



THE CITY OF NEW YORK

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Michael R. Bloomberg
Mayor

Thomas R. Frieden, M.D., M.P.H.
Commissioner

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July 22, 2004

I hereby find, pursuant to section 1043 (e)(1)(c) of the New York City Charter, that there is a substantial need for the immediate implementation of amendments to Articles 45, 47 and 173 of the New York City Health Code ("amendments") adopted by the Board of Health (the "Board") harmonizing such provisions with Local Law 1 of 2004 ("New York City Childhood Lead Poisoning Prevention Act of 2003", hereinafter "LL 1") and with the rules of the New York City Department of Housing Preservation and Development ("HPD"), amending Chapter 11 of Title 28 of the Rules of the City of New York concerning lead-based paint, to enable such amendments to take effect on August 2, 2004, the day LL 1 and HPD's rules take effect.

The implementation of the amendments before the expiration of the thirty-day post-publication period required by Charter section 1043 (e)(1)(c) is necessary to avoid inconsistencies between the Health Code and LL 1 and the HPD rules for any period of time. Adoption of these amendments has required (a) an initial meeting of the Board on May 19, 2004 to approve the publication of the amendments in the City Register; (b) a public hearing held thirty days after the publication of the amendments; and (c) a second meeting of the Board to consider and adopt the amendments. The notice of intention to amend the Health Code was published in the City Record on May 21, 2004 and a public hearing held on June 23, 2004. The Board met to consider the public comments and adopted the final amendments on July 22, 2004. Adherence to the thirty-day post-publication requirements set forth in section 1043 of the Charter would mean that these amendments would not take effect until some time in late August, after HPD's rules are in effect.

Local Law 1 and HPD's rules contain extensive and complex provisions for lead-based paint remediation in multiple dwellings occupied by children under seven years of age, and in day care services caring for children under six years of age. Local Law 1 requires that the work practices in HPD's rules 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. ..." See, Administrative Code §27-2056.11 (a)(1). HPD's rules were published in the City Record July 2, 2004, and will take effect on August 2, 2004. Simultaneous implementation of the amendments to the Health Code, the HPD rules and Local Law 1 on the same day will help avoid potential public and regulatory confusion.

Thomas R. Frieden, M.D., M.P.H.
Commissioner
Department of Health and Mental Hygiene

Approved by:
Michael R. Bloomberg
MAYOR

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH

NOTICE OF ADOPTION OF AMENDMENTS TO §§45.12, 47.44 AND 173.13;
REPEAL AND RE-ENACTMENT OF §173.14; AND REPEAL OF §173.15
OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of said Charter, a notice of public hearing and notice of intention to amend §§45.12, 47.44 and 173.13; repeal and re-enact §173.14; and repeal §173.15 of the New York City Health Code (the “Health Code”) were printed in the City Record on May 21, 2004. A public hearing was held on June 23, 2004. Comments were received from 21 individuals and/or organizations. Several changes have been made in the amendments, in response to comments, for the purpose of clarification, and to further harmonize the Health Code provisions with the final rules of the City’s Department of Housing Preservation and Development which were published in the City Record on July 2, 2004. At a meeting on July 22, 2004, the Board of Health adopted the resolution with the changes noted.

STATUTORY AUTHORITY

These amendments to the Health Code are promulgated pursuant to §§558 and 1043 of the Charter and Local Law 1 of 2004. Sections 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department’s authority extends. Section 1043 grants the Department rule-making authority. Local Law 1 of 2004 provides that the Department shall promulgate rules to implement certain provisions of such law on or before August 2, 2004.

STATEMENT OF BASIS AND PURPOSE

Introduction

The Board of Health has amended various provisions of the Health Code to harmonize current provisions of the Health Code, applicable to public and private lead poisoning prevention activities and safe lead-based paint work practices in child-occupied dwelling units and children’s group day care and public kindergarten programs, with Local Law 1 of 2004 (Local Law 1) and current regulations of the U.S. Environmental Protection Agency (“EPA”).

Over the past 30 years there has been a dramatic decline in childhood lead poisoning; however, childhood lead poisoning remains a significant public health concern. Elevated blood lead levels have been associated with intelligence deficiencies, reading and learning disabilities, reduced attention span, hyperactivity and behavior problems. The ingestion of household dust containing lead from deteriorating or abraded lead-based paint is believed to be a primary factor in lead poisoning occurring in children under six years of age.

In 1960, the Board of Health amended the Health Code to ban the use of lead-based paint on residential interior surfaces. In 1970, the Health Code was further amended to provide that the Department investigate a child’s home for possible environmental lead hazards when there is a

report of a child with an environmental intervention blood lead level (“EIBLL”). Local Law 1 of 1982, the City’s first lead poisoning prevention law, amended the Housing Maintenance Code (Title 27 of the Administrative Code of the City of New York) to require owners to correct lead-based paint hazards in dwelling units in multiple dwellings where children under seven years of age resided, but was never fully implemented. Its provisions were interpreted as requiring abatement of all lead-based paint, not just deteriorating lead-based paint, despite the nearly universal consensus that requiring abatement of intact lead-based paint could result in increasing children’s risk of lead poisoning. In 1999, after many years of litigation relating to implementation of Local 1 of 1982, the City Council enacted Local Law 38, repealing Local Law 1, to create a more pragmatic and workable approach to housing maintenance than was possible under Local Law 1 of 1982. However, on July 1, 2003, New York’s highest court invalidated Local Law 38 on the grounds of inadequate review under the State and City environmental quality review laws and on February 5, 2004, the City Council, overriding the Mayor’s veto, enacted Local Law 1 of 2004, repealing Local Law 1 of 1982 and Local Law 38 of 1999.

In 1992 the U.S. Congress enacted Title X - the Residential Lead-Based Paint Hazard Reduction Act (Title X), to develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in federally assisted housing. Throughout the 1990’s, federal agencies sponsored studies and assessments to help determine how to best prevent lead poisoning in young children. The U.S. Department of Housing and Urban Development (“HUD”) initially published guidelines for lead hazard assessment and remediation in 1995. Comprehensive HUD regulations did not become effective, however, until September 15, 2000, and are applicable to lead remediation in federally subsidized housing. It was not until March 1, 1999 that EPA’s regulations for “abatement” of lead-based paint by certified workers and firms became effective in New York State.

Since 1993, Health Code §173.14 has specified procedures and methods for correcting lead-based paint hazards when ordered or directed by the Department, or, in some cases, when correcting violations placed by the City’s Department of Housing Preservation and Development (HPD) pursuant to Title 27 of the Administrative Code of the City of New York (hereinafter “Administrative Code” or “Housing Maintenance Code”). Section 173.14 has been amended periodically by the Board to reflect prevailing safety standards and legal requirements. Methods and work practices for lead based paint abatement are specified in the Health Code and generally prohibited any person from performing an “abatement” if the person had not complied with applicable laws requiring training, licensing, certification, or other authorization. However, as noted, it is only since March 1, 1999 that EPA regulations have specified training, certification and work rules for firms and personnel performing various lead-based paint activities. See, e.g., EPA regulations at Title 40 Code of Federal Regulations Part 745 (“40 CFR 745”).

EPA’s rules now govern procedures and requirements for the certification of individuals and firms engaged in certain lead-based paint activities state-wide, and work practice standards for performing the activities defined in EPA’s rules. These rules require certain changes in the Health Code. For example, EPA’s rules define “abatement” as any measure or set of measures designed to permanently eliminate lead-based paint hazards, and any firm or individual

performing abatement as defined by EPA must be EPA-trained and certified. EPA's definition of abatement excludes activities that are not designed to permanently correct lead-based paint hazards, such as renovation, remodeling, or repair activities that may incidentally result in a reduction or elimination of lead-based paint hazards or disturbing lead-based paint. Furthermore, EPA's certification requirements do not apply to interim controls or other operations and maintenance activities designed to temporarily, but not permanently, reduce lead-based paint hazards. EPA also does not regulate individuals or firms engaged in non-abatement activities.

Local Law 1 of 2004 requires owners of older multiple dwellings in which a child under seven resides to identify and remediate lead-based paint hazards. There is also a broad requirement for remediation of lead-based paint hazards whenever a tenant vacates a rental unit. Local Law 1 defines remediation as the "reduction or elimination of a lead-based paint hazard by wet scraping and repainting, removal, encapsulation, enclosure, or replacement ... or other method approved by the commissioner of health and mental hygiene." Local Law 1 does not specify a preferred method to be utilized in remediation. Although the method of remediation is optional, Local Law 1 requires lead dust clearance testing after correction of HPD violations and after voluntary repairs by owners which disturb two or more square feet of lead-based paint per room in housing subject to the law. Local Law 1 also specifies minimum training and certification requirements for individuals and firms engaged in remediation and conducting final lead dust clearance testing.

Local Law 1 also provides that the work practices in HPD rules "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. ..." See, e.g., Administrative Code §27-2056.11 (a)(1). This and other requirements in Local Law 1 have resulted in parallel, nearly identical, work practices rules in both the amended Health Code and HPD rules.

There are differences between HPD's final rules and the Health Code, particularly pertaining to the use of wet scraping and repainting. This method was considered an "exclusive interim control" in Local Law 38, but is only one of several methods of remediation in the new Local Law 1 and in the proposed amended Health Code. While the amended Health Code no longer allows this as a method of "abatement" its limited use will be allowed in certain circumstances. Although EPA rules do not define wet scraping and repainting as a method of abatement, this method of lead-based paint hazard reduction will continue to be an acceptable way to correct violations, both pursuant to HPD rules and when ordered by the Department in certain circumstances. In the Notice of Intention to amend published for public comment, the Department initially proposed that wherever the term "abatement" appears in the current Health Code with respect to lead-based paint and lead hazards, the term "remediation," a broader and more inclusive term, be used. In response to comments received objecting to this change in all cases, the final resolution retains the term "abatement" in §173.13 (d)(2) with respect to children with environmental intervention blood lead levels. The work practices governing remediation of lead-based paint hazards incorporate the provisions of Local Law 1, EPA rules applicable to "abatement" and nearly all the current provisions of existing Health Code §173.14 are reorganized according to the magnitude and permanence of the remediation work. Local Law 1 adds a new Chapter 9 ("Lead-Based Paint in Day Care Facilities") to Title 17 of the

Administrative Code, imposing some additional requirements for lead-based paint hazard remediation and inspections on group day care operators and the owners of the buildings in which day care is located, which will need to be have been harmonized with existing provisions in Article 47 of the Health Code. Although Local Law 1 imposes no new requirements for remediation of lead-based paint hazards in Department of Education-operated kindergartens, the Department has imposed in the past, and proposes that the Board continue to impose, the same requirements for preventing exposure of children under six in public kindergartens to lead-based paint hazards as may be applicable to day care, pre-kindergarten classes and non-public kindergartens. See, e.g., Health Code §§45.12 and 47.44.

The Health Code is being amended as follows:

Amend Health Code §173.13 (“Lead Paint”)

1. Amend Health Code §173.13 (a) by adding a provision to enhance enforcement of the prohibition in both Health Code §173.14 and Local Law 1 of dry sanding and scraping. This provision requires places of business selling paint or paint removal products to post a warning sign alerting consumers to the prohibition of this method in dwellings, day care centers and schools. This section is being further amended to authorize enforcement by the City’s Department of Consumer Affairs, which currently inspects hardware and paint suppliers in the City to enforce laws restricting sales of box cutters and spray paints.

2. Amend Health Code §173.13 (d) (1) to better reflect national recognition, federal guidelines, and the Department’s experience in identifying and ordering remediation of lead hazards in housing, other buildings, and the areas surrounding such structures, in which children may reside or spend time, but which are not subject to the lead poisoning prevention provisions of the Housing Maintenance Code. Such premises include owner-occupied cooperative, condominium and one- and two-family homes, and commercial buildings in which children’s institutions and programs are located, or to which children at risk may have access. While the Department has exercised its general nuisance abatement authority (see, e.g., Health Code §3.11), in ordering the abatement of lead hazards on building exteriors, from fire escapes or yard soil and even at a museum exhibition of soft lead tiles, Health Code §173.13 (d)(1) is being amended to include a provision authorizing the Department to order the remediation of any leaded substances it finds which may present a hazard to children.

3. Amend §173.13 (d)(1) to authorize the Department to order remediation of lead-contaminated dust in a dwelling unit where the source of the lead-contaminated dust is not a condition of the dwelling in which the unit is located.

4. Amend §173.13 (d)(2) to change the mandatory environmental intervention action level for a lead poisoned child from a single 20 mcg/dL or greater blood lead level to a single 15 mcg/dL or greater. Local Law 1 amends Title 17 of the Administrative Code to provide for this intervention level.

5. Add a provision to §173.13 concerning the disposition of objections to Department orders to remediate lead hazards. From 1970 to 1997, the Department used X-ray fluorescent analysis

(XRF) equipment for sampling lead-based paint. The particular model of the machine used became outdated in the early 1990's, because it was not able to adjust for composition of the substrate of building components in calculating the value of lead on surface paint. Because of these equipment limitations, the Department's orders to abate nuisance were subject to routine challenge by owners submitting contrary results of laboratory analysis of paint chip samples. The process of removing paint chips further damaged deteriorated lead painted surfaces and contestations delayed the correction of confirmed lead-based paint hazards in dwellings where children with an EIBLL resided. In 1997, the Department purchased XRF equipment that self-adjusts for substrate composition. At the same time, a new Health Code definition of lead-based paint was adopted which incorporated federal definitions and the availability of federal calibration standards for XRF equipment. This has resulted in the Department generally rejecting the challenges of owners who simply submitted results that differed from the Department's. This Department practice was challenged in two suits, but upheld by the courts. See, e.g., *601 Realty Corp. v. City of New York Department of Health*, 269 AD2d 268, 703 NY2d 458 (AD 1st Dept. 2000). Processing such contestations unacceptably delays remediation of surfaces in the home of a lead poisoned child and promotes the taking of paint chips from deteriorating surfaces, further endangering such children. Currently, objections to Department orders are considered only if the objector presents evidence that the Department's XRF equipment is not functioning or was not calibrated properly, not merely because the owner's XRF or laboratory sampling results are different than the Department's. Two comments objecting to this amendment were received, but for the reasons already stated, no change has been made in the resolution.

Repeal and re-enact Health Code §173.14

1. Add definitions to Health Code §173.14(b). Define "abatement" as a set of measures specifically designed to permanently correct lead-based paint hazards, consistent with the federal definitions [24 CFR 35.110 (1999) and 40 CFR 745.223 (1997)]; "remediation" as the reduction or elimination of a lead-based paint hazard (Local Law 1, Administrative Code §27-2056.2); and "disturbance" as any action taken which breaks down, alters or changes lead-based paint (15 RCNY Chapter 1). Other applicable definitions of terms in the rules generally adopt the same definitions in Local Law 1 or in EPA rules.

2. Add provisions to Health Code §173.14(c), tracking Local Law 1 and EPA rules, differentiating training and credentialing requirements for abatement, other remediation of lead-based paint hazards, and disturbance of lead-based paint in the course of conducting other non-ordered repair and maintenance activities.

3. Amend the administrative requirements of Health Code §173.14 (c)

(i) Notification of commencement of work requirements. Local Law 1 [§27-2056.11(a)(2)(ii) of the Administrative Code] requires building owners or their representatives to notify the Department prior to performing work that will disturb greater than 100 square feet of paint per room or involve removing two or more windows. Comments received from owner and housing rehabilitation organizations indicated that such requirements would be excessively bureaucratic and burdensome and served no useful purpose. Comments supporting the notice

requirement stated that the notice requirement was not “unreasonable.” No change has been made in the resolution.

(ii) Recordkeeping. Currently, Health Code §173.14 (c)(3) requires building owners to maintain records for seven years; Local Law 1 [§27-2056.17 of the Administrative Code] requires building owners to maintain records for ten years.

4. Amend training and certification requirements in Health Code §173.14 (c)(2) to harmonize EPA, Local Law 1 and Department remediation requirements. EPA regulations (40 CFR Part 745, Subpart L) specify that firms, inspectors, risk assessors, supervisors, project designers and workers performing abatements be EPA certified. Local Law 1 specifies that only the *firms* engaged to perform work to remediate HPD violations, or non-violation work that disturbs greater than 100 square feet of paint per room or which involves the removal of two or more windows must be certified to perform lead abatements in accordance with 40 CFR Part 745, Subpart L. See, §27-2056.11(a)(2)(ii) of the Administrative Code. The amended Health Code requires that all *abatement* activities be performed only by firms and personnel who are EPA certified, but that only the firms require EPA-certification to conduct other lead-based paint remediation activities regulated by Local Law 1 or the Health Code, and that their workers be HUD trained. However, all work ordered by the Department pursuant to Health Code §173.13(d)(2) to correct interior lead-based paint hazards where there is a child with an environmental intervention blood lead level will be termed “abatements” and will require use of EPA-certified workers.

5. Workers performing work other than abatement. Local Law 1 specifies that persons performing work that disturbs from two to 100 square feet of paint per room or does not involve the removal of two or more windows must have successfully completed a course on lead safe work practices offered or approved by HUD or the Department. See, §27-2056.11 (a)(2)(i) of the Administrative Code. HUD regulations specify training requirements for persons performing interim control work (including remediation by the method of wet scraping and repainting) as defined in federal regulations. See, 24 CFR §35.1330 (a)(4). The amended Health Code requires workers performing such remediation pursuant to Local Law 1 [see, §27-2056.11 (a)(2)(i) of the Administrative Code] to be trained in accordance with these HUD regulations. Local Law 1 exempts from its worker training requirements any worker performing work that disturbs lead-based paint surfaces consisting 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 in a multiple dwelling unit or day care facility. See, §§27-2056.11 (a)(2)(iii) and 17-912 of the Administrative Code.

6. The Department is conducting an ongoing public health education campaign to increase awareness of potential lead hazards to young children from exposure to leaded dust and debris resulting from even minimal home repairs and maintenance, and the Health Code requires that signs be posted at places where paints are sold and paint scrapers are sold or rented warning that dry scraping of lead-based paint is prohibited in the City in any building where children reside. The Health Code, Local Law 38, HPD rules and Local Law 1 contain provisions prohibiting dry scraping and sanding as a method of removal of lead-based paint, but the signage requirement is new and not mandated by any law. To enhance enforcement of this provision, Health Code

§173.13(a) has been further amended to authorize enforcement by the City's Department of Consumer Affairs which already inspects hardware and paint stores to enforce laws restricting sales of box cutters and spray paints.

7. Workers remediating lead-based paint hazards violations pursuant to Department orders (other than when ordered to permanently abate lead-based paint), issued pursuant to Health Code §§45.12, 47.44 and 173.13(d)(1), HPD orders or violations issued under §27-2056.11 (a)(1) of the Administrative Code, or where any work disturbs greater than 100 square feet of paint per room or involves the removal of two or more windows pursuant to §27-2056.11 (a)(2)(ii) of the Administrative Code, will be required to be minimally trained in accordance with HUD regulations. See, 24 CFR §35.1330 (a).

8. Add requirements in Health Code §173.14 (c)(2)(bb) for qualifications of persons performing lead-contaminated clearance dust tests after the completion of non-abatement work that disturbs lead-based paint. Local Law 1 requires lead-contaminated dust clearance testing at the completion of all work performed in compliance with Department orders; to correct HPD violations pursuant to §27-2056.11 (a)(1) of the Administrative Code; that disturbs areas consisting of (a) two or more 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, pursuant to §27-2056.11 (a)(2)(i) and (ii) of the Administrative Code; on turnover, pursuant to §27-2056.8 of the Administrative Code; and in day care facilities, pursuant to § 17-912 of the Administrative Code. Health Code §45.12 requires that lead-based paint work performed in kindergartens operated by the City Department of Education must be performed in accordance with Health Code §173.14, and dust wipe tests by similarly trained personnel will also be required after the completion of such work in these facilities.

9. As repealed and re-enacted, Health Code §173.14 (e)(1)(I)(iii) specifies that no person shall perform a lead-contaminated dust clearance test unless such person is a third-party, who is independent of the owner and firm that performs the work. Section 27-2056.11 (b) of the Administrative Code also specifies that no person shall perform a lead-contaminated dust clearance test unless such person has successfully completed a course approved or administered by the Department, EPA or HUD. HUD regulations specify training requirements and courses for persons performing clearance dust testing following work other than abatement. Health Code §173.14(c)(2)(A) requires all persons performing any abatement work, including dust test sampling, to be EPA certified. Health Code §173.14(c)(2)(B) specifies training of persons performing work disturbing lead-based paint, or paint of unknown lead content, in Department of Education kindergartens and work conducted in compliance with orders issued by the Department to remediate lead-based paint hazards, when such work would not be considered an "abatement." See, HUD regulations 24 CFR 35.1340 (b)(1). Although one comment requested that the requirement for dust testing to be conducted by an independent third party be deleted as economically burdensome, the Department does not believe that such a change would benefit the public health.

10. Revise work methods and occupant protection standards in Health Code §173.14 (d) and (e). Local Law 1 specifies that the rules for an owner correcting HPD violations, or doing any work that disturbs more than 100 square feet of lead-based paint per room without a violation, shall be

no less stringent than those utilized in complying with an order issued pursuant to Health Code §173.13. The Health Code amendments accordingly specify work methods and occupant protection practices in buildings constructed before January 1, 1960, where children under 7 reside, for various types of lead-based paint activities. Required preparation of the work area is categorized in subdivision (e) as follows: (1) work to remediate lead-based paint hazards pursuant to a Department order, an HPD violation or non-ordered work that disturbs over 100 square feet of lead-based paint per room; (2) work performed that disturbs small or moderate amounts, i.e., two to 100 square feet per room, of lead-based paint, and the same amounts of non-ordered work performed in a day care facility or a Department of Education kindergarten; and (3) work performed in a dwelling unit upon turnover.

11. Remediation work to comply with a Department order or correct an HPD violation, or non-ordered work that disturbs more than 100 square feet of lead-painted surfaces per room, shall require that floors be cleaned before commencing work. In conducting work that disturbs lead-based paint in accordance with §17-911 (day care services), §27-2056.11(a)(2)(i) of the Administrative Code, or §45.12 (kindergartens) of the Health Code additional requirements would include using multiple layers of plastic or equivalent sheeting as needed to prevent dust from contaminating the floor; and, where applicable, turning off forced air systems in the work area and sealing off any vent openings in the work area with polyethylene.

12. Work to remediate lead-based paint hazards on turnover would require preparation of the work area using the procedures described above. However, since the dwelling unit will not be occupied while work is in progress, clean-up procedures are only specified at completion of all work, followed by lead-contaminated clearance dust testing.

13. In response to public comments, additional provisions have been added to §173.14 (d) and (e), reflecting HPD's final rules, to clarify under what conditions occupants of units undergoing work that disturbs lead-based paint must be relocated; and under what conditions occupants who do not relocate may have temporary access to work areas which have been adequately cleaned, but have not been cleared for "permanent re-occupancy" because work has not been completed, or where work has been completed and lead-contaminated dust test results have not been received.

Additional changes in subdivisions (d) and (e) have been made, deleting as unnecessary a provision which required a one hour delay after final cleaning before collecting lead-contaminated dust clearance test samples, and clarifying that only objects in the work area required pre-work cleaning, and that only doors and cabinets covered with lead-based paint or paint of unknown lead content require re-hanging or other treatment to avoid binding.

Subdivision (h) of §173.14 has been further amended to add that the Commissioner or designee may also issue modifications of the application of provisions in §173.13, when compliance with orders issued pursuant to such provisions present practical difficulties or unusual hardships. Articles 45 and 47 already contain a similar provision and do not require further amendment.

To facilitate use of this complex section, a new table of contents has been added to §173.14.

Repeal §173.15 (“Unsafe lead based paint work practices”)

This section authorized the Department to respond to complaints of unsafe lead-based paint work practices, and its substantive provisions have been incorporated within §173.14 of the Health Code. The provision was originally adopted to implement Local Law 38 of 1999, and was modeled on the procedures in the repealed Health Code §173.14 (c)(1)(cc). Local Law 1 of 2004 includes such a provision in a new §17-185 of the Administrative Code, mandating that the Department respond to such complaints. It may be found in subdivision (f) of the Health Code §173.14, as re-enacted.

Amend §§47.44 and 45.12

Amend §47.44 (“Lead Based Paint Restricted”) of Article 47 (“Day Care Services”) to harmonize Health Code provisions for remediation of lead-based paint hazards in day care services with new provisions added to Title 17 of the Administrative Code (Chapter 9: “Lead-Based Paint in Day Care Facilities”) and amend §45.12 (“Lead Based Paint Restricted: Kindergartens”) to track §47.44. The amendments to §47.44 include a new declaration of nuisance, modeled on that in §173.14, which will enable the City to recover its costs in remediating lead-based paint hazards in day care services whenever the Department determines that the operator of the day care service or the owner of the building in which the service is located who was ordered to remediate lead hazards has failed to substantially comply with such order. The resolution as adopted contains a new provision, similar to the provision in HPD’s rules, establishing a procedure for owners or operators of day care services to present evidence opposing Department orders to remediate peeling paint of unknown lead content, by demonstrating that such paint does not contain lead. Each of these sections has also been further amended by adding provisions referencing the definitions in §173.14 of the Code.

STATEMENT PURSUANT TO SECTION 1042 – REGULATORY AGENDA

This proposal was not included in the Department’s Regulatory Agenda because it was made necessary by the enactment of Local Law 1 of 2004 on February 5, 2004.

The proposal is as follows:

Note-matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that §45.12 of the New York City Health Code, as added by resolution on the second of October, nineteen hundred ninety-five, be, and hereby is, amended, to be printed together with explanatory notes, as follows:

§45.12 [Lead Based] Lead-Based Paint Restricted: Kindergartens. (a) This section shall apply to a kindergarten conducted as part of an elementary school by the [Board] Department of Education.

(b) Peeling lead-based paint prohibited.

(i) There shall be no peeling [lead based] lead-based paint or peeling paint of unknown lead content on any surface in a kindergarten.

(ii) Peeling [lead based] lead-based paint or peeling paint of unknown lead content shall be immediately abated or remediated upon discovery, [with such covering, materials and by such methods as may be authorized by] in accordance with §173.14 of this Code, [or as otherwise directed by the Department]

(iii) Children shall not be present and shall not have access to any room or area undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

(iv) The work practices of §173.14 of this Code shall not apply to repair and maintenance work which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) 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.

[(c) Effective January 1, 1997, interior window sills and window wells accessible to children, window friction surfaces, and other surfaces in kindergartens as may be determined by the Department, containing or covered with lead based paint or paint of unknown lead content shall be abated with such covering, materials and by such methods as may be authorized by §173.14 of this Code or as otherwise directed by the Department. Children shall not be present and shall not have access to any room undergoing abatement until completion of final clean-up. Abatement and clean-up shall be conducted in a manner consistent with §173.14 of this Code and as may further be directed by the Department.

(d) For purposes of this section “window well” shall mean the horizontal structure of the window frame that receives the window sash or the trough in which the lower part of the window fits or rests. The terms “peeling” “lead based paint,” “abatement,” and “friction surface” shall have the meanings as set forth in §173.14 of this Code.

(e) (c) Painted equipment must have lead-free paint.

(d) Annual survey. Each year the Department of Education shall conduct a survey of the condition of surfaces in kindergarten classrooms, where the surfaces of such classrooms or other areas used by children under six years of age are covered with lead-based paint or paint of

unknown lead content. Survey results shall be recorded on a form provided by or satisfactory to the Department, and copies of survey results shall be provided to the Department upon request.

(e) Definitions. All terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.

Notes:

Section 45.12 was amended by resolution adopted on July 22, 2004, effective August 2, 2004, to harmonize its provisions with the lead-based paint hazard remediation provisions applicable to children under six years of age in Local Law 1 of 2004 and in Health Code §47.44. Subdivision (a) was amended to indicate that these provisions are applicable to kindergartens in elementary schools operated by the City's Department of Education. Subdivision (b) was amended, by renumbering its provisions in separate paragraphs. Former subdivisions (c) and (d) have been repealed, and a new subdivision (e) indicates that terms used in the section have the same meaning as terms in §173.14 of this Code. Former subdivision (e) has been relettered as subdivision (c), and a new subdivision (d) requires an annual survey of surfaces covered with lead-based paint and paint of unknown lead content which are peeling in kindergartens in public elementary schools for children under six years of age similar to the survey to be conducted in day care services. See, Health Code §47.44.

RESOLVED, that section 47.44 of the New York City Health Code, as adopted by resolution on the twenty-second day of March nineteen hundred and ninety-six be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

§47.44 [Lead Based] Lead-Based Paint Restricted [(a) For purposes of this section “window well” shall mean the horizontal structure of the window frame that receives the window sash or the trough in which the lower part of the window fits or rests. The terms “peeling,” “lead based paint,” “abatement,” and “friction surface” shall have the meanings as set forth in Section 173.14 of this Code.]

(a) Peeling lead-based paint prohibited.

[b] (1) There shall be no peeling [lead based] lead-based paint or peeling paint of unknown lead content on any surface in a day care service.

(2) Peeling [lead based] lead-based paint and peeling paint of unknown lead content shall be immediately abated or remediated upon discovery by the day care service operator or the owner

of a building in which a day care service is located, regardless of whether there has been an inspection or order issued by the Department, [with such covering, materials and by such methods as may be authorized by] in accordance with §[Section] 173.14 of this Code, [or as otherwise directed by the Department.]

(3) When there has been an order to abate or remediate lead-based paint hazards issued by the Department, the day care service operator or owner of the building in which the service is located shall use only the methods specified in such order.

(4) The work practices of §173.14 of this Code shall not apply to repair and maintenance work in a day care service which disturbs surfaces of less than two (2) square feet of peeling lead-based paint per room or ten (10) 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.

(5) Children shall not be present and shall not have access to any room undergoing abatement, remediation or other work which disturbs lead-based paint or paint of unknown lead content until after completion of final clean-up and clearance dust testing.

(6) An operator of a day care service or the owner of a building in which a day care service is located, in which paint has not been tested by X-ray fluorescent (XRF) analysis by or on behalf of the Department for lead content, may object to an order issued to remediate peeling lead-based paint or peeling paint of unknown lead content, by submitting evidence satisfactory to the Department that the surface of any component cited in the order as requiring remediation does not contain lead-based paint, as follows:

(A) Such evidence shall consist of a sworn written statement by the person who performed the testing on behalf of the operator or owner 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; a copy of the certificate of training of the certified lead-based paint inspector or risk assessor; a copy of the inspection report of the inspector or risk assessor, including a description of the surfaces in each room where such testing or sampling was performed; and a copy of the results of XRF 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.

(B) Such written statement and all supporting documentation shall be submitted to the department not later than thirty (30) days before the date set for compliance with an order to

remediate, and shall only be submitted where the Department has not performed an XRF test prior to issuing such order. Receipt by the Department of a complete application in accordance with this paragraph including such written statement and such supporting documentation shall toll the time period to comply with the order. Receipt of an incomplete application shall not toll the time period for compliance with the order.

(C) The Department shall notify the applicant of its determination in writing, and, if the Department rejects the application, such notice shall set a date for compliance.

(D) The performance of lead-based paint testing shall be in accordance with the definition of lead-based paint established in § 173.14 of the Code. Laboratory analysis of 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 provision.

(E) Testing for lead-based paint may only be conducted 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.

[(c) Effective May 1, 1997, no] (b) *Day care services in operation prior to May 1, 1997.* No day care service permit shall be issued or renewed, and no day care service for which no permit is required shall operate, unless all interior window sills and window wells accessible to children, [and window] chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces, and such other surfaces in such day care service as may be determined by the Department, containing or covered with [lead based] lead-based paint or paint of unknown lead content shall have been abated [with such covering, materials and by such methods] or remediated in accordance with [as may be authorized by Section] §173.14 of this Code or as otherwise directed by the Department. [Children shall not be present and shall not have access to any room

undergoing abatement until completion of final clean-up. Abatement and clean-up shall be conducted in a manner consistent with Section 173.14 of this Code and as may further be directed by the Department.]

(c) Day care services commencing operation on or after May 1, 1997. [(d)] No day care service which [would receive] received its first permit or which, if no permit was or is required, [would commence] commenced operation after May 1, 1997 shall be issued a permit or [commence operation] operate where there is lead-based paint[, as defined in Section 173.14,] on any interior surface in such day care service.

(d) Painted equipment must have lead-free paint.

(e) Annual survey. Each year the operator of any day care service where any surfaces are covered with lead-based paint or paint of unknown origin shall conduct a survey of the condition of all such surfaces, note the results of the survey on a form provided by or satisfactory to the Department, and shall provide to the Department a copy of the results of such survey. Submission of such survey shall coincide with the permit issuance date, or anniversary thereof, for day care services required to hold a permit issued by the Department, and shall be submitted annually, prior to commencement of the school year, for services not required to hold a permit. Copies of such survey results may be submitted by mail, fax or electronically.

(f) Declaration pursuant to Administrative Code §17-145. The existence of a lead-based paint hazard in a day care service, or failure to comply with this section or §173.14 of this Code in correcting such hazard, 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 of this Code is hereby ordered to abate or remediate such nuisance by complying with any order or direction issued by the Department.

(g) Failure to comply with Department orders. In the event that the Department determines that the operator of a day care service or the owner of a building in which a day care service is located has failed to substantially comply with an order issued pursuant to this section within forty-five (45) days after service thereof, the Department shall, in accordance with §17-911(d) of the Administrative Code, request an agency of the City to execute such order pursuant to the provisions of §17-147 of the Administrative Code.

(h) 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.

Notes:

Section 47.44 was amended by resolution adopted on July 22, 2004, effective August 2, 2004, to harmonize Health Code restrictions on lead-based paint in day care services with provisions of Local Law 1 (the “New York City Childhood Lead Poisoning Prevention Act”) of 2004. Local Law 1 amended Title 17 of the Administrative Code by adding a new Chapter 9 (“Lead-Based Paint in Day Care Facilities”). Former subdivision (a)’s references to specific definitions related to lead remediation were repealed, and a new subdivision (h) added, indicating that the terms used in this section have the same definitions as §173.14 of this Code; former subdivision (b) was relettered as subdivision (a); and a new subdivision (e) was added to establish rules for submission of the annual survey results required by §17-913 of the Administrative Code. A new paragraph (2) was added to subdivision (b) establishing rules for rebutting the presumption in §17-910 of the Administrative Code. A declaration of nuisance pursuant to §17-145 of the Administrative Code was added in a new subdivision (f) to enable the City to follow the procedures authorized under Title 17 of the Administrative Code to recover the costs of remediating lead-based paint hazards, and a new subdivision (g) was added to indicate that when an owner or operator fails to substantially comply with an order of the Department the order will be referred to another City agency to abate or remediate such hazards pursuant to §17-911(d) of the Administrative Code. A new subdivision (h) indicates that terms used in the section have the same meaning as terms in §173.14 of this Code

RESOLVED, that the table of section headings of Article 173 of the New York City Health Code, as amended on the thirteenth day of December nineteen hundred ninety-nine be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

ARTICLE 173

Hazardous Substances

* * *

§173.13 Lead Paint

§173.14 Safety standards for [lead based] lead-based paint abatement and remediation, and work that disturbs lead-based paint

§173.15 [Unsafe lead based paint work practices] Repealed

* * *

Notes:

This article was further amended by resolution adopted on July 22, 2004, effective August 2, 2004, repealing and re-enacting §173.14, and repealing §173.15 (Unsafe lead based paint work practices) and including its substantive provisions in §173.14.

RESOLVED, that subdivision (a) of section 173.13 of the New York City Health Code, as amended by resolution adopted on the twenty-fourth day of September nineteen hundred and ninety-six be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

§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 16 Code of Federal Regulations (C.F.R.) Part 1303 or its successor regulations, containing more than 0.06 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 and renters of paint removal 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.

Notes:

Subdivision (a) was amended by resolution adopted July 22, 2004, effective August 2, 2004, by renumbering former subdivision (a) as paragraph (1). Paragraphs (2) and (3) require

notices in certain businesses and authorize agents and employees of the City's Department of Consumer Affairs to enforce the placement of such notices, with respect to the prohibition of dry sanding and scraping as a method of removal of lead-based paint in §17-181 of the Administrative Code.

RESOLVED, that subdivision (d) of section 173.13 of the New York City Health Code, as amended by resolution adopted on the twenty-fourth day of September nineteen hundred and ninety-six be, and the same hereby is amended, to be printed with explanatory notes, to read as follows:

(d) Orders for abatement or remediation.

(1) Generally. When the Department finds that there is [lead based] lead-based paint, [as defined in Section 173.14(b)(16),] 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. [, and the refinishing of such interior surfaces of the apartment, room or part of a room with a suitable finish which is not in violation of subsection (c) of this section, or the covering of such surfaces with such materials and by such methods as the Department may direct to protect the life and health of the occupants of such apartment or room.] The Department may also order the removal or covering of soil appurtenant to any dwelling 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] blood lead level of [20] fifteen (15) micrograms per deciliter or higher residing in any dwelling and further finds that the interior of such dwelling has [lead based] lead-based paint [as defined in Section 173.14(b)(16),] that is (a) peeling, (b) on a [window] friction, impact or chewable surface or (c) on any surface of the dwelling that, in the Department's determination, is a [lead] lead-based paint hazard because of its condition, location or accessibility to children, [it] the Department shall order the

abatement of any such condition in a manner and under such safety conditions as it may specify, [, and the refinishing of such interior surfaces of the apartment, room or part of a room with a suitable finish which is not in violation of subsection (c) of this section, or the covering of such surfaces with such materials and by such methods as the Department may direct to protect the life and health of the occupants of such apartment or room. When the above conditions exist and the blood lead-level of any child under 18 years of age residing in such dwelling is between 15 and 19 micrograms per deciliter, the Department, may, in such cases as it deems essential, order the same actions to be taken as above.]

(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 [such] an order issued pursuant to this subdivision fails to substantially comply therewith within five (5) days after service thereof, [in accordance with the provisions of §17-148 of the Administrative Code,] 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 [such] 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.

Notes:

Subdivisions (1) and (2) of section (d) were amended, a new subdivision (3) was adopted, and a portion of former subdivision (2) was renumbered as subdivision (4) by resolution adopted on July 22, 2004, effective August 2, 2004. The amendments to subdivision (2) incorporate a provision of Local Law 1 of 2004, which further reduces the Department’s “action level” or environmental intervention blood lead level to 15 micrograms per deciliter of blood. A provision

of former paragraph (2) of subdivision (d) which affords the Department discretion to issue orders to abate or remediate lead hazards when a child with a blood lead level of 15 to 19 micrograms resides in a dwelling unit has been repealed, since the Department already has that authority pursuant to subdivision (c) of this section. Paragraph (3) of subdivision (d), concerning Department review of challenges to Department orders to correct lead hazards, is new. It incorporates in the Health Code the Department's practice, reviewed in *601 Realty Corp. v. City of New York Department of Health*, 269 AD2d 268, 703 NYS2d 458 (AD 1 Dept. 2000) of providing owners with an opportunity to object to an order to abate a lead nuisance but declining to accept an owner's findings of allegedly lower values of lead in paint in contestation of the Department's findings where there is a child with an elevated blood lead level. *601 Realty* held that the Department was not being arbitrary and capricious or denying due process to owners who contest orders to abate lead nuisances. If the Department uses appropriate equipment and methodology to measure lead in paint at the home of a child with an elevated blood lead level it may properly rely on its own findings since it is attempting to be more protective of the health of such a child. A new paragraph (5) indicates that terms used in the section have the same meaning as terms in §173.14 of this Code.

RESOLVED, that section 173.14 of the New York City Health Code, as amended by resolution adopted on the sixth day of September two thousand and one, be, and the same hereby is, repealed and re-enacted, to be printed with explanatory notes, to read as follows:

§173.14 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 45.12 of this Code or 17-911 of the Administrative Code, or work ordered by HPD in accordance with §27-2056.11(a)(1) of the Administrative Code, or work performed pursuant to §27-2056.11(a)(2)(ii) of the Administrative Code

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(2) Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §§17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or §§45.12 or 47.44 of the Health Code

(A) Postings and warning sign

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(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 §§45.12 or 47.44 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 enclosure 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.

CFR 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 seven 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 seven 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 mouthed or chewed such edge or protrusion.

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 disturbs lead-based paint pursuant to this section.

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.

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 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 investigations and orders issued by the Commissioner pursuant to §173.13 of this Code, dwelling shall include exteriors, yards 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 multiple dwelling or private dwelling.

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 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.

Firm 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 745.226(f) 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 jambs, 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.

HPD 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 marking, 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 1.0 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 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. In the absence of a PCS for a specific XRF instrument or a particular function 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 subsurfaces, 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, 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.

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 wet 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 to be sanded or scraped is kept wet 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)(ii) 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 and telephone number 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 surface 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.

(2) 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.

(i) Other work to remediate lead-based paint hazards that is ordered by the Department or HPD, or work that disturbs large amounts of lead-based paint. All work ordered by the Department, or by the HPD 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 §§45.12 or 47.44 of this Code, or § 27-2056.11 (a)(2)(ii) of the Administrative Code, shall be performed by firms and trained workers meeting the following requirements:

(aa) Firm requirements. Firms conducting such work shall be certified to perform lead abatement by the EPA in accordance with subpart L of 40 CFR Part 745, or successor rule, for the abatement of lead hazards.

(bb) 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.

(cc) 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 performed in accordance with §17-911 or §27-2056.11(a)(2)(i) 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:

(aa) Worker requirements. Workers conducting such work shall be trained under regulations issued by HUD at 24 CFR 35.1330 (a)(4), or successor rule.

(bb) 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 § 27-2056.11(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 § 27-2056.8 of the

Administrative Code shall be trained in accordance with regulations issued by HUD at 24 CFR 35.1340 (b)(1), or successor rule

(3) Recordkeeping.

(A) 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 firms 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 §173.14 (e)(1)(J) and (e)(2)(F) when occupants are allowed temporary access to a work area.

(B) Time to maintain records. Such records shall be maintained by an 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 and occupant relocation.

(1) Minimizing dust dispersion.

(A) Work to remediate or that disturbs lead-based paint shall be conducted 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.

(B) Areas 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.

(2) Prohibited methods. The following methods shall not be used while performing work that disturbs lead-based paint in accordance with this section:

(A) Open flame burning or torching

(B) Machine sanding or grinding without HEPA local exhaust control

(C) Abrasive blasting or sandblasting without HEPA local exhaust control.

(D) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(E) Dry sanding or dry scraping

(F) 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.

(3) Work practices and surface finishing.

(A) Tools and materials. All tools and materials used when disturbing paint shall be used in accordance with the manufacturer's instructions. Wet sanding, wet scraping, removal, encapsulation, enclosure, replacement and other maintenance and repair activities shall be performed using standard construction and treatment methods.

(B) Seal surfaces. 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.

(C) 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.

(D) 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.

(E) 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.

(4)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 §2524.3(e). 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)(I)(i); occupants have safe access to areas adequate for sleeping, use of bathroom and kitchen facilities and safe access to entry-/egress pathways; and the work does not create other safety hazards, as specified herein.

(e) 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-

2056.11(a)(1) of the Administrative Code, or work performed pursuant to §27-2056.11 (a)(2)(ii) 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 (1) 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 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 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 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.

(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-movable 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 §173.14 (e)(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 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:

(aa) 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.

(bb) 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.

(cc) 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.

(dd) 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.

(ii) Final clean-up. Final cleaning shall be conducted as follows, in the following sequence:

(aa) 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.

(bb) 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.

(cc) 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.

(dd) 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.

(ee) 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.

(ff) 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 well, a window sill 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.

(iv) 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:

<u>Floors:</u>	<u>40 micrograms of lead per square foot.</u>
<u>Window Sills:</u>	<u>250 micrograms of lead per square foot.</u>
<u>Window Wells:</u>	<u>400 micrograms of lead per square foot.</u>

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)(I)(i),(ii) and (iii). 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.

(J) 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 work day:

(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)(I)(i) and the final clean-up requirements of §173.14 (e)(1)(I)(ii)(bb)through (dd) and (ff);

(ii)There are no safety hazards (including, but not limited to, exposed electric wiring or holes in 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-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 (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.

(2) Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §§17-911 and 27-2056.11(a)(2)(i) 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 (e) 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. Multiple layers of polyethylene sheeting shall be used as needed to prevent dust from contaminating the floor.

(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 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.

(G) Clean-up and lead-contaminated clearance dust testing. Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with §173.14(e)(1)(I) of this Code.

(H) 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 work day:

- (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)(I)(i) and the final clean-up requirements of §173.14 (e)(1)(I)(ii)(bb) through (dd) and (ff);
- (ii) There are no safety hazards (including, but not limited to, exposed electric 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-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 (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)(2)(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 work day 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)(1)(I) of this Code.

(f) *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 uncontained 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.

(g) *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 §173.13 of this Code is hereby ordered to abate or remediate such nuisance by complying with any order or direction issued by the Department.

(h) Modification by the Commissioner. When the strict application of any provision of this section or §173.13 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.

Notes:

Section 173.14 was repealed and re-enacted by resolution adopted on July 22, 2004, effective August 2, 2004, to harmonize lead-based paint hazard remediation safety standards with Local Law 1 of 2004 (the New York City Childhood Lead Poisoning Prevention Act of 2003) and the rules of the City's Department of Housing Preservation and Development. See, Article 14 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, and Chapter 11 of Title 28 of the Rules of the City of New York.

RESOLVED, that §173.15, adopted on the thirteenth of December nineteen hundred ninety-nine be, and the same hereby is, repealed.

Notes:

Section 173.15 was repealed by resolution adopted July 22, 2004, effective August 2, 2004. Its provisions for responding to complaints regarding unsafe lead-based paint work practices have been incorporated in §173.14 (f) of the Health Code.

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