

## ARTICLE 173

### HAZARDOUS SUBSTANCES

#### §173.01 Definitions.

When used in this article the following terms shall have the following meanings:

- (a) **Advertisement** means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase or use of a hazardous substance.
- (b) **Art material** means any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include substances subject to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or drugs, devices, or cosmetics subject to Article 71 of the Code.
- (c) **Combustible** means having a flashpoint at or above 100 degrees Fahrenheit (37.8 degrees Celsius) to and including 150 degrees Fahrenheit (65.6 degrees Celsius) as determined by the test method described at 16 C.F.R. §1500.43a or successor regulation.
- (d) **Corrosive** means capable of causing destruction of living tissue by chemical action when placed in contact with such tissue but shall not refer to action on inanimate surfaces.
- (e) **Electrical hazard** means an article that in normal use or when subjected to reasonably foreseeable damage or abuse may cause personal injury or illness by electric shock due to its design or manufacture.
- (f) **Extremely flammable** means that a substance has a flashpoint at or below 20 degrees Fahrenheit (-6.7 degrees Celsius) as determined by the test method described at 16 CFR § 1500.43a, or successor regulation.
- (g) **Flammable** means that a substance has a flashpoint above 20 degrees Fahrenheit (-6.7 degrees Celsius) and below 100 degrees Fahrenheit (37.8 degrees Celsius), as determined by the method described at 16 C.F.R. §1500.43a or successor regulation.
- (h) **Flashpoint** means the lowest temperature of a product at standard conditions at which the product's vapors will ignite momentarily when subjected to a flame. Flashpoint temperatures shall be determined pursuant to the procedures set forth in 16 C.F.R. §1500.43a or successor regulations.
- (i) **Hazardous substance** means:
  - (1) Any substance or mixture of substances that is combustible, corrosive, extremely flammable, flammable, highly toxic, an irritant, a strong sensitizer, toxic, or generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause or has caused substantial personal injury, including developmental delay or cognitive impairment, or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
  - (2) Any substance that the Federal Consumer Product Safety Commission determines is hazardous;
  - (3) Any radioactive substance if, with respect to such substance as used in a particular class of article or as packaged the Federal Consumer Product Safety Commission determines by regulation that the substance is sufficiently hazardous to require labeling to protect the public health;

- (4) Any toy or other article which the Federal Consumer Product Safety Commission or the Commissioner determines presents an electrical hazard, mechanical hazard, or thermal hazard; and
- (5) Any substance or product that contains a concentration or amount of lead that may cause or has caused substantial personal injury, including developmental delay or cognitive impairment, or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children. Such products include, but are not limited to:
- (A) Jewelry that is found to contain more than 100 parts per million of total lead content in accessible parts or a concentration of lead greater than 0.009 percent (90 parts per million) in paint or any similar surface coatings; and
- (B) Ceramic ware that is not suitable for use with foods because it leaches significant quantities of lead from potential food contact surfaces, as described by U.S. Food and Drug Administration Compliance Policy Guide Sections 545.450 and 545.500. The lead leaching limits for acceptable ceramic ware for use with foods is:

Product	Micrograms per milliliter limit
<b><i>Ceramic ware:</i></b>	
Flatware (average of 6 units)	3.0
Small hollowware other than cups and mugs (any 1 of 6 units)	2.0
Large hollowware other than pitchers (any 1 of 6 units)	1.0
Cups and mugs (any 1 of 6 units)	0.5
Pitchers (any 1 of 6 units)	0.5
<b><i>Silver-plated hollow ware:</i></b>	
Product intended for use by adults (average of 6 units)	7
Product intended for use by infants and children (any 1 of 6 units)	0.5

- (6) Hazardous substance shall not mean pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act or State Environmental Conservation Law; substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house; and source material, special nuclear material, or byproduct materials defined and regulated in applicable federal, state and local law.
- (j) **Highly toxic** means any substance which falls within the definition or description set forth in 16 CFR §1500.3 or successor regulation. If, pursuant to 16 CFR §1500.4 or successor regulation, available data on human experience with any substance indicates results different from those obtained on animals in the dosages and concentrations specified, human data shall take precedence.

- (k) **Human experience or data** shall mean a report or evidence of exposure of one or more persons to a hazardous substance resulting in an adverse effect.
- (l) **Irritant** means a substance that is not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.
- (m) **Label or labeling** means a display of written, printed, or graphic matter upon the immediate container of any hazardous substance or, in the cases of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto. A requirement of federal, State or local law that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (i) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (ii) on all accompanying literature where there are directions for use, written or otherwise.
- (n) **Mechanical hazard** means an article that in normal use or when subjected to reasonably foreseeable damage or abuse presents an unreasonable risk of personal injury or illness due to its design or manufacture:
  - (1) From fracture, fragmentation, or disassembly of the article;
  - (2) From propulsion of the article (or any part or accessory thereof);
  - (3) From points or other protrusions, surfaces, edges, openings, or closures;
  - (4) From moving parts;
  - (5) From lack or insufficiency of controls to reduce or stop motion;
  - (6) As a result of self-adhering characteristics of the article;
  - (7) Because the article (or any part or accessory thereof) may be aspirated or ingested;
  - (8) Because of instability; or
  - (9) Because of any other aspect of the article's design or manufacture.
- (o) **Strong sensitizer** means a substance that will cause a hypersensitivity-type reaction through an immunologically-mediated (allergic) response, including allergic photosensitivity, which offers a significant potential for causing injury and where the allergic reaction typically becomes evident upon reexposure to the same substance.
- (p) **Thermal hazard** means an article or thing that in normal use or when subjected to reasonably foreseeable damage or abuse, presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces due to its design or manufacture.
- (q) **Toxic** means a substance, other than a radioactive substance, that
  - (1) Has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface or any substance deemed to be toxic pursuant to the procedures as set forth in 16 C.F.R. §1500.3 or successor regulation;
  - (2) Is toxic (but not highly toxic) on the basis of human experience; or
  - (3) Presents a chronic hazard, if it is or contains a known or probable:
    - (A) Human carcinogen;
    - (B) Human neurotoxin; or
    - (C) Human developmental or reproductive toxicant.

**§173.03 Transfer of hazardous substances; use of food, drug and cosmetic containers.**

- (a) No person shall transfer a hazardous substance from one container to another without affixing to the new container the labeling required by this article.

- (b) No person shall use, possess, hold for sale, sell, give away or leave in any place a hazardous substance in a container which, whether or not previously used as a food, drug or cosmetic container, bears a food, drug or cosmetic label or imprint, or reuse a container which may be mistaken for a food, drug or cosmetic container because of its characteristic shape, impression or closure.

### **§173.05 Labeling.**

- (a) *Label required.* No person shall sell, hold for sale, transport, or give away a hazardous substance unless the labeling complies with this article. When a hazardous substance is labeled in compliance with applicable State or Federal law, this section shall not apply, except that if the Commissioner finds that the labeling of the substance is inadequate to protect the public health, the labeling of the substance shall, upon the order of the Commissioner and written notice to the manufacturer or distributor, contain such additional matter as may be required by this section.
- (b) *Label contents.* The label of a package or container of a hazardous substance shall bear the following information:
- (1) The name and place of business of the manufacturer, packer, distributor or seller;
  - (2) The common or usual name, or if there is no common or usual name, the chemical name, or if there is no common or usual name and if the chemical name is unknown or complex, the recognized nonprotected name (not trade name only) of the hazardous substance or of each component which contributes substantially to its hazard, unless the United States Consumer Product Safety Commission by regulation permits or requires the use of a recognized generic name;
  - (3) The signal word "Danger," "Warning" or "Caution" to indicate the degree of hazard. The signal word "Danger" shall be used for substances which are extremely flammable, corrosive, or highly toxic. The signal word "Warning" or "Caution" shall be used for all other hazardous substances;
  - (4) An affirmative statement of the principal hazard or hazards of the substance such as "Flammable," "Extremely Flammable," "Vapor Harmful," "Causes Burns," "Absorbed through Skin" or similar words descriptive of the hazard;
  - (5) Precautionary measures describing the action to be followed or avoided;
  - (6) Instructions for first-aid treatment, if available;
  - (7) Instructions for handling or storage on packages or containers requiring special care in handling or storage;
  - (8) Instructions for final disposal of containers on retail packages or containers requiring special care in disposal; and,
  - (9) The statement "Keep Out of the Reach of Children" or its practical equivalent on retail packages or containers offered for household use.
- (c) *Poisons.* In addition to the words, statements or other information required by subdivision (b) of this section, a hazardous substance shall bear on its label the word "Poison," a skull and crossbones symbol, directions to call a physician upon ingestion and, if available, an antidote, if such hazardous substance is highly toxic as defined in this Article.
- (d) *Art materials.* All art materials shall be labeled in a manner as required pursuant to the Federal Hazardous Substances Act, as amended, and related regulations.
- (e) *Other substances to be labeled.* When the Commissioner finds that any substance is dangerous or detrimental to the health and safety of the public, the Commissioner may require the substance to be labeled pursuant to subdivisions (b) or (c) of this section.

(e-1) *Ceramic ware not suitable for use with food.* All ceramic ware not suitable for use with foods must either:

(1) Bear two types of conspicuous warnings:

(A) A stick-on label on a surface clearly visible to consumers that states in legible font at least 3.2 mm (0.125 inches) in height one of the following messages:

(i) "Not for Food Use. May Poison Food,"

(ii) "Not for Food-Use. Glaze contains lead. Food Use May Result in Lead Poisoning," or

(iii) "Not for Food Use -Food Consumed from this Vessel [Plate] May be Harmful";

and

(B) A legible permanent statement of a message selected from the above paragraph molded or fired onto the exterior surface of the base or, when the ceramic ware is not fired after decoration, permanently painted legible font at least 3.2 mm (0.125 inches) in height onto the exterior surface of the base;

or

(2) Bear the label described above in subparagraph (A) of paragraph (1) of this subdivision and have a hole bored through any potential food-contact surface.

(f) *Strong sensitizers.* When the Department determines that a substance is a strong sensitizer, it may order the manufacturer, distributor or seller to label the substance pursuant to subdivision (b) of this section.

(g) *Experimental substances.* Subdivisions (b) and (c) of this section shall not apply to a substance still in the development stage when it is used solely for experimental purposes and when it is known that no specific hazard exists but the potential hazard is not identified, if it bears the following label or its practical equivalent: "Important! The properties of this substance have not been fully investigated and its handling or use may be hazardous. Exercise due care."

(h) *Wrapper labels.* The words, statements or other information required by this article to be borne on the label or labeling of a hazardous substance shall also appear on the outside container or wrapper, if any, of the retail package of the substance, unless the required word, statement or other information is easily legible through the outside container or wrapper, and on each place of the labeling of a hazardous substance where there are directions for use, whether written or otherwise.

(i) *Labeling to be conspicuous.* All words, statements or other information required on the label or labeling shall appear in a prominent place in the English language and in conspicuous and legible type which is contrasted by typography, layout or color from other printed matter on the label, container or wrapper. If the label or labeling contains any representation in a foreign language, all words, statements or other information required to appear on the label, container or wrapper shall also appear thereon in the foreign language.

#### **§173.07 False or misleading advertising or labeling.**

(a) No manufacturer, packer, distributor or seller of a hazardous substance shall disseminate or cause to be disseminated an advertisement concerning such hazardous substance that is false or misleading in regard to its safety or use.

(b) No person shall sell or hold for sale any hazardous substance the labeling of which is false or misleading in regard to its safety of use.

- (c) In determining whether the labeling of, or an advertisement concerning, a hazardous substance is false or misleading, the Department shall consider the representations made or suggested by the label's statement, word, picture, design or emblem and the extent to which the labeling or advertisement fails to reveal material facts about the substance.

### **§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 0.009 percent of metallic lead, based upon the total non-volatile content of the paint or other similar surface-coating material.
- (2) *Notice that dry sanding and scraping are prohibited.* Any place where paint and paint removal products are sold, or where sanding equipment is sold or rented for use in the City of New York, shall prominently post, or otherwise distribute to purchasers 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.
- (b) No person shall manufacture, sell, hold for sale, give away or leave toys, children's furniture or any other articles or things intended for use by children which have a paint or other similar surface-coating material containing more than 0.009 percent of metallic lead based on the total non-volatile content of the paint or other similar surface-coating material.
- (c) No person shall use a paint or other similar surface-coating material containing more than 0.009 percent of metallic lead, based on the total non-volatile content of the paint or other similar surface-coating material on the interior or exterior surfaces of a dwelling. As used in this section, dwelling means any building or structure or portion thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. This subsection shall also apply to places where children reside, or are boarded, or where they receive regular care and/or education, such as child care services, schools and children's institutions.
- (d) *Orders for abatement or remediation.*
- (1) *Generally.* When the Department finds that there is lead-based paint, or dust with a lead content in excess of the clearance levels specified in §173.14(e) of this Code, on the interior of any dwelling, or concentrations of lead in the paint on the exterior of a dwelling, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any dwelling or other premises, including

- but not limited to, child care services, schools, and recreational facilities primarily used or occupied by children under the age of six years when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency found in 40 C.F.R. Part 745, or successor regulations, and further determines that such concentrations may be dangerous to health.
- (2) *In a dwelling where a child with a blood lead level of five (5) micrograms per deciliter or greater resides.* When the Department finds that there is a child under 18 years of age with a blood lead level of five (5) micrograms per deciliter or higher residing in any dwelling and further finds that the interior of such dwelling has lead-based paint that is (a) peeling, (b) on a friction, impact or chewable surface or (c) on any surface of the dwelling that, in the Department's determination, is a lead-based paint hazard because of its condition, location or accessibility to children, the Department shall order the abatement of any such condition in a manner and under such safety conditions as it may specify; in addition, until HPD adopts regulations described by paragraph (b) of subdivision (7) of section 27-2056.2 of the Administrative Code, the Department is authorized to order abatement when an unsafe lead paint hazard is present in such dwelling.
  - (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 or unsafe lead paint sampling, provided such results are obtained in accordance with the methodology identified within the definitions of this Code and the Department has a reasonable belief that such reliance will be more protective of the health of a child with an elevated blood lead level.
  - (4) *Failure to comply with Department orders.* In the event that the Department determines that the owner or other person having the duty or liability to comply with an order issued pursuant to this subdivision fails to substantially comply therewith within five (5) days after service thereof, the Department shall in accordance with §27-2056.14 of the Administrative Code, request the Department of Housing Preservation and Development to execute such order pursuant to the provisions of §17-147 of the Administrative Code.
  - (5) *Definitions.* Except as otherwise provided, all terms used in this section shall have the same meanings as the terms defined in §173.14 of this Code.

**§173.14 Safety standards for lead-based and unsafe lead paint abatement and remediation, and work that disturbs lead-based or unsafe lead paint.**

- (a) *Purpose, scope and applicability.* This section establishes work practices and safety standards for
  - (1) abatement and other reduction of lead-based and unsafe lead paint hazards;
  - (2) other work that disturbs surfaces covered with lead-based paint, or paint of unknown lead content; and
  - (3) the minimum qualifications of persons who conduct such activities, in premises where children younger than six years of age reside, receive child care services, or attend pre-kindergarten or kindergarten classes. This section is intended to reduce the

exposure of such children to the lead-based and unsafe lead paint hazards associated with such work.

(b) *Definitions.* When used in this Article, or in §43.23 or §47.63 of this Code, the following terms shall have the following meanings:

**Abatement.** "Abatement" shall mean any set of measures designed to permanently eliminate lead-based paint, unsafe lead paint, lead-based paint hazards, or unsafe lead paint hazards. Abatement includes: (i) the removal of such hazards, the permanent enclosure or encapsulation of such paint, and the replacement of components or fixtures painted with such 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 or unsafe lead 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 or unsafe lead 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.** "Administrative Code" shall mean the Administrative Code of the City of New York.

**CFR.** "CFR" shall mean this Code of Federal Regulations.

**Chewable surface.** "Chewable surface" shall mean a protruding interior window sill (i) in a dwelling unit in a multiple dwelling where a child under six years of age resides, which is readily accessible to such child, or (ii) such surface in a day care service, or kindergarten in an elementary school, that is readily accessible to a child under six years of age. "Chewable surface" shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, day care service or kindergarten, such as a rail or stair, (i) where there is evidence that such other edge or protrusion has been chewed and where an occupant of the dwelling unit has notified the owner that a child under six years of age resides in that multiple dwelling, or (ii) where the operator of a day care service or kindergarten has observed that a child under six years of age has mouthed or chewed such edge or protrusion.

**Child of applicable age.** When used in Article 13 of Subchapter 2 of Chapter 2 of Title 27 of the Administrative Code, the term "child of applicable age" shall mean a child who is less than six years of age.

**Common area.** "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.** "Contractor" shall mean any person or firm engaged to perform work that disturbs lead-based paint pursuant to this section.

**Deteriorated subsurface.** "Deteriorated subsurface" shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

**Disturb.** "Disturb" shall mean any action taken, which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to wet sanding or scraping or routine painting and maintenance activities.

**Dwelling.** "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.** "Dwelling unit" shall mean any residential accommodation in multiple dwelling or private dwelling.

**Encapsulation.** "Encapsulation" shall mean the application of a covering or coating that acts as a barrier between the lead-based or unsafe lead 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.** "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 or unsafe lead paint and the environment.

**EPA.** "EPA" shall mean the U.S. Environmental Protection Agency or successor agency.

**Firm.** "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.** "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.** "HEPA vacuum" shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodisperse particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

**HPD.** "HPD" shall mean the Department of Housing Preservation and Development of the City of New York.

**HUD.** "HUD" shall mean the U.S. Department of Housing and Urban Development.

**Impact surface.** "Impact surface" shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

**Lead-based paint.** "Lead-based paint" for the purpose of this Code, shall mean paint or other similar surface coating material containing lead in a concentration of 1.0 milligram per square centimeter (mg/cm<sup>2</sup>) or greater as determined by laboratory analysis, or by an x-ray fluorescence (XRF) analyzer, except that, upon promulgation by HPD of the rule described by paragraph (b) of subdivision (7) of section 27-2056.2 of Administrative Code, "lead-based paint" shall mean paint or other similar surface

coating material containing 0.5 mg/cm<sup>2</sup> or greater as determined by laboratory analysis, or by 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" (July 2012) or any successor guidelines issued by HUD, 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/cm<sup>2</sup> 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/cm<sup>2</sup>. 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, except that, upon promulgation by HPD of the rule described by paragraph (b) of subdivision (7) of section 27-2056.2 of the Administrative Code, lead-based paint shall mean paint or other similar surface-coating material containing more than 0.25% 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.** "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.** "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.** "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.** "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.** "Permanent" shall mean an expected design life of at least 20 years.

**Remediation.** "Remediation" shall mean the reduction or elimination of a lead-based or unsafe lead 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.** "Removal" shall mean a method of abatement that completely eliminates lead-based or unsafe lead paint from surfaces.

**Replacement.** "Replacement" shall mean a strategy or method of abatement that entails the removal of building components that have surfaces coated with lead-based or unsafe lead paint and the installation of new components free of lead-based and unsafe lead paint.

**Stabilization.** "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.** "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.** "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.** "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.

**Unsafe lead paint.** "Unsafe lead paint" for the purposes of this Code shall mean paint with a concentration of lead content equal to or greater than 0.5 mg/cm<sup>2</sup> and less than or equal to 0.9 mg/cm<sup>2</sup> or a metallic lead content of 0.25% or greater, as determined by laboratory analysis or by an XRF analyzer. XRF readings shall be classified as positive or negative in accordance with the manufacturer's instructions and, 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. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such cases, lead-based paint shall mean any paint or other similar surface-coating material containing more than 0.25% of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

**Unsafe lead paint hazard.** "Unsafe lead paint hazard" shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from unsafe lead paint that is peeling or present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that could result in adverse human health effects.

**Wet sanding or wet scraping.** "Wet sanding" or "wet scraping" shall mean a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

**Work.** "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 or unsafe lead paint hazards.

**Work area.** "Work area" shall mean that part of a building where lead-based, unsafe lead paint or paint of unknown lead content is being disturbed.

- (c) *Administrative requirements.* All administrative requirements of this subdivision that apply to lead-based paint or lead-based paint hazards shall also apply to unsafe lead paint and unsafe lead paint hazards, respectively.

- (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 §43.23 or §47.63 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 child 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 §43.23 or §47.63 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.* All administrative requirements of this subdivision that apply to lead-based paint or lead-based paint hazards shall also apply to unsafe lead paint and unsafe lead paint hazards, respectively.
- (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 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.* All requirements of this subdivision that apply to lead-based paint or lead-based paint hazards shall also apply to unsafe lead paint and unsafe lead paint hazards, respectively.
- (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 child care service or kindergarten pursuant to §47.63 or §43.23 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. Until May 31, 2021, areas where every sample result is below the following dust lead levels may be cleared for permanent re-occupancy:

Floors:	10 micrograms of lead per square foot.
Window Sills:	50 micrograms of lead per square foot.
Window Wells:	100 micrograms of lead per square foot.

On and after June 1, 2021, areas where every sample result is below the following dust lead levels may be cleared for permanent re-occupancy:

Floors:	5 micrograms of lead per square foot.
Window Sills:	40 micrograms of lead per square foot.
Window Wells:	100 micrograms of lead per square foot.

Provided that, if EPA or HUD adopts lower definitions of lead-contaminated dust, those definitions shall apply for purposes of this subdivision. 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 §43.23 or §47.63 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 or unsafe lead paint hazards is being conducted, where any work which may disturb lead-based, unsafe lead 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, unsafe lead paint condition, lead-based paint hazard, or unsafe lead 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 this 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.

**§173.15 Unsafe lead based paint work practices. [Repealed]**

**§173.16 Lye intended for household use. [Repealed]**

**§173.17 Plastic bags.**

- (a) No person shall sell, offer for sale, or deliver, or offer for delivery, or give away any plastic bag or partial plastic bag intended for domestic or household use, or for packaging articles intended for domestic or household use, or which is so designed or decorated so as to encourage its use as a toy, the length and width of which when added together totals twenty-five inches or more and the opening side of which is seven inches or more and the material of which is less than one mil (1/1000 inch) in thickness; unless such plastic bag bears the following warning statement, or a warning statement which the Commissioner has approved as the equivalent thereof:

"WARNING: To avoid danger of suffocation, keep this plastic bag away from babies and children. Do not use this bag in cribs, beds, carriages or play pens."

- (b) Such warning statement shall be imprinted in a prominent place on the plastic bag or shall appear on a label securely attached to the bag in a prominent place, and shall be printed in legible type which shall be contrasted by typography, layout or color from the contents of the bag and from other printed matter on the bag, if any. The size of the print of such statement shall be as follows:

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Total length and width of bag	Size of print	
60 inches or more	at least	24 point
40–59 inches	at least	18 point

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30–59 inches	at least	14 point
25–20 inches	at least	10 point

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**§173.19 Glues and cements containing volatile solvents.**

- (a) Except as other-wise provided in subsection (b), no person shall sell, offer for sale, deliver or give away to any individual under the age of 18 years any glue or cement commonly known as plastic cement, household cement, cement, or any other similar substance, if such glue or cement contains one or more of the following volatile solvents:
1. Toluol
  2. Hexane
  3. Trichlorethylene
  4. Acetone
  5. Toluene
  6. Ethyl Acetate
  7. Methyl Ethyl Ketone
  8. Trichloroethane
  9. Isopropanol
  10. Methyl Isobutyl Ketone
  11. Methyl Cellosolve Acetate
  12. Cyclohexanone
  13. Any other substance which the Commissioner from time to time determines to be similar to such solvents. The determination of the Commissioner shall be published in the *City Record*.
- (b) This section shall not apply:
- (1) To any glue or cement which has been certified by the Department that it contains a substance which makes such glue or cement malodorous or causes such glue or cement to induce sneezing, or
  - (2) Where the glue or cement is sold, delivered or given away simultaneously with and as part of a kit used for construction of model airplanes, model boats, model automobiles, model trains or other similar models, or
  - (3) Where the person to whom the glue or cement is sold, delivered or given is a member of a hobby association and who properly identifies himself as such by an official membership card or other means of identification issued by such association. For the purposes of this section, the term hobby association means a group of persons (1) whose principal function is the construction of model airplanes, model boats, model automobiles, model trains or other similar objects, (2) which is composed of 25 or more members, and (3) is approved by the Department. The Department shall from time to time cause to be published in the *City Record* a list of approved hobby associations.

**§173.21 Sale of toxic and hazardous substances prohibited; embargo or seizure authorized.**

- (a) No person may sell, hold for sale, transport, or give away hazardous or toxic substances or products unless such items are capable of being labeled pursuant to this Article to prevent misuse or harm.

- (b) When in the opinion of the Department a substance or product is hazardous or toxic within the meaning of this Article, the Department may seize, embargo, or condemn such material pursuant to §3.03 of this Code.
- (c) In addition to other penalties imposed for violations of this Article, the Department may require persons to take an online safe products awareness training program developed by the Department.