



**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments of Articles 11, 71, and 173 of the New York City Health Code**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department” or “DOHMH”) is proposing that the Board of Health (“Board”) amend Articles 11 and 173 of the New York City Health Code (“Health Code”) to require: 24-hour reporting of blood lead level test results at or above five (5) micrograms per deciliter, environmental assessments and appropriate inspections and enforcement actions be conducted when such BLLs are reported for individuals under 18 years of age, and other related definition changes lowering the acceptable level of lead in paint. The Department is also proposing that the Board amend Articles 71 and 173 to provide greater clarity on consumer products that contain dangerous levels of lead and the Department’s authority to take action when such levels are found.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 10AM until 12PM on May 23, 2019. The hearing will be at the offices of the New York City Department of Health and Mental Hygiene at 42-09 28th Street, Room 14-43, Long Island City, NY 11101-4132.

How do I comment on the proposed amendments to the Health Code? Anyone may comment on the proposed amendments by:

- **Website:** You may submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You may email comments to resolutioncomments@health.nyc.gov
- **Mail:** You may mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax:** You may fax comments to the Department at 347-396-6087.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling at 347-396-6078 or 347-396-6116. You can also sign up in the hearing room before the hearing begins on May 23, 2019. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before May 23, 2019, at 5:00 pm.

What if I need assistance to participate in the hearing? You must tell the Office of General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us

if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078 or 347-396-6116. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by May 9, 2019.

This location is wheelchair-accessible.

Can I review the comments made on the proposed amendments? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department to make these amendments? Section 558(b), (c), and (g) of the New York City Charter ("Charter") empowers the Board to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043(a) of the Charter grants rulemaking powers to the Department.

Where can I find the Department rules and the Health Code? The Department's rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

The proposed amendments were not included in the Department's regulatory agenda for this fiscal year because they were not contemplated when the Department published the agenda.

Statement of Basis and Purpose

I. The Dangers of Lead Exposure

Children exposed to any level of lead may face serious, irreversible harm that has consequences throughout their lifetimes. Children under the age of six are at greatest risk for exposure because they explore the world through hand-to-mouth activity and because their bodies are rapidly growing and can more readily absorb lead. Elevated blood lead levels in children can result in behavioral changes, reduced educational attainment and hearing and speech delays. In 2012, the Centers for Disease Control and Prevention (CDC) explained that there is no safe blood lead level (BLL) for children, announced that 98.5% of children nationally had a BLL below five micrograms per deciliter (mcg/dL), and recommended public health action at this defined "reference level." In adults, lead exposure can increase risk of hypertension, peripheral neuropathy, renal dysfunction, and adverse reproductive outcomes. Pregnant women present a unique concern because lead exposure can affect the health of both the woman and the fetus. Since symptoms of elevated BLLs are often not immediately observable and many adverse health effects are irreversible, preventing exposure before it occurs and reducing future

exposures are the only effective ways to protect children and adults from lead's deleterious effects.

II. Lead in Paint

Lead in paint remains the most common source of lead exposure for New York City children. As the older layers of lead-based paint from previous decades remain on interior surfaces, such layers peel, crack, chip, or flake. Very young children – especially those under the age of three – are most at risk as this peeling or chipped lead-based paint and dust easily end up on a crawling baby or toddler's hands and toys and then into their digestive systems due to developmentally appropriate hand-to-mouth activity. At critical stages of physical development, these very young children absorb lead at higher rates than older children and adults, putting them at the greatest risk of all when exposed to lead.

New York City has long been at the vanguard of efforts nationally to reduce BLLs in children, beginning in 1960 when the Board of Health made New York City one of the first jurisdictions in the country to prohibit the use of lead paint in residential settings, 18 years before it was banned by the federal government. Because of strong laws, regulations, policies and procedures—including the requirements of the Health Code—New York City has seen close to a 90 percent decline since 2005 in the number of children under age six with a BLL at or above five mcg/dL.

The New York City Childhood Lead Poisoning Prevention Act (“Local Law 1”), enacted in 2004, required the Department to investigate the potential sources of lead in the home and elsewhere when it receives a report of children under 18 years old with a BLL level at or above 15 mcg/dL.¹ Complementing Local Law 1, the Health Code currently defines “lead-based paint” as paint with a lead content of 1.0 milligrams per centimeter squared (mg/cm²). It also requires that:

- Health care providers and clinical laboratories notify the Department of BLL test results of 10 mcg/dL or greater within 24 hours (Health Code section 11.03) and all BLL test results within five business days (Health Code section 11.09);
- DOHMH conduct investigations of children under 18 years old with BLLs at or above 15 mcg/dL to identify sources of lead and order abatement as needed (Health Code section 173.13(d)(2));
- If lead-based paint hazards are identified based on a report of a child with a BLL of 15 mcg/dL, a Commissioner's Order to correct the hazard be issued, requiring the owner to correct the violation within five days (Health Code section 173.13(d)(2)); and
- The maximum content of lead dust permitted for re-occupancy of a unit is 40 mcg/ft² for floors, 250 mcg/ft² for window sills, and 400 mcg/ft² for window wells (Health Code section 173.14(e)(1)(i)(iv)).

Based on changes in federal guidelines and evolving scientific evidence, the Department has been conducting investigations for children at BLLs lower than Health Code mandates,

¹ NYC Administrative Code § 27-2056.14.

including at eight mcg/dL and above for children under 16 months old, and 10 mcg/dL and above for children under six years old. These environmental investigations include a comprehensive risk assessment and environmental sampling of the child's residence and any supplemental addresses. The environmental sampling includes testing peeling paint and dust for lead content. The Department has been taking public health action for children with a BLL of five mcg/dL and above since 2009, by notifying parents and health care providers about the blood lead test results and providing recommendations for follow-up testing and interventions. Beginning in 2018, the Department began conducting environmental investigations for all children under 18 years old with a BLL of five mcg/dL.

In light of such changes in guidelines and scientific evidence, and to align with recent amendments to local law, the Department seeks to update relevant Health Code provisions related to childhood lead paint exposure interventions as described below. Among the changes proposed is redefining "lead-based paint" from a lead concentration threshold of 1.0 mg/cm² to 0.5 mg/cm² and from paint with a metallic lead content of 0.5% or greater to 0.25% or greater once the New York City Department of Housing Preservation and Development (HPD) confirms via rulemaking that there is at least one Performance Characteristic Sheet (PCS) published by the United States Department of Housing and Urban Development or other sufficient written technical guidance approving a commercially available x-ray fluorescence (XRF) analyzer tested at the level of 0.5 mg/cm². In addition, since the Department's review of XRF readings taken from residences of children with BLLs of eight mcg/dL and above show that paint with lead content below current Health Code levels presents a risk to children, the Department is proposing to immediately adopt this more protective standard and order abatement of non-intact paint where an XRF reading is 0.5 mg/cm² and there is a child with under 18 years old with a BLL of five mcg/dL. In this manner, property owners are on clear notice that the Department will take enforcement action when needed if these lower lead levels in non-intact paint are present in the home of a child with a BLL of five mcg/dL or higher.

III. Consumer Products as a Source of Lead Exposures

While lead-based paint remains the primary source of lead exposure for New York City children, consumer products—such as certain supplements or remedies, cosmetics, religious powders, jewelry, and spices—are also often identified as potential lead sources associated with elevated BLLs. This poses a special challenge in New York City, where many residents come from a broad spectrum of ethnic, cultural, and religious backgrounds and use imported goods that may contain lead or other heavy metals at unsafe levels not permitted in goods produced in the United States.

To address this challenge, the Department has a comprehensive approach to identifying and reducing exposure to lead in consumer products that includes surveying stores to find potentially hazardous products, conducting enforcement actions to remove the products from sale and use, and providing risk communication and public education to prevent future use of the products. The Department has tested thousands of consumer products for lead and other heavy metals since 2011, of which hundreds of product samples have been found to contain elevated lead or other heavy metals. From September 2014 through 2018, the Department

surveyed more than 700 New York City stores to determine the availability of hazardous consumer products and embargoed more than 19,000 hazardous consumer products.

Multiple federal laws regulate non-paint sources of lead, including the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Food, Drug and Cosmetic Act, and their attendant regulations, guidelines, and other publications. These federal laws, regulations and guidelines provide baselines for permissible levels of lead in consumer products and other substances nationwide. Combined, these laws and regulations provide a continuously evolving set of complex standards by which products and substances are regulated to protect the public health. Some states and localities have taken steps to augment the federal standards. In New York State, Education Law § 6818 bans the sale of cosmetics containing poisonous or deleterious substances. In New York City, Administrative Code § 17-189 prohibits the sale of lead-containing candy and litargirio. California and Minnesota have made lead levels for adult jewelry closer to that required federally for children's jewelry.^{2 3} Many states have also adopted the federal standards for lead content in children's toys.

While the Health Code currently incorporates federal standards for lead content in consumer products, food, drugs, and cosmetics, these provisions can be confusing regarding specific items with dangerous levels of lead and regarding the Department's enforcement authority. The Department is therefore proposing to clarify specific products that are banned for sale, use, and transfer in the City due to their lead content. The Department is also proposing to adopt specific Health Code authorization allowing it to seize, embargo, and/or condemn products and substances with dangerous levels of lead. And finally, the Department is proposing to include a safe products awareness training program as a requirement for individuals and entities who offer for sale or otherwise distribute hazardous lead-containing products or materials; such a program will assist small businesses and others in identifying products they are not supposed to sell in the future and thereby expand the positive impact of Department enforcement action.

IV. Summary of Proposed Health Code Amendments

The Department is proposing the following amendments to the Health Code:

1. Requiring all BLL test results of five mcg/dL or greater be reported to the Department within 24 hours and removing "lead poisoning" from the reportable condition of "poisoning by drugs or other toxic agents" (Section 11.03(a));
2. Requiring that BLL test results below five mcg/dL are also reported to the Department (Section 11.09(a));
3. Lowering the BLLs of children under 18 years of age from 15 mcg/dL to five mcg/dL when the Department is required to issue abatement orders if a lead-based paint hazard is identified in a dwelling where children reside (Section 173.13(d)(2));
4. Creating a trigger to redefine "lead-based paint" from a lead concentration threshold of 1.0 mg/cm² to 0.5 mg/cm² and from paint with a metallic lead content of 0.5% or greater to

² California Health and Safety Code Article 10.1.1.

³ 2018 Minnesota Statutes § 325E.389.

- 0.25% or greater once the conditions of NYC Administrative Code Section 27-2056.2(7)(b) have been met to redefine the term citywide (Section 173.14(b));
5. Defining “unsafe lead paint condition” to mean non-intact paint with a concentration of lead equal to or greater than 0.5 but not greater than 0.9 milligrams per square centimeter or with a metallic lead content of 0.25% or greater regardless of whether a PCS has been issued for an XRF at these levels (Section 173.14(b));
 6. Reducing the clearance level for dust wipes for floors and window wells and sills (Section 173.14(e)(1)(l)(iv));
 7. Clarifying that cosmetics containing lead that could cause harm to users is not permitted, and specifying that kohl, kajal, al-Kahal, surma, tiro, tozali, kwalli, and litargirio, among other substances, are banned from sale (Section 71.05(g)(1));
 8. Adding a new subsection to the definition of *per se* hazardous substances to specify the danger of lead exposure, and banning the sale of certain ceramic ware not suitable for use with foods and any jewelry that does not meet the federal standards for children’s jewelry (Section 173.01(i)(5));
 9. Requiring conspicuous warnings on ceramic ware not suitable for use with food (Section 173.05(e)); and
 10. Specifying that the sale, use, and transfer of hazardous or toxic substances or products is not permitted, that the Department has the power to seize, embargo, or condemn any such items, and that violators may be required to take a safe products awareness training program (Section 173.21).

Statutory Authority

These amendments to the Health Code are promulgated pursuant to Sections 558 and 1043 of the New York City Charter. Section 558 empowers the Board to amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 1043 grants the Department rulemaking authority.

The proposal is as follows:

New material is underlined.
[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that section 11.03(a) of Article 11 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

§ 11.03 Diseases and conditions of public health interest that are reportable.

(a) Cases and carriers affected with any of the following diseases and conditions of public health interest, and persons who at the time of their death were apparently so affected, shall be reported to the Department as specified in this article:

* * *

Babesiosis

Blood lead level of five micrograms per deciliter or higher (see also section 11.09(a) of this Code)

Botulism (including infant, foodborne and wound botulism)

* * *

Poisoning by drugs or other toxic agents, including but not limited to [lead poisoning consisting of a blood lead level of 10 micrograms per deciliter or higher (see also § 11.09(a) of this Code);] carbon monoxide poisoning and/or a carboxyhemoglobin level above 10%; and including confirmed or suspected pesticide poisoning as demonstrated by:

- (1) Clinical symptoms and signs consistent with a diagnosis of pesticide poisoning;
or
- (2) Clinical laboratory findings of blood cholinesterase levels below the normal range;
or
- (3) Clinical laboratory findings or pesticide levels in human tissue above the normal range.

RESOLVED, that section 11.09 of Article 11 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York be amended to read as follows:

§ 11.09 Blood Lead Reporting and Children's Blood Lead Registry.

(a) In addition to the reports of blood lead levels [poisoning] made pursuant to § 11.03 of this Code, results of blood lead analyses [which] that are less than [10] five micrograms per deciliter for any resident of the City of New York shall be reported as follows:

- (1) Except as provided in paragraph (2), clinical laboratories shall report blood lead test results [which] that are less than [10] five micrograms per deciliter to the Department.
- (2) A clinical laboratory [which] that reports blood lead test results less than [10] five micrograms per deciliter electronically to the New York State Department of Health shall not be required to make any additional report to the Department of such test results.
- (3) A person or entity who orders or performs blood lead tests but does not submit the specimen to a clinical laboratory for analysis shall report results of less than [10] five micrograms per deciliter to the Department.

* * *

RESOLVED, that section 71.05(g)(1) of Article 71 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

§ 71.05 Adulteration or misbranding prohibited; possession deemed for purpose of sale.

(g) *Cosmetic deemed adulterated.* A cosmetic shall be deemed adulterated if the Department has determined the cosmetic to be adulterated or as set forth in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 361) or State Education Law (§ 6818) under circumstances including, but not limited to, any of the following:

(1) If it bears or contains any poisonous or deleterious substance, including lead, [which] that may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual[.].

(A) Kohl, kajal, al-Kahal, surma, tiro, tozali, and kwalli, and other cosmetic color additives (as defined in the Federal Food, Drug and Cosmetic Act, 21 U.S.C.A. section 201(t)) containing lead that have not been approved by the U.S. Food and Drug Administration for sale in the United States are *per se* adulterated substances.

(B) Litargirio and any powder containing lead intended for sale for personal use, including, but not limited to, use as an antiperspirant, deodorant, foot fungicide or as a treatment for burns and wounds, as defined by New York City Administrative Code § 17-189(a)(2), are *per se* adulterated substances.

(C) [except that this provision shall not apply to any] Any cosmetic product [, whose label bears] that, pursuant to 21 U.S.C. § 740.1, has been authorized by the U.S. Food and Drug Administration [a statement pursuant to 21 U.S.C. § 740.1] to bear a label warning of the hazards associated with use of the product is not considered adulterated for purposes of this Article.

RESOLVED, that section 173.01(i) of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

(i) **Hazardous substance** means:

(1) Any substance or mixture of substances [which] 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 [which] that the Federal Consumer Product Safety Commission determines [meets the requirements of section 2(f)(1)(A) of the Federal Hazardous Substances Act] 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; [and]

(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 Section 545.450. The lead leaching limits for acceptable ceramic ware for use with foods is:

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

(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.

RESOLVED, that section 173.05 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

§ 173.05 Labeling.

* * *

(e) 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 in subsection (1)(A) above and have a hole bored through any potential food-contact surface.

[(e)] (f) *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.

[(f)] (g) *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)] (h) *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)] (i) *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)] (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.

RESOLVED, that section 173.13(d) of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

§ 173.13 Lead Paint.

* * *

(d) *Orders for abatement or remediation.*

* * *

(2) *In a dwelling where a child with [an elevated] 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 [fifteen (15)] 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 the New York City Department of Housing Preservation and Development (HPD) adopts regulations pursuant to New York City Administrative Code section 27-2056.2(b), 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 "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.

RESOLVED, that section 173.14 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

§ 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;[, and] (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[, and]. 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, [or] lead-based paint hazards, or unsafe lead paint hazards. Abatement includes: (i) the removal of [lead-based paint] such hazards, the permanent enclosure or encapsulation of [lead-based] such paint, and the replacement of components or fixtures painted with [lead-based] 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 or unsafe lead paint hazards.

* * *

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.

* * *

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 [of lead]

per square centimeter (mg/cm²) or greater as determined by laboratory analysis, or by an x-ray fluorescence (XRF) analyzer, except that, upon promulgation of a rule by HPD pursuant to New York City Administrative Code section 27-2056.2(7)(b), "lead-based paint" shall mean paint or other similar surface coating material containing 0.5 milligrams of lead per square centimeter 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" ([June 1995, revised 1997] 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/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, except that, upon promulgation of a rule by HPD pursuant to New York City Administrative Code section 27-2056.2(7)(b), 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.

* * *

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.

* * *

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/cm² and less than or equal to 0.9 mg/cm² 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.

* * *

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 paint, unsafe lead paint, or paint of unknown lead content is being disturbed.

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

* * *

(d) *Work methods and occupant relocation.* All administrative requirements of this subsection that apply to lead-based paint or lead-based paint hazards shall also apply to unsafe lead paint and unsafe lead paint hazards, respectively.

* * *

(e) *Occupant protection.* All administrative requirements of this subsection 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:*

* * *

(l) *Clean-up and lead-contaminated dust clearance testing procedures.*

* * *

(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] Until May 31, 2021, areas where every sample result if below the following dust lead levels may be cleared for permanent re-occupancy:

- Floors: [40] 10 micrograms of lead per square foot.
- Window Sills: [250] 50 micrograms of lead per square foot.
- Window Wells: [400] 100 micrograms of lead per square foot.

On and after June 1, 2021, areas where every sample result if 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 the federal environmental protection agency or a successor agency, or the federal department of housing and urban development or a successor agency, adopts lower definitions of lead-contaminated dust, those definitions shall apply for purposes of this subsection. 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)(l)(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.

* * *

(f) *Investigation of unsafe lead work practices by the Department.*

* * *

(2) *Scope of authority.* Such inspection may include but not be limited to premises where abatement or remediation of lead-based paint or unsafe lead hazards is being conducted, where any work which may disturb lead-based paint, 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.

* * *

(g) *Declaration pursuant to Administrative Code § 17-145.* The existence of a lead-based paint condition, unsafe lead paint condition, [or] 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.

RESOLVED, that Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to add a new section 173.21 to read as follows:

§ 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.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Articles 11, 71, & 173 of the NYC Health Code

REFERENCE NUMBER: DOHMH-99

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Lindsay Fuller
Mayor's Office of Operations

April 11, 2019
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Health Code Requirements for Lead Testing and Products with High Lead Content

REFERENCE NUMBER: 2019 RG 021

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 11, 2019