

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

NOTICE OF ADOPTION OF AMENDMENTS  
TO ARTICLE 173 OF THE NEW YORK CITY HEALTH CODE

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health by §558 of said Charter, notice public hearing and of intention to amend Article 173 (Hazardous Substances) of the New York City Health Code was published in the City Record on December 17, 2010, and a hearing was held January 24, 2011. No written comments were received and no testimony was given at the hearing. At its meeting on March 15, 2011, the Board of Health adopted the following resolution.

**STATUTORY AUTHORITY**

These amendments to the New York City Health Code (“Health Code”) are promulgated pursuant to §§556, 558 and 1043 of the New York City Charter (the “Charter”). Section 556 of the Charter provides the Department of Health and Mental Hygiene (“DOHMH”) with jurisdiction to regulate all matters affecting the health in the city of New York. Section 558(b) and (c) of the Charter empower the Board of Health (the “Board”) to amend the Health Code and to include in the Health Code all matters to which the DOHMH’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

**STATEMENT OF BASIS AND PURPOSE**

The Board of Health has amended §173.13 (Lead paint) of Article 173 (Hazardous Substances), updating its provisions for the acceptable limits of lead in paint and other leaded surface-coating materials and harmonizing this section with related provisions of the Federal Consumer Product Safety Act, found in 15 USC §§2051-2089, and regulations of the Consumer Product Safety Commission, found in 16 CFR Part 1303 (Ban of lead-containing paint and certain consumer products bearing lead-containing paint).

Effective January 1, 1960, Health Code §173.13 prohibited use of paint containing more than 1.05% of metallic lead based on the non-volatile content of the paint for covering toys, furniture or interior surfaces of dwellings. At the time, there were no federal or state limitations on the amount of lead in paint to be used for dwellings or in consumer products. The Board amended this section in 1997, reducing the percentage of lead to 0.06%, consistent with the then current federal standard.

Effective August 14, 2009, the Consumer Product Safety Improvement Act (CPSIA) of 2008 (Public Law 110-314) and 16 CFR §1303.1 (c) limit the amount of lead in paint and similar surface-coating materials for consumer household and similar uses to no more than 0.009 percent. Accordingly, the Board of Health has amended paragraph (1) of subdivision (a) and subdivisions (b) and (c) of Health Code §173.13 to incorporate these current federal standards for the maximum levels of lead that can be found in paint and similar surface-coating materials intended for use in residences and other facilities accessible to consumers, and for covering furnishings, toys and other articles intended for use by children, reducing the levels in these Health Code provisions from the current 0.06 percent standard to 0.009 percent.

Statement pursuant to Charter §1043

This resolution was not included in the DOHMH Regulatory Agenda because the need for the proposal was not anticipated at the time the Regulatory Agenda was promulgated.

The resolution is as follows.

Deleted matter is in [brackets].

New matter is underlined.

RESOLVED, that §173.13 (Lead paint) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, 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] 0.009 percent of metallic lead, based upon the total non-volatile content of the paint or other similar surface-coating material.

\* \* \*

(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 [0.06] 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 [0.06] 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 [day] child care services, schools and children's institutions.

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Notes:

Paragraph (1) of subdivision (a) and subdivisions (b) and (c) of §173.13 were amended by resolution adopted on March 15, 2011 to reflect the lower federal standard of 0.009 percent of

metallic lead that may be contained in lead based paints or similar surface coating materials sold for use or used in consumer goods, children's toys and dwelling interiors.