, except that painting or repairs designated to eliminate the lead-based paint poisoning hazard shall be eligible for tax exemption and tax abatement under this section and provided, however, that ordinary repairs and normal replacement of maintenance items, as defined by regulations rules adopted by the department of housing preservation and development pursuant to subdivision m of this section, shall be eligible for tax exemption and tax abatement under this section provided that repairs and maintenance items:

(1) were started and completed within a twelve-month period,
(2) were made to any common area of the dwelling premises concurrently with a major capital improvement thereto, as defined by regulations rules adopted by the department of housing preservation and development pursuant to subdivision m of this section, and
(3) require the issuance of a permit for at least one item thereof by any city agency, and
(4) the amount of money expended thereon shall not exceed two times the amount expended on the major capital improvement performed concurrently therewith.

“Alteration” and “improvement” shall also mean “an abatement” of lead-based paint hazards, as defined in part 745 of title forty of the code of federal regulations or any successor regulations, and shall include an “inspection” and “risk assessment” for lead-based paint hazards, as defined in such part, in a dwelling unit occupied by a child of applicable age, as established in accordance with section 27-2056.18 of this code, regardless of whether a child is or has been lead poisoned but shall not include any work performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter 2.

Amendment to last paragraph of § 11-243(1)(a), pursuant to Local Law 74 of 2005, effective August 10, 2005

“Alteration” and “improvement” shall also mean “an abatement” of lead-based paint hazards, as defined in part 745 of title forty of the code of federal regulations or any successor regulations in any existing dwelling including any common areas, and shall include an “inspection” and “risk assessment” for lead-based paint hazards, as defined in such part, in a dwelling unit whether such unit is vacant or occupied [by a child of applicable age, as established in accordance with section 27-2056.18 of this code, regardless of whether a child is or has been lead poisoned] but shall include any work performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter two of title 27 of the administrative code. For purposes of this paragraph, the term, “targeted area” shall mean the geographical area of New York city that is determined by the department of health and mental hygiene to have high rates of children with environmental intervention blood lead levels. The department of housing preservation and development shall establish two schedules of certified reasonable costs for items that are included in an abatement of lead-based paint hazards, one covering such abatement that is performed in an eligible dwelling unit or common area located in the targeted area, and one covering such abatement that is performed in an eligible dwelling unit or common area that is not located in the targeted area. The first such schedules shall be promulgated by the department of housing preservation and development within 180 days of the effective date of this local law and shall be used for any such abatements that are commenced on or after August 2, 2004. Such schedules shall be reviewed by such department biennially following their effective dates and amended as necessary. Notwithstanding any other provision of law or rule, an owner who performs an abatement of lead-based paint hazards pursuant to this paragraph shall not be required to comply with subdivision (y) of this section which provides for filing of a notice of intent form prior to the commencement of work, and no additional fee or penalty shall be due and owing the department at the time of issuance of a certificate of eligibility and reasonable cost for failure to file such notice of intent.
§9. Title 17 of the administrative code of the city of New York is amended by adding a new chapter nine to read as follows:

Chapter 9
Lead-Based Paint in Day Care Facilities
Subchapter 1
Definitions

§17-900 Definitions.

Subchapter 2
Remediation of Lead-Based Paint Hazards in Day Care Facilities

§17-910 Presumption.
§17-911 Remediation.
§17-912 Department Rules.
§17-913 Annual Inspection.

Subchapter 1
Definitions

§17-900 Definitions. For the purpose of this chapter the following terms shall have the following meanings:

1. “Chewable surface” shall mean a protruding interior window sill in a day care facility that is readily accessible to a child of applicable age. “Chewable surface” shall also mean any other type of interior edge or protrusion in a day care facility, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where the operator of such day care facility has observed that a child under six years of age has mouthing or chewed such edge or protrusion.

2. “Day care facility” shall mean any facility used to provide day care service.

3. “Day care service” shall mean any service which, during all or part of the day, regularly gives care to seven or more children under six years of age, not all of common parentage, which operates more than five hours per week for more than one month a year. Day care service shall not mean a kindergarten or higher grade in a facility operated by the board of education.

4. “Deteriorated subsurface” shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including but not limited to, rotting or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

5. “Friction Surface” shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape or bind when in motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

6. “Impact Surface” shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

7. “Lead-based paint” shall mean paint or other similar surface-coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” (June 1995, revised 1997) and the PCS released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material containing more than 0.5% of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.
8. "Lead-based paint hazard" shall mean any condition that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

9. "Lead-contaminated dust" shall mean dust containing lead at 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the New York City board of health.

10. "Operator of such day care facility" shall mean any person who provides day care service and the owner of the premises where such day care facility is located. "Person" shall mean an individual, corporation, partnership, association or other for-profit or not-for-profit entity.

11. "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking, or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

12. "Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of health and mental hygiene.

Subchapter 2
Remediation of Lead-Based Paint Hazards in Day Care Facilities
§17-910 Presumption. a. All paint or similar surface-coating material on the interior of any day care facility in a structure erected prior to January 1, 1978, shall be presumed to be lead-based paint.

b. The presumption established by this section may be rebutted by the operator or owner of the day care facility by submitting to the department a sworn written statement by the operator or owner of the day care facility supported by lead-based paint testing or sampling results, a sworn written statement by the person who performed the testing if performed by an employee or agent of the operator or owner of the day care facility, and such other proof as the department may require. Testing performed to rebut the presumption may only be performed by a person who has been certified as an inspector or risk assessor in accordance with subparts L and Q of part 745 of title 40 of the code of federal regulations or successor regulations. The determination as to whether such proof is adequate to rebut the presumption established by this section shall be made by the department.

§17-911 Remediation. a. There shall be no peeling lead-based paint in any portion of any day care facility.

b. Lead based paint or paint of unknown lead content that is peeling, or which is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces shall be immediately remediated in a manner authorized by the department.

c. Any equipment that is painted shall be painted with lead-free paint.

d. Whenever a condition prohibited by this section is found to exist, the department shall immediately serve an order on the operator or owner of such day care facility to remediate the condition. In the event such order is not complied with within forty-five days of service thereof, the department shall immediately request an agency of the city of New York to execute such order pursuant to the provisions of section 17:174 of this code. The agency shall execute the order within forty-five days of the department's request. The city of New York shall be entitled to enforce its rights for reimbursement of expenses incurred thereby, including as credits toward lease payments.

e. When lead-based paint hazards are remediated pursuant to this section such work shall be performed in compliance with work practices established by the department pursuant to section 17:912 of this subchapter.

§17-912 Department rules. The department shall promulgate such rules as may be necessary for the implementation of this chapter. Such rules shall incorporate work practices that are no less protective of public health than those set forth in section 173.11 (d) and (e) and those parts of subdivision b of the health code applicable thereto or a successor rule, and shall include a requirement that lead-contaminated dust clearance testing be performed at the completion of such work. Such rules shall require that such work be performed by a person who has, at a minimum, successfully completed a course on lead-safe work practices given by or on behalf of the department or, by the United States environmental protection agency or an entity authorized by it to give such course, or by the United States department of housing and urban development or an entity authorized by it to give such course. Such rules shall not apply where such work disturbs surfaces of less than (a) two square feet of peeling lead-based paint per room or (b) ten percent of the total surface area of peeling paint on a type of component with a small surface area, such as a window sill or door frame.

§17-913 Annual Survey. The operator of a day care facility shall conduct a survey of such facility annually, and more often if necessary, to determine the physical condition of surface-coating material throughout each such facility and shall provide a copy of the survey results to the department.
§10. All actions taken by the departments of housing preservation and development and health and mental hygiene pursuant to local law 38 of 1999 and local law 1 of 1982 shall be deemed valid to the extent that all violations written, and fines or penalties assessed, as well as any costs for repairs of such violations shall remain valid and enforceable, provided, however, that any such violations which remain uncorrected on the effective date of this local law shall be repaired using the work practices established pursuant to section 27-2056.11(a)(1) as added by section 5 of this local law, and the rules promulgated thereunder, and certified to the department of housing preservation and development in accordance with section 27-2056.10(c)(5) and subdivision (l) of section 27-2115 of the administrative code of the city of New York, as added by section five of this local law, and the rules promulgated thereunder pursuant to this local law.

§11. If any sentence, paragraph, section or part of this local law shall be adjudged invalid by a court of competent jurisdiction such judgment shall not impair or invalidate the remainder thereof but shall be confined to that part.

§12. Paragraph 4 of subdivision e of section 27-2056.4 of the administrative code of the city of New York, as added by section 5 of this local law, shall take effect immediately, and all other provisions of this local law shall take effect one hundred eighty days after its enactment, except that the commissioners of health and mental hygiene and housing preservation and development shall promulgate all rules and take all other actions necessary to implement this local law, other than paragraph 4 of subdivision e of section 27-2056.4, on or before the date upon which it shall take effect.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:
I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on December 15, 2003, disapproved by the Mayor on December 17, 2003 and repassed by the Council Members on February 4, 2004 and said law is adopted notwithstanding the objection of the Mayor.
VICTOR L. ROBLES, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27
Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 1 of 2004, Council Int. No. 101-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 15, 2003: 44 for, 5 against, 1 not voting.
Was disapproved by the Mayor on December 17, 2003.
Was returned to the City Clerk on December 19, 2003.
Was reconsidered by the Council on February 4, 2004 and received the following vote of the Council members at a meeting of the Council on February 4, 2004: 44 for, 5 against, 1 not voting.
JEFFREY D. FRIEDLANDER, Acting Corporation Counsel

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§11-01 Definitions.

Whenever used in this chapter:

(a) Abatement. "Abatement" shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (i) the removal of lead-based paint and dust lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (ii) all preparation, cleanup, disposal and post abatement clearance testing associated with such measures. Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(b) Applicable age. "Applicable age" shall mean under seven years of age for at least one calendar year from August 2, 2004. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of article 14 of the housing maintenance code should apply to children of age six, and based on this determination, may redefine "applicable age" for the purposes of some or all of the provisions of such article 14 to mean under six years of age. In the event that the board of health makes such determination, the term "applicable age" shall mean under six years of age.

(c) CFR. "CFR" shall mean the Code of Federal Regulations.

(d) Chewable surface. "Chewable surface" shall mean a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides and which is readily accessible to such child. "Chewable surface" shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child of applicable age who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.

(e) Commissioner. "Commissioner" shall mean the Commissioner of the New York city department of housing preservation and development or of its successor agency.

(f) Common area. "Common area" shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

(g) Contractor. "Contractor" shall mean any person engaged to perform work that disturbs lead-based paint pursuant to this chapter.

(h) Department. "Department" shall mean the New York city department of housing preservation and development or its successor agency.

(i) Deteriorated subsurface. "Deteriorated subsurface" shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

(j) Disturb. "Disturb" shall mean any action taken, which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to wet sanding or scraping or routine painting and maintenance.

(k) Door. "Door" shall mean every door in a dwelling unit including, but not limited to, the entrance door to the unit, closet doors, and cabinet doors where such cabinets are affixed to the walls of the dwelling unit.

(l) Encapsulation. "Encapsulation" shall mean the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. Only encapsulants approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable may be used for performing encapsulation.

(m) Enclosure. "Enclosure" shall mean the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the
environment.

(n) Firm. "Firm" shall mean a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the United States environmental protection agency has issued a certificate of approval pursuant to 40 CFR 745.226(f).

(o) Friction surface. "Friction surface" shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

(p) HEPA-vacuum. "HEPA-vacuum" shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodispersive particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

(q) Housing maintenance code. "Housing maintenance code" shall mean chapter two of title 27 of the administrative code of the city of New York.

(r) Impact surface. "Impact surface" shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

(s) Lead-based paint hazard. "Lead-based paint hazard" shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(t) Lead-based paint. "Lead-based paint" shall mean paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997) and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material.

(u) Lead-contaminated dust. "Lead-contaminated dust" shall mean dust containing lead at a mass per area concentration of 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the department of health and mental hygiene.

(v) Lead contaminated dust clearance test. "Lead contaminated dust clearance test" shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with §27-2056.11 of the housing maintenance code.

(w) Peeling. "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

(x) Permanent. "Permanent" shall mean an expected design life of at least 20 years.

(y) Remediation or Remediate. "Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of the department of health and mental hygiene.

(z) Removal. "Removal" shall mean a method of abatement that completely eliminates lead-based paint from surfaces.
(aa) Replacement. "Replacement" shall mean a strategy or method of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

(bb) Rule or rules. "Rule" or "rules" shall mean a rule or rules promulgated pursuant to §1043 of the New York city charter.

(cc) Stabilization. "Stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, and removing loose paint and other material from the surface to be treated.

(dd) Substrate. "Substrate" shall mean the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

(ee) Turnover. "Turnover" shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling unit. Such term shall not mean temporary relocation of an occupant for purposes of performing work pursuant to article 14 of the housing maintenance code.

(ff) Underlying defect. "Underlying defect" shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

(gg) Wet sanding or wet scraping. "Wet sanding" or "wet scraping" shall mean a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

(hh) Window. "Window" shall mean the non-glass parts of a window, including but not limited to any window sash, window well, window jamb, window sill, or window molding.

(ii) Work. "Work" shall mean any activity performed in accordance with article 14 of the housing maintenance code that disturbs paint.

(jj) Work area. "Work area" shall mean that part of a building where paint is being disturbed.

§11-02 Owner's Responsibility to Remediate.
An owner shall remediate all lead-based paint hazards and underlying defects in a dwelling unit where a child of applicable age resides in accordance with the applicable work practices set forth in §11-06 of these rules.

§11-03 Notice Inquiring About the Residency of a Child of Applicable Age.
(a) Notice upon signing of a lease, including a renewal lease, if any, or upon any agreement to lease or at the commencement of occupancy if there is no lease.

(1) The owner of a multiple dwelling erected prior to January first, nineteen hundred sixty or of a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight, where an owner has actual knowledge of the presence of lead-based paint, shall provide to an occupant of a dwelling unit at the signing of a lease, including a renewal lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, a notice in English and Spanish inquiring whether a child of applicable age resides or will reside therein. If there is a lease, such notice will be attached as a rider to the lease. In addition, such owner shall deliver to the occupant at the time the occupant signs a lease, if any, or upon any agreement to lease, or, at the commencement of occupancy if there is no lease, the pamphlet developed by the department of health and mental hygiene pursuant to §17-179(b) of the administrative code of the city of New York. Such notice shall be printed on a single form, the content of which shall be as specified in Appendix A hereto, and shall be printed in not less than ten point type, and shall bear the title "Prevention of Lead-based Paint Hazards Inquiry Regarding Child". Such notice shall be in duplicate, one copy of which will be for the occupant's records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt by the owner or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request. The notice provided at the signing of a lease, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, shall also contain a statement, signed by such owner, stating that he or she has complied with the provisions concerning apartments at turnover pursuant to §27-2056.8 of Article 14 of the housing maintenance code and §11-05 of these rules, and that he or she has delivered such pamphlet developed by the department of health and mental hygiene to the occupant.
(2) No occupant in a dwelling unit in such multiple dwelling shall refuse or unreasonably fail to provide accurate and truthful information regarding the residency of a child of applicable age therein, nor shall an occupant refuse access to the owner at a reasonable time and upon reasonable prior notice to any part of the dwelling unit for the purpose of investigation and repair of lead-based paint hazards.

(3) Where an occupant has responded to the notice provided by the owner pursuant to paragraph (1) of this subdivision by indicating that no child of applicable age resides therein or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time during the immediately following year prior to the delivery of the annual notice by the owner pursuant to subdivision (b) of this section, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(b) Annual Notice.

(1) Each year an owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall cause to be delivered to each residential unit a notice in English and Spanish inquiring as to whether a child of applicable age resides therein and advising the occupant of his or her duty to report the presence of such child in writing.

(2) Such notice shall be delivered as provided in §27-2056.4(e) of article 14 of the housing maintenance code, no earlier than January first and no later than January sixteenth, provided, however, that if such notice is enclosed with the January rent bill, such notice may be delivered no sooner than December fifteenth and no later than January sixteenth.

(3) Such notice shall be printed on a single form, the content of which shall be as specified in Appendix B hereto, and shall be printed in not less than ten point type, and shall bear the title "Prevention of Lead-based Paint Hazards Inquiry Regarding Child". Such notice may be combined with the annual window guard notice required by 24 RCNY Chapter 12 in a form approved by the department of health and mental hygiene. Such notice shall be in duplicate, one copy of which will be for the occupant's records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt by the owner or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request.

(4) Upon receipt of such notice, the occupant shall have the duty to deliver a written response to the owner indicating whether a child of applicable age resides in the dwelling unit, by February fifteenth of the year in which the notice is sent. Where an occupant has responded to the notice provided by the owner pursuant to paragraph one of this subdivision by indicating that no child of applicable age resides therein, or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time prior to delivery of the next annual notice, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(5) If, subsequent to the delivery of such annual notice, the owner does not receive a written response by February fifteenth, and does not otherwise have actual knowledge as to whether a child of applicable age resides therein, then the owner shall at reasonable times and upon reasonable notice inspect the occupant's dwelling unit to ascertain whether a child of applicable age resides therein. Where, between February sixteenth and March first of that year the owner has made reasonable attempt to gain access to the dwelling unit and was unable to gain access, the owner shall notify the department of health and mental hygiene of that circumstance in writing.

(c) The wording of the notices specified in this section shall not be altered or varied in any manner, unless otherwise approved by the department or the department of health and mental hygiene, provided, however, that such owner may provide such notice in any languages in addition to English and Spanish as such owner believes will be of assistance in ensuring communication of the content of such notice to the occupants of the multiple dwelling.

§11-04 Investigation for Lead-Based Paint Hazards.

(a) In any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred sixty where a child of applicable age resides, and in any dwelling unit in a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight, where a child of applicable age resides and the owner has actual knowledge of the presence of lead-based paint, and in common areas of such multiple dwellings, the owner shall cause a visual inspection to be made for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces. A visual inspection
for lead-based paint hazards shall include every surface in every room in the dwelling unit, including the interiors of closets and cabinets. Such inspection shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause a lead-based paint hazard, or an occupant makes a complaint concerning a condition that is likely to cause a lead-based paint hazard or requests an inspection, or the department issues a notice of violation or orders the correction of a violation that is likely to cause a lead-based paint hazard.

(b) An owner shall maintain or transfer to a subsequent owner records of inspections of dwelling units performed pursuant to this section. Such records shall include the location of such inspection and the results of such inspection for each surface in each room, as specified in subdivision (a) of this section, and the actions taken as a result of such inspection pursuant to §11-02 of these rules. If an owner claims an inability to gain access to the unit for such inspection, such records shall contain a statement describing the attempt made to gain access, including, but not limited to providing a written notice to the tenant, delivered by certified or registered mail, or by first class mail with proof of mailing from the United States Postal Service, informing the tenant of the necessity of access to the dwelling unit to perform the inspection, and the reason why access could not be gained. Such records shall be kept for a period of ten years from either the date of completion of the inspection, or from the date of the last attempt to gain access by the owner, or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request. In addition, the owner shall make such records available to the occupant of such dwelling unit upon request.

(c) Nothing in this section shall be deemed to preclude an owner from conducting any additional types of inspections for lead-based paint hazards, provided, however, that such owner shall correct any lead-based paint hazards identified pursuant to such inspection in accordance with the work practices specified in §11-06 of these rules.

§11-05 Turnover of Dwelling Units.

(a) Upon turnover of any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred and sixty, or of a dwelling unit in a private dwelling erected prior to January first, nineteen hundred and sixty where each dwelling unit is to be occupied by persons other than the owner or the owner's family, the owner shall within such dwelling unit have the responsibility to:

1. Remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;
2. Make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;
3. Provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and
4. Provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

(b) Such work shall be performed in the time period commencing with the vacancy of the unit and shall be completed prior to reoccupancy of such unit. All work performed pursuant to this section shall be performed using the applicable safe work practices set forth in §11-06(g)(3) of these rules.

(c) An owner shall maintain or transfer to a subsequent owner records of work performed in dwelling units pursuant to this section in accordance with the recordkeeping requirements of §11-06(c) of these rules. In addition, the owner shall make such records available to the new occupant of such dwelling unit upon request.

(d) An owner shall certify that he or she has complied with §27-2056.8 of article 14 of the housing maintenance code and this section in the notice provided to an occupant upon signing of lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease pursuant to subdivision (a) of §11-03 of these rules.

§11-06 Safe Work Practices

(a) Filing procedures. Not less than ten days prior to commencement of work that will disturb lead-based paint pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, an owner shall file with the department of health and mental hygiene a notice of the commencement of the work. Such notice shall be signed by the owner or by a representative of the firm performing the work. Where work is required to be commenced in a lesser period of time than that specified herein for the filing of a notice of commencement of work, then such filing shall be made as soon as practicable but prior to the
commencement of work. Such notice shall be in a form satisfactory to or prescribed by the department of health and mental hygiene and shall set forth at a minimum the following information:

(1) The name, address and telephone number of the owner of the premises in which the lead-based paint work is to be performed;
(2) The address of the building and the specific location of the lead-based paint work within the building;
(3) The name, address and telephone number of the firm who will be responsible for performing the work;
(4) The date and time of commencement of the work, working or shift hours, and the expected date of completion;
(5) A complete description and identification of the surfaces and structures, and surface areas, subject to the work; and
(6) Any changes in the information contained in the notice required by this section shall be filed with the department of health and mental hygiene prior to commencement of work, or if work has already commenced, within 24 hours of any such change.

(b) Licensing and training.

(1) Abatement. All work conducted as part of an abatement as defined in this chapter shall be performed by firms and personnel certified to perform lead-based paint activities in accordance with regulations issued by the United States environmental protection agency at subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.
(2) Work ordered by the department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:
   (i) Firm requirements. Firms conducting such work shall be certified to perform lead abatement by the United States environmental protection agency in accordance with subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.
   (ii) Worker requirements. Workers conducting such work shall be trained, at a minimum, in accordance with the regulations issued by the United States department of housing and urban development at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.
   (iii) Clearance dust testing. No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. All personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained, at a minimum, in accordance with regulations issued by the United States department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.
(3) Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:
   (i) Worker requirements. Workers conducting such work shall be trained under regulations issued by the United States department of housing and urban development at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.
   (ii) Clearance dust testing. No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.
(4) Work performed in a dwelling unit upon turnover in accordance with §27-2056.8 of article 14 of the housing maintenance code. No person shall perform a lead-contaminated dust clearance test pursuant to this paragraph unless such person is a third party, who is independent of the owner and
any individual or firm that performs the work upon turnover. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340(b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(c) Recordkeeping. An owner shall keep a record of the following information for all work performed pursuant to this section:

(1) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work;

(2) A copy of all licenses and training certificates, required pursuant to subdivision (b) of this section, for the firms and personnel who performed work and lead-contaminated dust clearance testing;

(3) The location of the work performed in each room including a description of such work and invoices for payment for such work;

(4) Results of lead-contaminated dust clearance tests analyzed by an independent laboratory certified by the state of New York;

(5) Checklists completed pursuant to (g)(1)(ix)(F)(f) when occupants are allowed temporary access to a work area; and

(6) Such records shall be maintained by such owner for a period of ten years from the date of completion of such work or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request.

(d) Work methods.

(1) Minimizing dust dispersion. Work that disturbs lead-based paint as defined in this chapter shall be carried out in such a manner as to minimize the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building or adjacent outdoor areas.

(2) An area designated as a clean changing area shall be segregated from the work area by a physical barrier to prevent the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building and to prevent occupant exposure to materials containing lead.

(3) Repair of lead-based paint hazard violations may be performed by wet sanding, wet scraping, removal, enclosure, encapsulation, replacement or abatement except where otherwise specified in article 14 of the housing maintenance code or these rules.

(e) Prohibited methods. The following methods shall not be used while performing work in accordance with these rules that disturbs lead-based paint or paint of unknown lead content:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without HEPA local exhaust control.

(3) Abrasive blasting or sandblasting without HEPA local exhaust control.

(4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(5) Dry sanding or dry scraping.

(6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States consumer product safety commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the United States occupational safety and health administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

(f) Work practices and surface finishing.

(1) All tools and materials used when disturbing paint shall be used in accordance with the manufacturer’s instructions.

(2) Wet sanding, wet scraping, removal, enclosure, encapsulation, replacement, abatement and other maintenance and repair activities shall be performed using standard construction and treatment methods, and in accordance with manufacturer’s instructions, where applicable.

(3) All surfaces where paint has been disturbed shall be sealed and finished with appropriate materials. Underlying surface substrates shall be dry and protected from future moisture before
applying a new protective coating or paint, and all paints and coatings shall be applied in accordance with the manufacturer's recommendations.

(g) Occupant protection.

(1) Work ordered by the Department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code.

(i) Postings. The following information shall be conspicuously posted no later than twenty-four hours prior to beginning work and shall remain in place until the work area has been cleared for re-occupancy:

(A) Notice of commencement of work information submitted to the department of health and mental hygiene pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code. Such information shall be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(B) A warning sign of at least 8-1/2" by 11” with letters at least one inch high, reading as follows: WARNING: LEAD WORK AREA POISON NO SMOKING OR EATING. Such information shall be posted adjacent to the work area.

(ii) Pre-cleaning and protecting moveable items. All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with two layers of six-mil disposable polyethylene sheeting before work begins. Such sheeting shall be taped together with waterproof tape, and taped to the floors or bottom of the walls or baseboards, so as to form a continuous barrier to the penetration of dust.

(iii) Sealing vents. Forced-air systems within the room where work that disturbs lead-based paint is occurring shall be turned off and covered with two layers of six-mil polyethylene sheeting and waterproof tape to prevent lead contamination and lead dispersal to other areas.

(iv) Affixing doorway entrance flap. After all moveable objects have been removed, the work area shall be sealed off from non-work areas by taping with waterproof tape, two layers of disposable, six-mil polyethylene sheeting over every entrance or doorway to the work area, as follows: To deter the dispersal of lead dust one sheet shall be taped along all sides of the doorway and a slit shall be cut down the middle of the sheeting, leaving intact at least six inches of sheeting on the top and six inches of sheeting on the bottom of the doorway. A second sheet of polyethylene large enough to cover the doorway, shall be attached to the top of the doorway in the room or area where work is being conducted and shall act as a flap opening into the work area.

(v) Covering floors. The floor of the work area shall be covered with at least two sheets of disposable six-mil polyethylene sheeting. Such sheeting shall be taped together with waterproof tape, and taped to the bottom of the walls or baseboard, so as to form a continuous barrier to the penetration of dust to the floor. The furniture and non-moveable furnishings, such as counters, cabinets, and radiators in the work area shall be removed or covered with such taped sheeting.

(vi) Sealing openings. All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with subdivision (g)(1)(iii) of the section, shall be sealed with two layers of six-mil polyethylene sheeting and waterproof tape to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(vii) Instructing occupants. Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clearance levels have been achieved.

(viii) Hazardous materials. All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(ix) Clean-up and lead-contaminated dust clearance testing procedures.

(A) Daily clean-up. At the completion of work each day, the work area shall be thoroughly wet-mopped or HEPA-vacuumed. No polyethylene sheeting, drop cloths, or other materials that are potentially hazardous to young children or infants shall be
accessible outside the work area. In addition, any work area and other adjoining area exposed to lead or lead-contaminated materials shall be cleaned as follows:

(a) Large debris. Large demolition-type debris (e.g., door, windows, trim) shall be wrapped in six-mil polyethylene, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(b) Small debris. Small debris shall be HEPA-vacuumed or wet swept and collected. Before wet sweeping occurs, the affected surfaces shall be sprayed with a fine mist of water to keep surface dust from becoming airborne. Dry sweeping is prohibited. The swept debris and all disposable clothing and equipment shall be placed in double four-mil or single six-mil plastic bags which shall be sealed and stored with other contaminated debris in the work area and shall be properly disposed of in a lawful manner.

(c) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area shall be examined visually to ensure that no lead debris has escaped containment. Any such debris shall be wet swept and HEPA-vacuumed, collected and disposed of as described above.

(d) Supply storage. Upon finishing work for the day, all rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(B) Final clean-up. Final cleaning shall be performed as follows, in the following sequence:

(a) The final cleaning process shall start no sooner than one (1) hour after lead-based paint disturbance activities have been completed, but before repainting, if necessary.

(b) First, all polyethylene sheeting shall be sprayed with water mist and swept prior to removal. Polyethylene sheeting shall be removed by starting with upper-level polyethylene, such as that on windows, cabinets and counters, folding the corners, ends to the middle, and placing in double four-mil or single six-mil plastic bags. Plastic bags shall be sealed and properly disposed of in a lawful manner.

(c) Second, all surfaces in the work area shall be HEPA-vacuumed. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(d) Third, all surfaces in the work area shall be washed with a detergent solution. Washing shall begin with the ceiling and proceed down the walls to the floor. Wash water shall be properly disposed of in a lawful manner.

(e) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process shall be HEPA-vacuumed again. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(f) Fifth, all surfaces shall be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed. If all visible dust and debris have not been removed, affected surfaces shall be re-cleaned.

(C) Final inspection. After final clean-up, and re-painting if necessary, has been completed, a final inspection shall be made by a third party retained by the owner who is independent of the owner and the contractor. The final clearance evaluation shall include a visual inspection and lead-contaminated dust clearance testing. Three wipe samples shall be collected and tested from each room or area where work has been conducted; one wipe sample contaminated dust clearance samples shall be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(D) Clearance for re-occupancy. Lead-contaminated dust levels in excess of the following constitute contamination and require repetition of the clean-up and testing
process in all areas where such levels are found. Areas where every lead-contaminated dust sample result is below the following levels may be cleared for re-occupancy:

Floors: 40 micrograms of lead per square foot.
Window Sills: 250 micrograms of lead per square foot.
Window Wells: 400 micrograms of lead per square foot.

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed and dust test samples have been collected in compliance with this section. The owner shall provide all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit.

(E) Relocation. An owner shall request that an occupant temporarily relocate from a unit pending completion of work where it appears that work cannot be performed safely with occupants in residence. Such owner shall offer a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards to such occupants for temporary relocation. Unreasonable refusal by such occupants to relocate pursuant to such offer shall constitute a refusal of access under housing maintenance code §§27-2009 and 27-2056.4(b), and, where applicable, 9 NYCRR §2524.3(e). Relocation shall not be required provided that work can be done safely with occupants in residence, and provided further that at the end of each day of work, the work area is properly cleaned as specified in subdivision (g)(1)(ix)(A) of this section; occupants have safe access to areas adequate for sleeping; occupants have bathroom and kitchen facilities available to them; occupants have safe access to entry/egress pathways; and the work does not create other safety hazards (e.g., exposed electrical wiring or holes in the floor).

(F) Temporary access to the work area when occupants not relocated. When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day, provided that at the end of each work day:

(a) Any work area to be accessed is properly cleaned as specified in the daily clean-up requirements of subdivision (g)(1)(ix)(B)(b) through (d) and (f);
(b) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in the floor) or covered vents;
(c) Floor coverings containing leaded dust and debris and hazardous materials are removed;
(d) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor;
(e) Work areas are prepared in accordance with the requirements above when work recommences; and
(f) At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed by the person responsible for overseeing the work. No person shall make a false, untrue or misleading statement or forge the signature of another person on any document or record required to be prepared pursuant to these rules.

(g) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the actions required by clauses (a) through (f) of this subparagraph (F). Nothing herein shall extend the time for compliance with any violation issued pursuant to article 14 of the housing maintenance code.

(2) Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code that disturbs lead-based paint.

(i) Postings. A warning sign shall be posted in accordance with subdivision (g)(1)(i)(B) of this section and caution tape shall be placed across the entrance to the work area.

(ii) Pre-cleaning and protecting moveable items. All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable
items shall then be moved out of the work area or otherwise covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

(iii) Covering floors. The floor of the work area shall be covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work. Multiple layers of polyethylene sheeting shall be used as needed to prevent dust from contaminating the floor.

(iv) Sealing openings. Where applicable, forced air systems in the work area shall be turned off and any openings in the work area shall be sealed with polyethylene or equivalent sheeting to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(v) Instructing occupants. Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clean up has been completed.

(vi) Hazardous materials. All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer’s labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(vii) Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with subdivision (g)(1)(ix) of this section.

(viii) Relocation and temporary access to work areas when occupants are not relocated, where provided, shall be performed in accordance with (g)(1)(ix)(E) and (F) of this section.

(3) Work performed in a dwelling unit on turnover in accordance §27-2056.8 of article 14 of the housing maintenance code.

(i) Preparation. The procedures described in subdivision (g)(2)(i)-(iv) of this section shall be followed.

(ii) Clean-up. At the completion of work, the work area shall be thoroughly wet-mopped or HEPA-vacuumed and a visual examination shall be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris shall be wet-mopped or HPEA-vacuumed. All rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint shall be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(iii) Lead-contaminated dust clearance testing. Lead-contaminated dust clearance testing shall be conducted in accordance with subdivision (g)(1)(ix)(C)-(D) of this section.

§11-07 Presumption.

(a) In any multiple dwelling erected prior to January first, nineteen hundred sixty, it shall be presumed that the paint or other similar surface-coating material in any dwelling unit where a child of applicable age resides or in the common areas of such multiple dwelling is lead-based paint.

(b) (1)The presumption established in this section may only be rebutted as provided in paragraph (2) of this subdivision by the registered owner, registered officer or director of a corporate owner or by a registered managing agent of such multiple dwelling by submitting to the department:

(i) a sworn written statement, supported by lead-based paint testing or sampling results, including a description of the testing methodology and manufacturer and model of instrument used to perform such testing or sampling;

(ii) a sworn written statement by the person who performed the testing if performed by an employee or agent of the owner which shall include a copy of the certificate of training as a
certified lead-based paint inspector or risk assessor as provided in subdivision (d) of this section;

(iii) a copy of the inspection report provided by the person who performed the testing or sampling which shall include a description of the surfaces in each room where such testing or sampling was performed; and

(iv) a copy of the results of such testing and/or such laboratory tests of paint chip samples performed by an independent laboratory certified by the state of New York where such testing has been performed.

(2) Such written statement and all supporting documentation shall be submitted to the department not later than six (6) days before the date set for correction in the notice of violation in accordance with paragraph (1) of this subdivision, and may only be submitted to rebut the presumption where the department has not performed an XRF test prior to issuing such violation. Receipt by the department of a complete application in accordance with this subdivision including such written statement and such supporting documentation shall toll the time period to correct the violation. Receipt of an incomplete application shall not toll the time period for correction of the violation.

(3) The department shall notify the registered owner, registered officer or director of a corporate owner or registered managing agent of such multiple dwelling of its determination in writing, and, if the department determines that such presumption has not been rebutted, such notice shall set a date for correction of the violation.

(c) Where testing or sampling is performed to rebut the presumption established in this section, the performance of such testing shall be in accordance with the definition for lead-based paint established in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code. Laboratory analysis for paint chip samples shall be permitted only where XRF tests fall within the inconclusive zone for the particular XRF machine or where the configuration of the surface or component to be tested is such that an XRF machine cannot accurately measure the lead content of such surface or component. Laboratory tests of paint chip samples, where performed, shall be reported in mg/cm², unless the surface area of a paint chip sample cannot be accurately measured, or if an accurately measured paint chip sample cannot be removed, in which circumstance the laboratory test may be reported in percent by weight. Where paint chip sampling has been performed, the sworn written statement by the person who performed the testing shall include a statement that such sampling was done in accordance with 40 CFR §745.227 or successor provisions.

(d) Testing performed to rebut the presumption may only be performed by a person who has been certified as a lead-based paint inspector or risk assessor in accordance with subparts L and Q of 40 CFR part 745 or successor provisions and such testing shall be performed in accordance with 40 CFR §745.227(a) and (b) or successor provisions.

§11-08 Exemption from Presumption.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent of a multiple dwelling erected prior to January first, nineteen hundred sixty or, where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, a representative of the corporation or the condominium board of managers may apply to the department, in writing, for an exemption of the application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules with respect to such multiple dwelling or any part thereof, provided further, that where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, the shareholder of record on the proprietary lease or the owner of record of such condominium unit, as is applicable, may apply to the department for such exemption for his or her individual unit where such presumption is or may become applicable.

(b) Except as otherwise provided in subdivision (c), such exemption shall be granted only where such owner or such other person specified in subdivision (a) of this section submits a written determination made by a lead-based paint inspector or risk assessor certified pursuant to subparts L and Q of 40 CFR part 745 or successor provisions, and in accordance with , or Chapter 7 of the department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing that each tested surface and component in each dwelling unit in such multiple dwelling or in the individual dwelling unit, if applying for an exemption of a particular dwelling unit in such multiple dwelling, is free of lead-based paint as defined in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code, or, that as a result of a substantial alteration of each dwelling unit such lead-based paint on each surface and component in each dwelling unit has been contained so that each surface tested is
negative for such lead-based paint. Where surfaces or components within the dwelling unit can be demonstrated by the owner, to the satisfaction of the department, to have a common construction and painting history, the lead-based paint inspector or risk assessor performing such testing may test a sample of the surfaces and components having such common construction and painting history within the dwelling unit to make such determination, in accordance with 40 CFR § 745.227(b) or Chapter 7 of the department of housing and urban development’s Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing. For purposes of this section, the term "contained" shall mean that every surface containing lead-based paint has been permanently covered, enclosed and sealed with sheetrock or similar durable construction material to eliminate gaps which may allow access to or dispersion of dust or other matter from the underlying surface.

(c) For any surface within a dwelling unit or dwelling where encapsulation has been applied to a surface for the purpose of qualifying such dwelling unit or dwelling for an exemption under this section, in addition to the information required to be provided to the department pursuant to subdivision (d) of this section, such application shall include: the location of each surface that has been encapsulated; the name of the encapsulant that has been used, which shall be limited to those approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable; and a statement by the person who applied such encapsulant, who shall be certified to perform abatement pursuant to 40 CFR part 745 or successor provisions, that it has been applied in accordance with the manufacturer’s instructions. The surfaces to which such encapsulants are applied shall be subject to periodic monitoring by the owner to ensure that they remain undamaged and intact, provided further, that the owner of such dwelling unit or dwelling shall keep records of any monitoring of such encapsulated surfaces for a period of ten years and produced by the owner upon request by the department.

(d) In addition to the information required by subdivision (c) of this section, where applicable, an application for exemption shall include: the address of the multiple dwelling; the number of units; the dates, if known, when substantial alterations were made to the dwelling unit(s) and a description of the work performed; the date of the inspection resulting in the determination; and a copy of the inspection report. Such inspection report shall contain a description of the surfaces tested and the results of such testing. Such application shall also include a copy of the certificate of training of the person who performed such testing.

(e) Upon submission of a complete application for exemption to the department, such multiple dwelling or part thereof, or dwelling unit, shall be deemed to be exempt from application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules. The department may revoke an exemption granted pursuant to this section where the department determines, after inspection, that a surface in any dwelling unit for which lead-based paint was contained or to which an encapsulant was applied is no longer intact or sealed or that such exemption was determined to be based upon fraud, mistake or misrepresentation. The department shall provide written notification to the owner upon making such determination. Absent fraud, mistake or misrepresentation in the initial application, an owner may reapply for the exemption by showing that the surface for which the lead-based paint was no longer contained or encapsulated has been repaired and resealed.

(f) Results of lead-based paint testing or evidence of application of encapsulants to surfaces performed prior to the effective date of these rules, that conforms with the requirements of this section, may be submitted to qualify for an exemption from the presumption pursuant to this section.

§11-09 Certification of Correction of Lead-Based Paint Hazard Violation.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent shall submit a certification of correction of a lead-based paint hazard violation issued pursuant to §27-2056.6 of article 14 of the housing maintenance code and these rules within five (5) days of the date set for correction in the notice of violation. Such certification shall be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent and shall include the following:

(1) the date that the violation was corrected, and a statement that the violation was corrected in compliance with article 14 of the housing maintenance code and §11-06 of these rules;

(2) the results of laboratory tests performed by an independent laboratory certified by the state of New York for lead-contaminated dust clearance tests performed pursuant to §27-2056.11(b) and (d) of the housing maintenance code and §11-06(g)(1)(ix)(C) and (D) of these rules;

(3) a copy of the certificate of training required pursuant to §11-06(b)(2)(iii) qualifying the person who performed the lead-contaminated dust clearance testing; and

(4) a sworn statement by the person or firm who performed the work necessary to correct the
violation that such work was performed in accordance with the applicable provisions of §27-2056.11 of article 14 of the housing maintenance code and the applicable provisions of §11-06 of these rules; and

(5) a copy of the certification by the United States environmental protection agency of the firm that performed the work as required pursuant to §11-06(b)(2)(i) of these rules.

(b) Certification of a lead-based paint hazard violation shall be rejected by the department unless the results of the laboratory tests for the required lead-contaminated dust clearance tests are submitted with the certification, and such laboratory test results comply with the standards specified in §11-06(g)(1)(ix)(D) of these rules.

(c) Failure to file a certification of correction of such violation shall establish a prima facie case that such violation has not been corrected.

§11-10 Postponements.

(a) An owner may apply to the department in writing for postponement of the time to correct a lead-based paint hazard violation issued pursuant to §27-2056.6 of article 14 of the housing maintenance code within the five days preceding the date set for correction of such violation pursuant to §27-2115(l)(1).

(b) Grant of a postponement shall be in the sole discretion of the department, and will be limited to circumstances where a showing has been made by the owner, to the satisfaction of the department, that such owner has taken steps to correct the violation promptly but that full correction could not be completed expeditiously because of the existence of a serious technical difficulty, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit or other area of the building necessary to make the required repair. An application for postponement shall contain a detailed statement by the registered owner or agent, or registered managing agent, explaining the steps taken to correct the violation promptly and the specific circumstances surrounding the inability to fully correct the violation within the time set for correction of the violation. Where an owner claims inability to gain access, such application shall include a description of the steps taken to gain access, including but not limited to providing a written notice to the tenant, delivered by certified or registered mail, informing the tenant of the necessity of access to the dwelling unit to correct the violation and the reason why access could not be gained.

(c) (1) The department shall make a determination in writing whether the postponement shall be granted or denied, and the reasons therefor. The department may include such other conditions as are deemed necessary to insure correction of the violation within the time set by the postponement. If the postponement is granted, a new date for correction shall be set, which shall not exceed fourteen days from the date set for correction in the notice of violation, provided, however, that the department may grant an additional postponement of fourteen days where the department determines that the conditions which is the subject of the violation has been stabilized.

(2) The department may grant a postponement of the time to correct a lead-based paint hazard violation in excess of the twenty-eight days provided for in paragraph (1) of this subdivision, where the department determines that the work to be done to remediate the violation includes one or more substantial capital improvements to be made in conjunction with such work, and that such improvements will significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling unit, provided that the paint which is the subject of the violation is stabilized. An owner who applies for such longer postponement shall submit an application within the time period specified in subdivision (a) of this section, and shall include with such application such documentation as the department may require to make its determination, which may include, but is not limited to, written contracts for work, building permits, plans filed with the department of buildings; invoices for materials purchased; and evidence that work has commenced and substantial progress has been made.

§11-11 Audit and Inspection by the Department.

(a) Upon the issuance of a commissioner's order to abate by the commissioner of the department of health and mental hygiene pursuant to New York city health code §173.13, the department shall require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. At such other times as the department may deem it necessary, the department may require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. If such order to abate has been issued, such records shall be submitted to the department within 45 days of written demand for such records by the department. In all other cases, the time period for submission shall be stated in writing to the owner, and
shall be in the discretion of the department.

(b) The department may undertake any inspection and enforcement actions it deems necessary under applicable law and these rules based upon its review of the records submitted by an owner pursuant to subdivision (a) of this section. The department may also undertake any inspection or enforcement action authorized by law where an owner refuses or fails to produce any of the records required to be kept pursuant to article 14 of the housing maintenance code, these rules, and other applicable law.

§11-12 Dwelling Units in Cooperative Housing Corporations and Condominiums.

Where the department has issued a violation pursuant to article 14 of the housing maintenance code for a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of record on the proprietary lease for such dwelling unit or the owner of record of such condominium unit, as is applicable, or the shareholder's or record owner's family, the cooperative housing corporation or the condominium board of managers may apply to the department to have such violation reissued. Such application shall include a sworn affidavit from a representative of the cooperative housing corporation or condominium board of managers attesting to the status of such multiple dwelling as either a cooperative or condominium, and a sworn affidavit from the shareholder of record on the proprietary lease of the unit or the owner of record of the condominium unit for which the violation was issued, attesting to his or her occupancy of the unit.
LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR PREVENTION OF LEAD-BASED PAINT HAZARDS—INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under six years of age resides or will reside in the dwelling unit (apartment) for which you are signing this lease/commencing occupancy. If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD. If you do not respond to this notice, the owner is required to attempt to inspect your apartment to determine if a child under six years of age resides there.

If a child under six years of age does not reside in the unit now, but does come to live in it at any time during the year, you must inform the owner in writing immediately. If a child under six years of age resides in the unit, you should also inform the owner immediately at the address below if you notice any peeling paint or deteriorated subsurfaces in the unit during the year.

Please complete this form and return one copy to the owner or his or her agent or representative when you sign the lease/commence occupancy of the unit. Keep one copy of this form for your records. You should also receive a copy of a pamphlet developed by the New York City Department of Health and Mental Hygiene explaining about lead-based paint hazards when you sign your lease/commence occupancy.

CHECK ONE:

□ A child under six years of age resides in the unit.
□ A child under six years of age does not reside in the unit.

_________________________________ (Occupant signature)

Print occupant’s name, address and apartment number:________________________

_______________________________________________________________

(NOT APPLICABLE TO RENEWAL LEASE) Certification by owner: I certify that I have complied with the provisions of §27-2056.8 of Article 14 of the Housing Maintenance Code and the rules promulgated thereunder relating to duties to be performed in vacant units, and that I have provided a copy of the New York City Department of Health and Mental Hygiene pamphlet concerning lead-based paint hazards to the occupant.

_________________________________ (Owner signature)

RETURN THIS FORM TO: _________________________________________

____________________________

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS
OWNER COPY/OCCUPANT COPY
CONTRATO/COMIENZO DE OCUPACION Y MEDIDAS DE PRECAUCION CON LOS PELIGROS DE PLOMO EN LA PINTURA-ENCUESTA RESPECTO AL NIÑO.

Usted esta requerido por ley informarle al dueño si un niño menor de seis años de edad esta viviendo o vivirá con usted en la unidad de vivienda (apartamento) para la cual usted va a firmar un contrato de ocupación. Si tal niño empieza a residir en la unidad, el dueño del edificio esta requerido hacer una inspección visual anualmente de la unidad para determinar la presencia peligrosa de plomo en la pintura. POR ESO ES IMPORTANTE QUE USTED LE DEUEVELVA ESTE AVISO AL DUEÑO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NIÑO. Si usted no informa al dueño, el dueño esta requerido inspeccionar su apartamento para descubrir si un niño menor de seis años de edad esta viviendo en el apartamento.

Si un niño menor de seis años de edad no vive en la unidad ahora, pero viene a vivir en cualquier tiempo durante el año, usted debe de informarle al dueño por escrito inmediatamente a la dirección provenida abajo. Usted tambien debe de informarle al dueño por escrito si un niño menor de seis años de edad vive en la unidad y si usted observa que durante el año la pintura se deteriora o esta por pelarse sobre la superficie de la unidad.

Por favor de llenar este formulario y devolver una copia al dueño del edificio o al agente o representante cuando usted firme el contrato o empiece a ocupar la unidad. Mantenga una copia de este formulario para sus archivos. Al firmar su contrato de ocupación usted recibirá un pamfleto hecho por el Departamento de Salud y Salud Mental de la Ciudad de Nueva York, explicando el peligro de plomo en pintura.

MARQUE UNO:

☐ Vive un niño menor de seis años de edad en la unidad.

☐ No vive un niño menor de seis años de edad en la unidad.

______________________________________________ (Firma del inquilino)

Nombre del inquilino, Dirección, Apartamento: __________________________

(Esto no es aplicable para un renovamiento del contrato de alquiler.) Certificacion de dueño: Yo certifico que he cumplido con la provision de §27-2056.8 del Articulo 14 del codigo y reglas de Vivienda y Mantenimiento (Housing Maintenance Code) relacionado con mis obligaciones sobre las unidades vacante, y yo le he dado al ocupante una copia del pamfleto del Departamento de Salud y Salud Mental de la Ciudad de Nueva York sobre el peligro de plomo en pintura.

______________________________________________ (Firma del dueño)

DEVUELVA ESTE FORMULARIO A: _____________________________

INQUILINO: MANTENGA UNA COPIA PARA LOS ARCHIVOS

COPIA DEL DUEÑO/COPIA DEL INQUILINO
PROTECT YOUR CHILD FROM LEAD POISONING AND WINDOW FALLS

Annual Notice

New York City law requires that tenants living in buildings with 3 or more apartments complete this form and return it to their landlord before February 15, each year. If you do not return this form, your landlord is required to visit your apartment to determine if children live in your apartment.

Peeling Lead Paint

By law, your landlord is required to inspect your apartment for peeling paint and other lead paint hazards at least once a year if a child under 6 years of age (5 years or younger) lives with you.

- You must notify your landlord in writing if a child under 6 comes to live with you during the year.
- If a child under 6 lives with you, your landlord must inspect your apartment and provide you with the results of these paint inspections.
- Your landlord must use safe work practices to repair all peeling paint and other lead paint hazards.
- Always report peeling paint to your landlord. Call 311 if your landlord does not respond.

These requirements apply to buildings with 3 or more apartments built before 1960. They also apply to buildings built between 1960 and 1978 if the landlord knows that lead paint is present.

Window Guards

By law, your landlord is required to install window guards in all your windows if a child under 11 years of age (10 years or younger) lives with you, OR if you request them (even if no children live with you).

- It is against the law for you to interfere with installation, or remove window guards where they are required. Air conditioners in windows must be permanently installed.
- Window guards must be installed so there is no space greater than 4½ inches above or below the guard, on the side of the guard, or between the bars.
- ONLY windows that open to fire escapes, and one window in each first floor apartment when there is a fire escape on the outside of the building, are legally exempt from this requirement.

These requirements apply to all buildings with 3 or more apartments, regardless of when they were built.

---

Fill out and detach the bottom part of this form and return it to your landlord.

Please check all boxes that apply:

☐ A child under 6 years of age (5 years or younger) lives in my apartment.

☐ A child under 11 years of age (10 years or younger) lives in my apartment and:
  ☐ Window guards are installed in all windows as required.
  ☐ Window guards need repair.
  ☐ Window guards are NOT installed in all windows as required.

☐ No child under 11 years of age (10 years or younger) live in my apartment:
  ☐ I want window guards installed anyway.
  ☐ I have window guards, but they need repair.

---

Last Name First Name Middle Initial
Street Address Apt.# City State Zip Code
Signature Date Telephone Number

Deadline for return: February 15, 2018

Return form to: Name and address of landlord or managing agent. Call 311 for more information on preventing lead poisoning and window falls.

Lead Laws and Regulations - Page 229

Approved 10/26/2017
La ley de la Cuidad de Nueva York requiere que los inquilinos que viven en edificios de 3 apartamentos o más deben completar y devolver este formulario a su propietario antes del 15 de febrero de cada año. Si usted no devuelve este formulario, su propietario está obligado a visitar su apartamento para averiguar si hay niños que viven con usted.

### La Pintura a Base de Plomo Descascarada

La ley exige que su propietario inspeccione su apartamento por lo menos una vez al año para ver si hay pintura descascarada y otros riesgos relacionados con la pintura a base de plomo si un niño menor de 6 años de edad (6 años o menos) vive con usted.

- **Usted debe notificarle al propietario por escrito, si un niño menor de 6 años de edad vive en su apartamento durante el año.**
- **Si un niño menor de 6 años vive con usted, su propietario debe inspeccionar su apartamento y comunicarle los resultados de la inspección de pintura.**
- **Siempre reporte la pintura descascarada a su propietario. Llame al 311 si su propietario no actúa en respuesta a su notificación.**
- **Su propietario debe utilizar prácticas laborales seguras para reparar toda la pintura descascarada y otros riesgos de la pintura a base de plomo.**

Estos requisitos se aplican a los edificios de 3 o más apartamentos construidos antes del año 1960, o construidos entre 1966 y 1978 si el propietario sabe que el edificio contiene pintura a base de plomo.

### Las Rejas de Seguridad en las Ventanas

La ley exige que su propietario instale las rejas de seguridad en todas sus ventanas si un niño menor de 11 años de edad (10 años o menos) vive con usted, o si usted las pide (aun si no tienen niños con usted).

- **SÓLOMENETE** las ventanas que dan acceso a las escaleras de incendios, y una ventana en cada apartamento del primer piso cuando hay una escalera de incendios afuera del edificio, están legalmente exentas de este requisito.
- **Está prohibido por la ley interferir con la instalación de las rejas de seguridad en las ventanas, o quitar las rejas de seguridad de donde son obligatorias.** Los acondicionadores de aire deben estar instalados en las ventanas de forma permanente.
- **Las rejas de seguridad deben ser instaladas de manera que no haya ningún espacio mayor de 4 ½ pulgadas encima, por debajo, al lado, o entre las barandas.**

Estos requisitos se aplican a todos los edificios de 3 o más apartamentos, sin importar la fecha de su construcción.

---

**Por favor marque todas las casillas aplicables:**

- [ ] Un niño o una niña de 5 años de edad o menos (menor de 6 años) vive en mi apartamento.
- [ ] Un niño o una niña de 10 años de edad o menos (menor de 11 años) vive en mi apartamento. [ ] Las rejas de seguridad han sido instaladas en todas las ventanas. [ ] Las rejas de seguridad necesitan reparación. [ ] Las rejas de seguridad no han sido instaladas en todas las ventanas.
- [ ] Ningún niño de 10 años de edad o menos (menor de 11 años) vive en mi apartamento: [ ] Quiero tener las rejas de seguridad instaladas de todos modos. [ ] Tengo las rejas de seguridad, pero necesitan reparación.

**Apellido**  **Nombre**  **Inicial**

**Dirección**  

**Dirección**  

**Código Postal**

**Firma**  **Fecha**  **Número de teléfono**

Fecha límite para devolver el formulario: 15 de febrero del 2007

Devuelva el formulario al Nombre y dirección del propietario o administrador del edificio.

Llame al 311 para más información sobre cómo prevenir el envenenamiento por plomo y las caídas por las ventanas.
What Tenants Should Know:

Local Law 1 is the New York City Childhood Lead Poisoning Prevention Act of 2003. The purpose of the law is to prevent lead paint hazards in housing and day care facilities. The law requires landlords to follow certain rules meant to help prevent children from being lead-poisoned.

Local Law 1 applies to apartments and common areas of buildings:

- Built before 1960 (or built between 1960 and 1978 if your landlord knows that the building contains lead paint).
- With 3 or more apartments, and
- Where a child under 7 years of age lives.

The law presumes that paint in these buildings is lead-based paint.

On turnover (when a tenant moves out), all rental units, including those in 1-2 family homes, are covered by the law.

What landlords must do:

Local Law 1 says that landlords must:

- Find out if a child under 7 lives in any apartment in buildings covered by the law.
- Inspect those apartments for lead paint hazards.
- Use safe work practices and trained workers for any work that disturbs lead paint in applicable apartments and common areas, including required repairs of peeling paint.
- Make apartments "lead safe" on turnover (when a tenant moves out and another moves in).
- Clean up work areas thoroughly.
- Have "clearance dust wipe tests" performed when work is finished to make sure cleanup is complete.
- Keep records of all notices, inspections, and repair of lead paint hazards, and other matters related to the law.

Your landlord needs to know if a child under 7 lives in your apartment:

Every January, your landlord must send you a notice asking if a child under 7 lives in your apartment. Be sure to fill out the notice completely and return it by February 15. During the year, if you have a new baby, or if a child under 7 comes to live in your apartment, you must notify your landlord in writing.

Your landlord must inspect your apartment:

If your landlord knows that a child under 7 lives in your apartment, your landlord must inspect your apartment for peeling paint and other lead paint hazards at least once a year. Your landlord must also check your apartment if you complain about peeling paint or other unsafe paint conditions. All lead paint hazards found during these inspections must be fixed safely.

Your landlord must check your apartment for the following lead paint hazards:

- Peeling paint.
- Deteriorated subsurfaces, including crumbling plaster and broken wood frames or molding.
- Friction surfaces, including painted doors and windows that bind or rub together.
- Impact surfaces, including painted baseboards, molding, and doors that may be hit by objects or by closing doors.
- Chewable surfaces, including all painted window sills and other surfaces that may have been chewed by children.

Work covered by the law:

The law requires landlords to use safe work practices and trained workers for any work that disturbs lead paint. There are specific rules for:

- Repair of violations issued by the Department of Housing Preservation and Development (HPD).
- Repair and renovation work, including repainting, window replacement, plumbing, and electrical work.
- Work done on turnover (when a tenant moves out and another moves in).

Lead law repairs can be dangerous and illegal:

Landlords and contractors are not allowed to:

- Dry-sand or dry-scrape lead paint.
- Use a chemical paint remover containing methylene chloride.
- Grind or sand lead paint without using a special vacuum attachment.
- Use a heat gun over 1100° F or an open flame torch on lead paint.
25. Notes for Repair and Renovation Work

When landlords have work done in apartments, such as painting, plumbing, painting a room, or replacing windows, certain requirements may apply. Specific requirements depend on how much painted surface area is disturbed by the work.

Between 2 and 100 square feet

- **When disturbing between 2 and 100 square feet of lead paint in a room, landlords must complete all of the steps below:**

1. **Coal tar alkyd workers:**
   - Workers must have completed a training course in lead-safe work practices developed by the U.S. Department of Housing and Urban Development (HUD) or lead abatement workers certified by the U.S. Environmental Protection Agency (EPA) may also be hired.

2. **Prepare the area before starting work:**
   - The work area must be cleared, cleaned, and sealed off from the rest of the apartment so that lead dust does not escape from the work area.
   - All floors, furniture, carpets, and other items in the work area must be HEPA-vacuumed.
   - High Efficiency Particulate Air (HEPA) filtered or washed.
   - Remove items, places, and work areas from the work area.
   - One layer of plastic sheeting and waterproof tape must be used to cover doors, door frames, windows, and vents in the work area.

3. **Closeup every day:**
   - Cleaning up is vital to prevent accidental exposure to dust and debris.
   - At the end of each work day, the work area must be thoroughly vacuumed.
   - All dust and materials must be removed using a HEPA air filter.
   - Avoid leaving any dust or dirt particles in the work area.

4. **Check up on:**
   - Daily inspections must ensure that no dust or debris is tracked out of the work area.

5. **Who will do the work:**
   - A coal tar alkyd worker must be present.
   - workstation areas must be completely sealed.
   - Work must be completed at the end of the workday.
   - Plastic sheeting must not be any exposed to water or air, and all debris must be removed. Plastic must then be fastened together and sealed in heavy-duty plastic bags.

- **All surfaces — including ceiling, walls, windows, floors, and furniture — must be HEPA-vacuumed, washed, and HEPA-vacuumed again.**
- The work area must be inspected when the cleanup is finished if dust and debris remain, the area must be re-cleaned.

6. **Take ‘ancestors dust vitals:**
   - Clean-up must be done to ensure proper clean-up.
   - Landlords must hire a qualified, third-party inspection service to inspect the work area.
   - A sample must be taken from every room or area where work has been done.
   - A sample must be taken from the floor at the most severe right next to the work area.

7. **Dust results must be less than the following levels:**
   - If dust is present, it must be removed by wet or dry cleaning.
   - If dust is present, the area must be re-cleaned.

8. **More than 100 square feet or removing windows:**
   - When disturbing more than 100 square feet of lead paint in a room or removing 2 or more windows in an apartment, landlords must complete all of the steps below:
   - All coal tar dismissing or removing windows must be done by certified painters.
   - The work area must be completely sealed off.
   - All surfaces must be HEPA-vacuumed, washed, and HEPA-vacuumed again.
   - The work area must be inspected when the cleanup is finished if dust and debris remain, the area must be re-cleaned.

- **Moving into a new apartment:**
  - Once the apartment is painted, the landlord must perform all necessary repairs to make the apartment safe for the tenant.
  - Painted areas must be HEPA-vacuumed, washed, and HEPA-vacuumed again.
  - The work area must be inspected when the cleanup is finished if dust and debris remain, the area must be re-cleaned.

- **When moving into a new apartment:**
  - Landlords must notify the tenant of all changes to the apartment.
  - All lead hazards must be completely removed from the apartment.

- **Additional information:**
  - Landlords must provide a written report to the tenant within 30 days of completion of the work.
  - The report must include a list of all lead paint areas that have been disturbed during the work.
  - The report must also include a statement that all lead hazards have been removed from the apartment.

- **Compliance:**
  - Landlords must comply with all applicable laws and regulations regarding lead paint.
  - Landlords must provide tenants with all necessary information about the work that has been done.

- **Penalties:**
  - Landlords who violate any of the above requirements may be subject to fines and other penalties.
  - Landlords who fail to complete the required work may be subject to fines and other penalties.

- **Additional resources:**
  - The EPA provides detailed information on lead-safe work practices.
  - The EPA also offers training courses for lead abatement workers.

- **Contact information:**
  - EPA Lead Abatement Program:
    - Phone: 1-800-LEAD-000
    - Website: http://www.epa.gov/lead
5. More Information

Call 311 to:
• Report unsafe work practices and paint hazards.
• Get more information about Local Law 1.
• Get information about screening, diagnosis, and treatment for lead poisoning.
• Order more copies of the booklet, or copies in Spanish.
• Report discrimination if you believe you were refused housing because you have children.

4. You Can Help Prevent Lead Poisoning

• Let your landlord know if a child under 7 lives in your apartment.
• Report peeling paint to your landlord.
• Call 311 if your landlord fails to fix peeling paint.
• Keep children away from peeling paint and renovation work.
• Clean floors, window sills, and dusty places often with wet mops or wet cloths.
• Wash toys, pacifiers, and other items children put in their mouths.
• Wash children's hands often, especially before they eat.
• Use cold (not hot) tap water for making baby formula, drinking, and cooking. Let the water run for a few minutes before use.
• Do not use items that may contain lead, such as imported pottery, food and cosmetics, and traditional medicines.
• Keep children away from work clothes or tools of family members who do home repairs or other lead work.
• Remind your doctor to test your child for lead poisoning at ages 1 and 2 years, as required by law. Ask your doctor about testing older children.

3. Correcting Violations

Violations are enforced by the Department of Housing Preservation and Development (HPD).

HPD may inspect your apartment and order your landlord to repair peeling paint. The landlord and the contractor must use safe work practices and follow the same rules for 'disturbing more than 100 square feet of lead paint' outlined on page 8.

Record of landlord records

Landlords must keep records of all notices, inspections, repairs of lead paint hazards, and other matters related to the law. HPD may request landlords to submit these records.
Sample DHMH Inspection Reports and Orders

NAME: J. __________  C. __________  Last __________
DOB: 09/05/92  RACE: 0  SEX: 1
P. NAME: J. __________  C. __________  P. LAST __________
PHONE: (000)000-0000

ADDRESS ___________________________  CITY: __________  BORO.: __________  ZIP: __________

TYPE OF TEST: V  PEP:  
Pb: 36  DRAWING POINT: __________

RECO 06/06/95  RECEIVED 06/07/95  REPORTED 06/08/95
REPORTED: 06/08/95

CASE NUMBER: __________  BORO HEALTH AREA: __________

NAME: MT SINAI CHEMISTRY DEPT
ADRESS: MADISON AVENUE
City: NEW YORK
NY

ACCESSION NUMBER: 15

6/6/95
REPORT

NAME OF CHILD  
ADDRESS  
DATE ASSIGNED  
SANITARIAN ASSIGNED  

INRUSION TYPE  

ORIGINAL  
SUPPLEMENT  
Previous Address  
New Address  
Child Visits  

RESAMPLE  
SPECIAL  
RELEASE SUPPLEMENT  
5 DO REINSPECTION  
ABATEMENT/SAFETY REINSPECTION  
CURRENT  

INSPECTION RESULTS  

☑ NCA  ☐ POSTED 5 DO  
☐ NEG  ☐ LLEXT -  
☐ VRR  ☐ WIPPL -  
☐ HFO  ☐ WIP EP -  
☐ RAT  ☐ SVEW -  
☐ RALL  ☐ VCEW LL -  
☐ CNE  ☐ VCEW EP -  
☐ BV  ☐ VCEW HPD -  
☐ AV  ☐ VCEW NYCH  
☐ TID  ☐ VCEW -  
☐ MVS  ☐ SIB -  
☐ NAP  ☐ OTHER (Specify)  
☐ VSC  

SAMPLE INFORMATION  

☑ XRF Samples Taken  
☑ XRF Positives  
☐ Paint Chips Taken  
☐ WATER  
☐ DUST  
☐ SOIL  
☐ CERAMICS  
☐ DISHES  
☐ TOYS  
☐ OTHER (Specify)  

FORMS COMPLETED  

☐ CHECK LIST  
☐ SAMPLE SHEET  
☐ TRIBUNAL  
☐ CHANGE OF CASE DATA  

☑ EXTENSIVE CHECK LIST  
☐ WINDOW GUARD  
☐ COMPLAINT  
☐ OTHER (Specify)  

APPLICATIONS / RECOMMENDATIONS  

☑ APT. STAMPED  
☑ OWNER/AGENT CONTACTED  
☐ NA LETTER TO BE SENT  
☐ LL WAIVER  
☐ INTERVIEWED & INSTRUCTED  
☐ CHANGE OF CASE DATA  

COUMNTS  

"Want to paint with my child's parents (D  

I inspected the apartment & observed several violations.  
The father stated that he has been living with small children in the 
area, and that there are several violations affecting the condition 

On the above date, an inspector was at your home to check for possible sources of lead. Since your child may be exposed to lead hazards, it is 
very important for your child's health that this inspection be made. Please call 424-8400 to make an appointment.

En la fecha que aparece arriba, un inspector fue a su hogar para comprobar si hay plomo en alguna parte de su hogar. Como su niño/a puede 
estar expuesto/a peligrosamente al envenenamiento por plomo, es muy importante para la salud de su niño/a que esta comprobación se haga 
tan pronto como sea posible. Por favor llame al 424-8400 para hacer una cita para llevar a cabo esta inspección.

SPOKE TO:  

COPY RECEIVED BY:  

SIGNATURE OF PUBLIC HEALTH/SANITARIAN  
BADGE NO.  
LD NO.  

WARNING: PENALTY FOR FALSE OR MISLEADING STATEMENTS - ORALLY OR IN WRITING UP TO $1000.00 PER VIOLATION (NYC HEALTH CODE SECTION 3.19) 
THE OFFER OF A BRIbe, GRATUITY OR REWARD IS A CRIME

LP 57 (REV. 11/94)  
WHITE (Office) • BLACK (DMU) • PINK (Inspection Site)  
SEE REVERSE SIDE FOR CODE EXPLANATIONS

Lead Laws and Regulations - Page 236
CODE EXPLANATIONS

AV  Apt. Vacant
BV  Building Vacant
CNL Cannot Locate
CPLERP Compliance Emergency Repair Program
CPLL Compliance Landlord
ERP Emergency Repair Program
HA  NYC Housing Authority
HFO Hold for Further Observation
HPD Housing Preservation & Development
LLEXT Landlord Extention
NA  No Access
NAP No Adult Present
NCA No Cause for Action
NEG Negative
NVS Not Valid Supplement
NYCHA New York City Housing Authority
RALL Refused Access Landlord
RAT Refused Access Tenant
SVCW Violations Substantially Complied With
TM  Tenant Moved
VCW Violations Complied With
VCWERP Violations Complied With by the Emergency Repair Program
VCWHPD Violations Complied With by Housing Preservation & Development
VCWLL Violations Complied With by Landlord
VCWNYCHA Violations Complied With by N.Y. City Housing Authority
VRR Violations of Rules and Regulations
WA  Wrong Address
WIPLL Work in Progress Landlord
XRF X-ray Fluorescence
5DO Five Day Order

BOROUGH CODES

B  Bronx
K  Brooklyn
M  Manhattan
Q  Queens
S  Staten Island
**Lead Laws and Regulations - Page 238**

<table>
<thead>
<tr>
<th>SAMPLE NO.</th>
<th>LOCATION/DESCRIPTION OF AREA WHERE SAMPLE TAKEN</th>
<th>RESULTS</th>
<th>XRF READINGS</th>
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<td>27</td>
<td>Wall #1</td>
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<td>Closet Interior: Wall #1</td>
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<td>42</td>
<td>Left Lower Closet Door - Wall #2</td>
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<td>43</td>
<td>Right Lower Closet Door - Wall #2</td>
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<td>44</td>
<td>Shelves on Wall #3</td>
<td>10.0</td>
<td>10.0</td>
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</tbody>
</table>

**Falsification of any statement made herein is an offense punishable by a fine or imprisonment or both: (N.Y.C. Administrative Code Section 10-154)**

**Signature of P.H. Sanitarian:**

**Chemist Certification:**

**Reported Date:**

**Approved Date:**

---

**Lead Laws and Regulations - Page 238**
ORDER TO ABATE NUISANCE

DATE: Februar, 1995

ORDER No.: 95-00

L.I. No.: ( )

ADDRESS: 7th Avenue

New York, NY 10026

CHILD'S NAME: Jordan Smith

APT. No./FLOOR: 

TELEPHONE #: (212)

WHEREAS, you are the owner or agent of the above-referenced premises;

WHEREAS, it has been found that a child residing in the above dwelling unit has a blood lead level of 20 micrograms per deciliter, or higher; and

WHEREAS, as a result of an inspection conducted by this Department of such dwelling unit on 1/30/95, it was found that paint on the surface(s) described herein of such dwelling unit contained 0.7 milligrams of lead per square centimeter of surface or greater and/or more than 0.5% of metallic lead based paint in the non-volatile content of the paint, resulting in a violation of the New York City Health Code, Section 173.13(d); and

WHEREAS, such conditions constitute a nuisance in that they present a danger to the life and health of the children of the above-referenced premises; and

WHEREAS, the following is a list of such surfaces and conditions:

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LIST OF LEAD POISONING VIOLATIONS

Continued from pg 2

Kitchen from pantry:

Door opening including stop, casing and jamb.
Window opening except sash, including stop, stool, apron and casing.
Baseboard on wall #4

Bedroom from kitchen on wall #2

Door
Wall #1
Wall #3

1st room from pantry on wall #4:

Door opening on wall #3 including stop, casing and jamb.

Baseboards on wall #2
Baseboards on wall #3
Steampipe

Front room from public hall:

Door
Door opening on wall #2 including stop, casing and jamb.
Door on wall #2
Baseboards on wall #2
Baseboards on wall #3
Steampipe
Door opening including stop, casing and jamb.

Middle room from front room:
THEREFORE, pursuant to the authority vested in me by the provisions of Title 17, Sections 17-113, 17-114 and 17-141 to 17-158 of the New York City Administrative Code, and Sections 3.01(c), 3.09, 3.11 and 173.13(d) of the New York City Health Code, YOU ARE HEREBY ORDERED AND DIRECTED to remove and correct all such lead poisoning hazards listed above.

YOU ARE FURTHER ORDERED to abate these violations in accordance with the prescribed Safety Standards for Lead Based Paint Abatement, set forth in Section 173.14 of the New York City Health Code.

Unless you comply with this Order within five days after service hereof, the Department of Health shall authorize the Department of Housing, Preservation and Development's Emergency Repair program to execute this Order. In order to collect the cost thereof, the Department of Health and/or the Department of Housing Preservation and Development may, among other things, commence collection of rents directly from the tenants and place a priority lien on the property.

WARNING

IF YOU WISH TO CONTEST ANY PART OF THIS ORDER YOU MUST DO SO WITHIN THREE (3) DAYS AFTER SERVICE FOLLOWING THE ATTACHED PROCEDURE IF YOU ARE CONTESTING LEAD-BASED PAINT LEAD CONTENT. TO CONTEST THIS ORDER YOU MUST CONTACT THE ENVIRONMENTAL ABATEMENT UNIT AT 212-442-4897. A FAILURE TO CONTEST THIS ORDER OR TO REQUEST A STAY OR MODIFICATION WITHIN THREE DAYS AFTER SERVICE WILL RESULT IN A FINAL AGENCY DETERMINATION.

Please be advised that civil penalties may be imposed for Health Code violations separate and apart from the execution of this order. This Order reports each lead based paint violation found on your property wherein such paint contains more than 0.5% lead or a reading of 0.7 milligrams of lead per square centimeter or greater on an x-ray fluorescent analyzer. In approximately five working days, a reinspection will be made to determine if there has been compliance. If the violations remain, you may be summoned to a hearing before the Administrative Tribunal of the Health Department. Violations of the Health Code are punishable by a penalty of up to and including $1,000.00 (one thousand dollars) per violation. In addition, Section 562 of the New York City Charter provides that a violation of the Health Code is punishable as a misdemeanor.
## ENVIRONMENTAL MANAGEMENT SYSTEMS, INC.
### LEAD BASED PAINT INSPECTION LOG

<table>
<thead>
<tr>
<th>Assay #</th>
<th>Room/Area</th>
<th>Direction</th>
<th>Component</th>
<th>Substrate</th>
<th>Cond.</th>
<th>Color</th>
<th>Screen (K)</th>
<th>Screen (L)</th>
<th>Test (K)</th>
<th>Test (L)</th>
<th>Status</th>
<th>Photo #</th>
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<tr>
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<td>SOUTH</td>
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<td>-0.2</td>
<td>NEG</td>
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<td></td>
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</tbody>
</table>

### EXPLANATION OF DATA

**LEAD STATUS FOR SCREEN READING:**
- NEO: < 0.1 mg/m²
- COM: 0.1 TO 1.0 mg/m²
- POS: > 1.0 mg/m²

**LEAD STATUS FOR TEST READING:**
- NEO: < 0.3 mg/m²
- COM: 0.3 TO 1.0 mg/m²
- POS: > 1.0 mg/m²

**VISUAL CONC. OF PAINT AT TIME OF INSPECTION:**
- A: INTRACTABLE
- B: CHIPPED/CRACKED
- C: BUBBLED/Raised
- D: FLAKING/PEELING
- E: LOCAL DAMAGE
- F: MAJOR DAMAGE

### EMS RECOMMENDED GUIDELINES BASED UPON NYC DOH PROTOCOLS

Ref. Standard 1.1
- Begin Check- (K) 0.5 (L)
- Post Check- (K) 1.3 (L)
Public Service Testing Laboratories, Inc.

AFFILIATED
Non-Destructive Testing Inc.
37-31 37th STREET, WOODSIDE, N.Y. 11377

Report of Analysis

PROJECT NO.: 8040

March 28, 1995

Lab. No. E-10006

In the sample of 74 Paint Chip Samples collected on 03/03/95 and 03/09/95

Your Order No. Telefax

Marked 7th Avenue, Apartment and as below

Submitted for Chemical Analysis for Pb (Lead) Content of Paint

We find as follows:

<table>
<thead>
<tr>
<th>SAMPLE LOCATION</th>
<th>% Pb [LEAD] FOUND</th>
<th>REGULATORY LIMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Hall From Apt Entrance:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wall # 1</td>
<td>0.12</td>
<td></td>
</tr>
<tr>
<td>Wall # 3</td>
<td>0.06</td>
<td></td>
</tr>
<tr>
<td>Rear Foyer From Public-Hall:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wall # 3</td>
<td>0.13</td>
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</tr>
<tr>
<td>Closet Door on Wall # 4</td>
<td>0.13</td>
<td></td>
</tr>
<tr>
<td>Rear Right Bedroom From Rear Foyer:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Door</td>
<td>0.12</td>
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<tr>
<td>Door Opening Including</td>
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<td></td>
</tr>
<tr>
<td>Stop, Casing and Jamb</td>
<td>6.5</td>
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<td>4.9</td>
<td></td>
</tr>
<tr>
<td>Window Opening (except sash)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Including Stop, Stool, Apron and Casing</td>
<td>8.5</td>
<td></td>
</tr>
</tbody>
</table>

NYS DOH ELAP No.: 10921

TO: ...

Yours respectfully,

S. DiMarino, P.E., Laboratory Director

Report on sample by client applies only to sample. Information contained herein is not to be used for reproduction except by special permission.

Samples retained for thirty days maximum after date of report unless specifically requested otherwise by client.
## DUST & WIPE SAMPLE ANALYSIS

<table>
<thead>
<tr>
<th>SAMPLE #</th>
<th>SAMPLE LOCATION/NOTES</th>
<th>ANALYTE</th>
<th>RESULTS (ug/ft²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>FIELD BLANK</td>
<td>LEAD</td>
<td>&lt; 5.00</td>
</tr>
<tr>
<td>02</td>
<td>FIELD BLANK</td>
<td>LEAD</td>
<td>&lt; 5.00</td>
</tr>
<tr>
<td>03</td>
<td>BEDROOM #1 FLOOR AT CLOSET</td>
<td>LEAD</td>
<td>15675.84</td>
</tr>
<tr>
<td>04</td>
<td>BEDROOM #1 FLOOR AT DOOR</td>
<td>LEAD</td>
<td>2481.00</td>
</tr>
<tr>
<td>05</td>
<td>LIVINGROOM FLOOR ADJ. TO BATH</td>
<td>LEAD</td>
<td>71.00</td>
</tr>
</tbody>
</table>

Laboratory Director (Signature): [Signature] Date 9-26-95

ELAP Number: [Number]
LEAD-SAFE WORK REQUIREMENTS IN RESIDENTIAL HOUSING:
A SUMMARY COMPARISON OF NEW YORK CITY RULES AND
FEDERAL RENOVATION, REPAIR AND PAINTING ("RRP") RULES*

<table>
<thead>
<tr>
<th>(subject)</th>
<th>New York City rules</th>
<th>federal RRP rules</th>
</tr>
</thead>
</table>

| **APPLICABILITY** | Generally pre-1960 multiple dwelling units, but also a) 1960-1978 multiple dwelling units where owner aware of Pb paint, b) any non-owner occupied pre-1960 dwelling or dwelling unit at turnover (including non-multiple dwellings), c) any dwelling or dwelling unit of any age where DHMH issues order, d) common areas of pre-1960 multiple dwellings (and 1960-1978 if owner aware of Pb paint). | “Target Housing” – all pre-1978 housing, except A) housing for elderly or disabled (unless child < 6 resides there), B) zero-bedroom dwellings (studio apt., hospital, hotel, dorm). ** |

| Impact of Child Occupancy | Applies only to A) dwelling units with child < 6; B) common areas of multiple dwellings in any unit has a child < 6 **NOTE: Does apply at turnover regardless of whether a child < 6 will reside there. | Effective 7/6/10, EPA eliminated “opt-out” rule for owner occupied dwelling where no child < 6 or pregnant woman resides. |

* Revision of 2/25/11. A key to abbreviations used here appears on the last page.

** Note that for work that involves HUD-affected properties (see 24 CFR Part 35) more stringent requirements may apply (e.g.: de minimus exception is < 2 ft²; temporary relocation provisions, Dust Clearance Testing required, etc.). These are not covered in this chart.
<table>
<thead>
<tr>
<th>(subject)</th>
<th>New York City rules</th>
<th>federal RRP rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>“de minimus” exception</td>
<td>&lt; 2 ft² peeling Pb paint per room or 10% of component with small surface area such as window sill or door frame</td>
<td>&lt; 6 ft² Pb paint per room or &lt; 20 ft² of exterior surface and work does not involve window replacement, demolition of painted surface areas, or prohibited practices.</td>
</tr>
<tr>
<td>Pb-free exception</td>
<td>Presumption of Pb in pre-60 unit can be rebutted if EPA certified inspector or risk assessor tests and submits required documentation to HPD</td>
<td>EPA certified inspector or risk assessor has found unit is Pb free, or renovator determines component being renovated is Pb free using EPA recognized test kit</td>
</tr>
<tr>
<td>Emergency exception</td>
<td>Actions immediately necessary to safeguard against imminent danger to human life, health or safety or to protect property from major damage, such as fire, structural collapse, cascading water, lack of utilities or other emergency conditions. Applies only to repairs immediately necessary to respond to emergency. Occupants must still be protected from Pb exposure to extent possible.</td>
<td>Activities not previously planned and that if not immediately done present a safety hazard or threaten equipment and/or property with significant damage. Does not exempt response to child with elevated blood Pb.</td>
</tr>
<tr>
<td>Pb Abatement (intent to permanently remove Pb hazards)</td>
<td>Covered by NYC laws/regs</td>
<td>Cannot be performed per RRP rules, must comply with 40 CFR Subpart L instead (restrict training, work practices, clearance requirements, etc., not covered in this chart)</td>
</tr>
<tr>
<td>Exterior work</td>
<td>Not applicable</td>
<td>General requirements to capture and contain paint chips and dust (not discussed in detail in this chart)</td>
</tr>
<tr>
<td>(subject)</td>
<td>New York City rules</td>
<td>federal RRP rules</td>
</tr>
<tr>
<td>-----------</td>
<td>---------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>TRAINING / CERTIFICATIONS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training / Certifications</td>
<td>A) At minimum, all worker workers must have HUD training or equivalent (approved by HPD or DHMH); B) For HPD NOVs and DHMH orders, or for work &gt; 100 ft² or 2 window removals in child-occupied dwelling unit (herein “large jobs”): same as above, plus firm EPA-certified to perform Pb abatement; C) For any Pb “abatement” (permanent elimination of Pb-based paint or Pb-hazards), EPA certified firm and workers.</td>
<td>Firm must be EPA certified renovation firm, must have a Certified Renovator (“CR”) (8 hour course). Firm and CR must ensure compliance with RRP rule &amp; that all renovation personnel either CR or trained by CR. CR must be present when signs posted, containment set up, and cleaning performed, and prepare records. Other times, either on site or always available by phone.*</td>
</tr>
<tr>
<td>PRE-COMMENCEMENT REQUIREMENTS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agency filings</td>
<td>For “large jobs” in child-occupied dwelling unit, must pre-file with DHMH 10 days before work. <strong>NOTE:</strong> applies only if work does not involving an HPD NOV or DHMH order.</td>
<td>None (would be required if “abatement”)</td>
</tr>
<tr>
<td>Pre-renovation education / notification</td>
<td>None (although if HPD NOV or DHMH order, agency provides pamphlet on safe work practices, and landlords must provide pamphlet on local Pb law with lease)</td>
<td>Firm must provide “Renovate Right” pamphlet to owner &amp; occupants &lt;60 days before job start, and document delivery or receipt (if mailed, ≥7 days before job start. If common area work, must notify (either notices or posting) all building residents, stating nature, location, dates of renovation; make pamphlet available.</td>
</tr>
</tbody>
</table>

* But CR must “regularly direct work ... to ensure” RRP compliance, “including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.”
<table>
<thead>
<tr>
<th>(subject)</th>
<th>New York City rules</th>
<th>federal RRP rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Postings at job site</td>
<td>Warning sign adjacent to work area at least 24 hours prior to commencement and until job completed (plus posting DHMH pre-commencement filing if applicable, at building entrance and dwelling unit entrance), caution tape</td>
<td>Warning signs before beginning renovation until work completed and post-renovation cleaning verification completed. If practical, in primary language of occupants.</td>
</tr>
</tbody>
</table>

### OCCUPANT PROTECTION MEASURES

<table>
<thead>
<tr>
<th>Job site preparation</th>
<th>Floors and moveable objects pre-cleaned with HEPA vacuum or washed; Moveable objects removed or covered with thick plastic and secured (if HPD NOV, DHMH order, or “large job”, must use 2 layers 6 mil poly, taped with waterproof tape)</th>
<th>Moveable objects removed or covered with plastic sheeting with edges taped down; Ducts closed and all vents and other openings (windows, doors) sealed with plastic sheeting and taped down</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Forced air vents turned off, all vents and other openings (windows, doors) sealed with heavy plastic (if HPD NOV, DHMH order, or “large job”, must use 2 layers 6 mil poly &amp; waterproof tape)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If HPD NOV, DHMH order, or “large job”, work area entrance door flap of 2 layers 6 mil poly</td>
<td>Door to work area covered with plastic sheeting in manner allowing worker to pass but retaining dust, debris</td>
</tr>
<tr>
<td></td>
<td>Floors covered with thick plastic and secured (if HPD NOV, DHMH order, or “large job”, must use 2 layers 6 mil poly secured to floor with waterproof tape)</td>
<td>Floors covered with plastic sheeting and taped down 6 ft beyond perimeter of work area or sufficient to contain dust (whichever greater)</td>
</tr>
<tr>
<td></td>
<td>Occupants instructed not to enter work area until job completion</td>
<td>(No verbal requirement, but warning signs state same)</td>
</tr>
<tr>
<td></td>
<td>Hazardous materials delivered in original containers and safety data sheets kept on site and available to occupants</td>
<td></td>
</tr>
<tr>
<td>(subject)</td>
<td><strong>New York City rules</strong></td>
<td><strong>federal RRP rules</strong></td>
</tr>
<tr>
<td>-----------</td>
<td>------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Prohibited work methods</td>
<td>(Not specifically stated, but implied) Renovation firm must maintain integrity of containment by ensuring plastic not torn or displaced, take other steps needed to ensure no dust or debris leave work area while work performed.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Open flame burning or torching</td>
<td>Open flame burning or torching</td>
</tr>
<tr>
<td></td>
<td>Machine sanding, grinding or abrasive blasting without HEPA exhaust control</td>
<td>Machine sanding, grinding, planing or abrasive blasting without HEPA exhaust control</td>
</tr>
<tr>
<td></td>
<td>Heat guns &gt; 1100 F°</td>
<td>Heat guns &gt; 1100 F°</td>
</tr>
<tr>
<td></td>
<td>Dry scraping or sanding <strong>(NOTE: general prohibition city-wide by Admin. Code § 17-181 in any dwelling, day care, or school regardless of presence of child, if Pb paint or paint of unknown Pb content)</strong></td>
<td>Dry scraping or sanding</td>
</tr>
<tr>
<td></td>
<td>Paint stripping in poorly ventilated space with certain regulated substances</td>
<td></td>
</tr>
<tr>
<td>Temporary Relocation of Occupants</td>
<td>If work cannot be performed safely with occupants in residence, owner must provide occupants temporary relocation suitable, decent, safe and similarly accessible dwelling unit without Pb-based paint hazards until clearance achieved. Not required if a) required daily clean-up can be performed b) occupants have safe access to sleeping areas, bathroom and kitchen, safe entry/egress pathways and c) no other safety hazards.</td>
<td>Not covered</td>
</tr>
<tr>
<td>(subject)</td>
<td>New York City rules</td>
<td>federal RRP rules</td>
</tr>
<tr>
<td>-----------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Temporary</td>
<td>Permitted, if A) required daily clean-up and/or final clean-up performed; B) no safety hazards present; C) floor covering containing Pb dust and debris removed; D) floors in work area recovered with non-skid covering taped down; E) work areas re-prepared when work recommences; and F) at end of each workday, before access permitted, compliance checklist completed and signed by work supervisor (penalties for false, untrue, misleading statements or forgeries) <strong>NOTE:</strong> temporary access only for 5 days, after which above must be re-completed</td>
<td>Not explicitly covered</td>
</tr>
<tr>
<td>Access if Occupants Not Relocated</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CLEAN-UP</td>
<td>A) Work area wet mopped or HEPA vacuumed; B) In work area and adjoining areas, 1) Large debris wrapped in 6 mil poly, sealed with waterproof tape, and safely disposed of, and 2) Small debris HEPA vacuumed or wet swept after misting, placed in double 4 mil or single 6 mil bags sealed and disposed of. C) Area adjacent and exterior to work area visually examined for Pb debris, and any debris wet swept or HEPA vacuumed; D) paint stripper supplies (including rags, cloths, etc.) and other hazardous materials, including items contaminated with Pb dust or paint, stored in sealed containers or removed.</td>
<td>Waste stored in containment, in an enclosure or behind barrier that prevents release of dust and debris</td>
</tr>
<tr>
<td>(subject)</td>
<td>New York City rules</td>
<td>federal RRP rules</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Final clean-up</td>
<td>Wait at least 1 hour after work completed for dust to settle (but before any re-painting)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Area adjacent and exterior to work area visually examined for Pb debris, and any debris wet swept or HEPA vacuumed</td>
<td>Collect all paint chips and debris, seal in heavy duty bag without dispersing</td>
</tr>
<tr>
<td></td>
<td>Mist and sweep all poly sheets, remove starting with uppermost sheets, fold into themselves, place in double 4 mil or single 6 mil bags, seal and dispose</td>
<td>Mist all plastic sheets, fold inward, tape shut or seal in heavy duty bags. Plastic used to isolate contaminated rooms should remain until all other cleaning done</td>
</tr>
<tr>
<td></td>
<td>HEPA vacuum all surfaces in work area, starting with ceiling, then walls, then floors, including furniture and carpets</td>
<td>Either HEPA vacuum or wet wipe interior work area, starting with ceiling, then walls, then floors. HEPA vacuum all other surfaces and objects, including furniture and fixtures (HEPA vacuum of carpets must have beater bar)</td>
</tr>
<tr>
<td></td>
<td>After HEPA vacuum, follow with detergent wash of all surfaces, starting with ceiling, then walls, then floor</td>
<td>Wet wipe all remaining surfaces and objects (except carpets and upholstery). 2 bucket mop of floor.</td>
</tr>
<tr>
<td></td>
<td>After detergent wash, 2nd HEPA vacuum of all surfaces exposed to Pb dust</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Inspect all surfaces for visible dust and debris, if fail, reclean.</td>
<td>(covered in next section)</td>
</tr>
<tr>
<td>(subject)</td>
<td><strong>New York City rules</strong></td>
<td><strong>federal RRP rules</strong></td>
</tr>
<tr>
<td>--------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td><strong>FINAL INSPECTION / DUST CLEARANCE OR VERIFICATION</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qualifications</td>
<td>Third party independent of owner and contractor, must have HUD training at minimum (or equivalent)</td>
<td>TWO OPTIONS: A. Cleaning verification by CR (need not be independent), or B. Dust clearance tests by certified inspector, risk assessor or dust sampling technician.</td>
</tr>
<tr>
<td>Procedure</td>
<td>Must wait one hour after final clean-up to take dust samples</td>
<td>OPTIONS: A. If using Cleaning Verification, no waiting requirement B. If using Dust Clearance Tests, must wait one hour after final clean-up to take dust samples</td>
</tr>
<tr>
<td>Dust Clearance Tests</td>
<td>Must take 3 wipe samples per room where work performed (window well, window sill, floor) and 1 sample in rooms or areas immediately adjacent to work area</td>
<td>If using Dust Clearance Tests: same procedures as NYC regs (but Cleaning Verification permitted as alternative)</td>
</tr>
<tr>
<td></td>
<td>(Cleaning verification not required nor accepted as alternative to Dust Clearance Tests)</td>
<td>Cleaning Verification: After visual inspection, wipe windowsill with cleaning cloth and compare with verification card, if fails, reclean windowsill, if fails again, wait one hour or until surface dry, dry clean. Same process for uncarpeted floors. <em>(NOTE: Window wells not covered)</em> <em>(Cleaning Verification not required if Dust Clearance Tests used)</em></td>
</tr>
<tr>
<td>Clearance levels</td>
<td>floors 40 µg/ft² window sills 250 µg/ft² window wells 400 µg/ft²</td>
<td>same as NYC regs, if Dust Clearance Tests performed</td>
</tr>
<tr>
<td>(subject)</td>
<td>New York City rules</td>
<td>federal RRP rules</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Provision of Dust</td>
<td>Must be provided to occupant, to City if HPD NOV or DHMH order, and to City if otherwise requested. (NOTE: Per NYC regs, Dust Clearance Test results from turnover work must be provided to new occupant “upon request,” but per federal disclosure regs results must be supplied)</td>
<td>If Dust Clearance Test performed, must be disclosed to occupant with lease or lease renewal (per disclosure regs, Subpart F)</td>
</tr>
<tr>
<td>Clearance Test results</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**RECORDS**

| Record keeping          | Landlord must maintain for 10 years, transfer to subsequent owners. Name, address, phone of entity or person who performed work, start and completion date, licenses and training certificates, description of work, invoices, dust test results, checklists. | Renovator must maintain for 3 years. Includes any certifications that Pb not present, records of pamphlet distribution, compliance with RRP. |

**ABBREVIATIONS**

- Admin.: NY City Administrative Code
- CFR: Code of Federal Regulations
- CR: Certified Renovator
- DHMH: NYC Department of Health and Mental Hygiene
- EPA: US Environmental Protection Agency
- ft²: square feet
- HEPA: High Efficiency Particulate Accumulator
- HPD: NYC Dep’t of Housing Preservation and Development
- HUD: US Dep’t of Housing and Urban Development
- NOV: Notice of Violation (from HPD)
- Pb: Lead
- RCNY: Rules of the City of New York
- TSCA: Toxic Substances and Control Act
- µg/ft²: micrograms per square foot
- USC: United States Code
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>i g/ft²</td>
<td>millionths of a gram (of lead) per square foot</td>
</tr>
<tr>
<td>i g/dL</td>
<td>micrograms (of lead) per deciliter (of blood)</td>
</tr>
<tr>
<td>AAS</td>
<td>Atomic Absorption Spectroscopy</td>
</tr>
<tr>
<td>Admin. Code</td>
<td>Administrative Code of the City of New York</td>
</tr>
<tr>
<td>ATSDR</td>
<td>Agency for Toxic Substances and Disease Registry</td>
</tr>
<tr>
<td>BLL</td>
<td>Blood Lead Level</td>
</tr>
<tr>
<td>CDC</td>
<td>Centers for Disease Control</td>
</tr>
<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>COTA</td>
<td>Commissioner’s Order to Abate</td>
</tr>
<tr>
<td>CPSC</td>
<td>federal Consumer Product Safety Commission</td>
</tr>
<tr>
<td>DHMH</td>
<td>NYC Department of Health and Mental Hygiene</td>
</tr>
<tr>
<td>EPA</td>
<td>Environmental Protection Agency</td>
</tr>
<tr>
<td>F.R</td>
<td>Federal Register</td>
</tr>
<tr>
<td>HEPA</td>
<td>High Efficiency Particulate Accumulator (vacuum)</td>
</tr>
<tr>
<td>HPD</td>
<td>New York City Department of Housing Preservation and Development</td>
</tr>
<tr>
<td>HUD</td>
<td>Department of Housing and Urban Development</td>
</tr>
<tr>
<td>LPPPA</td>
<td>federal Lead Paint Poisoning Prevention Act</td>
</tr>
<tr>
<td>mg/cm²</td>
<td>milligrams (of lead) per square centimeter</td>
</tr>
<tr>
<td>MMWR</td>
<td>Morbidity and Mortality Weekly Report (published by CDC)</td>
</tr>
<tr>
<td>NIOSH</td>
<td>National Institute for Occupational Safety and Health</td>
</tr>
<tr>
<td>NoV</td>
<td>Notice of Violation</td>
</tr>
<tr>
<td>NYCHA</td>
<td>New York City Housing Authority</td>
</tr>
<tr>
<td>NYCRR</td>
<td>New York Code of Rules and Regulations</td>
</tr>
<tr>
<td>Pb</td>
<td>Lead</td>
</tr>
<tr>
<td>PHL</td>
<td>New York Public Health Law</td>
</tr>
<tr>
<td>RCNY</td>
<td>Rules of the City of New York</td>
</tr>
<tr>
<td>RLBPHRA</td>
<td>federal Residential Lead-Based Paint Hazard Reduction Act</td>
</tr>
<tr>
<td>TSCA</td>
<td>federal Toxic Substances Control Act</td>
</tr>
<tr>
<td>USC</td>
<td>United States Code</td>
</tr>
<tr>
<td>XRF</td>
<td>X-Ray Fluorescence</td>
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</table>