



**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 and 173 of the New York City Health Code**

What are we proposing? The New York City (“NYC”) 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 reduce the childhood blood lead level for both mandatory reporting and as the threshold for mandated Department investigation from 5.0 micrograms per deciliter (“mcg/dL”) to 3.5 mcg/dL.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00AM to 12:00PM on Monday, August 29, 2022. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?RGID=r4cb7c938148d359b6ba1c051cd1f6c05>
If prompted to provide an event number or password, please enter the following:
Webinar number: **2356 269 9757**, Password: **Health** (432584 from phones)
- **Phone:** For access, dial: **(408) 418-9388**; then please enter the following
Access code: **235 626 99757**

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 speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before August 29, 2022 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 Monday, August 15, 2022.

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.

Statement of Basis and Purpose

New York City has been on the forefront of action to protect New Yorkers from lead paint hazards since 1960. In response to NYC Administrative Code lead poisoning prevention provisions recently enacted, as well as to formally adopt the Department's high standards of public health practice, the Board has amended Article 173 of the Health Code twice in the past three years. In 2019, the Board adopted significant new safeguards for children that, among other things, lowered the childhood blood lead level requiring mandatory Department investigations and the lead dust action level.¹ And in 2021, the Board amended Article 173 to make explicit that the Department's investigations in response to reports of children with elevated blood lead levels ("EBLLs") include inspection of any location where the child regularly spends significant time, to clarify that the Department has the authority to order abatement or remediation of lead-based paint and dust in locations occupied by children under age 18, and to extend the unsafe lead paint hazard standard to childcare programs attended by a child with an EBLL.²

Among the recent Administrative Code amendments for lead poisoning prevention was the enactment of § 17-912 regarding anticipated changes by the federal Centers for Disease Control and Prevention (CDC) to its childhood blood lead reference value ("reference value") and the action level for Department investigations.³ The reference value is based on the 97.5th percentile of the blood lead distribution in U.S. children aged 1–5 years from National Health and Nutrition Examination Survey (NHANES) data, and identifies children with higher levels of lead in their blood compared to most children.

Until October 2021, the most recent reference value was 5 micrograms per deciliter (mcg/dL) and the amendments to the Administrative and Health Codes set 5 mcg/dL as the action level for Department investigations. Anticipating that the reference value would continue to decline as fewer children are exposed to lead hazards, the Administrative Code requires the Department to either adopt any new reference value as

¹ New York City Record, June 19, 2019, at 3049 *et seq.*

² New York City Record, September 28, 2021, at 6627 *et seq.*

³ Local Law 66 of 2019.

its action level or submit a report to the Mayor and Speaker of the City Council detailing the reasons the new reference value should not be adopted as the threshold for investigations.

In October 2021, the CDC lowered the reference value in children to 3.5 mcg/dL.⁴ The Department believes this lower level should be the new threshold for its investigations in order to continue to advance protections for children from lead exposure. Accordingly, the Department proposes to amend Article 173 to lower the action level for investigations for children with EBLLs to 3.5 mcg/dL and amend Article 11 to adopt the 3.5 mcg/dL standard for mandated reporting and inclusion in the Children’s Blood Lead Registry. These proposed amendments also respond to a petition to the Board submitted pursuant to Health Code Article 9 asking for such a change.

In addition, the NYC Department of Housing Preservation and Development (HPD) has adopted regulations described by Administrative Code § 27-2056.2(7)(b) to redefine “lead-based paint” as that containing a lead content of 0.5 milligrams per square centimeter (mg/cm²) or greater.⁵ With this adoption, the Health Code definition of “unsafe lead paint” at 0.5 mg/cm², which had been adopted to enable the Department to order abatement of non-intact paint at this lower level until HPD was able to adopt the more protective standard, is no longer needed. The Department therefore proposes to repeal the definitions of “unsafe lead paint” and “unsafe lead paint hazard” from Health Code § 173.14(b) and amend the definition of “lead-based paint” to provide for this new lower standard. The now-outdated portions of the definition of “lead-based paint” that refer to Administrative Code § 27-2056.2(7)(b) are also proposed for deletion.

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.]

Asterisks (***) indicate unamended text.

“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 subdivision (a) of section 11.03 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:

⁴ CDC, *Update of the Blood Lead Reference Value – United States, 2021*, MMWR, October 29, 2021, available online at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7043a4.htm>.

⁵ New York City Record, October 13, 2021, at 6956 *et seq.*, eff. December 1, 2021.

Blood lead level of [five] three and a half micrograms per deciliter or higher (see also section 11.09(a) of this Code)

RESOLVED, that subdivision (a) of 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:

- (a) In addition to the reports of blood lead levels made pursuant to 24 RCNY Health Code § 11.03, results of blood lead analyses that are less than [five] three and a half 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 that are less than [five] three and a half micrograms per deciliter to the Department.
 - (2) A clinical laboratory that reports blood lead test results less than [five] three and a half 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 [five] three and a half micrograms per deciliter to the Department.

RESOLVED, that paragraph (4) of subdivision (a) of section 173.13 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:

- (4) *Investigations.* Whenever a report has been made to the Department of a child under 18 years of age with a blood lead level of [five (5)] three and a half (3.5) micrograms per deciliter or higher, the Department shall conduct such investigation as may be necessary to identify potential sources of the elevated blood lead level, including but not limited to, an inspection of the dwelling unit where such child resides and any supplemental address of that child.

RESOLVED, that paragraph (2) of subdivision (d) of section 173.13 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:

- (2) *In the dwelling of a child with a blood lead level of [five (5)] three and a half (3.5) micrograms per deciliter or greater.* When the Department finds that the interior of any dwelling of a child under 18 years of age with a blood lead level of [five (5)] three and a half (3.5) micrograms per deciliter or higher has 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].

RESOLVED, that subdivision (b) of 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:

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] 0.5 milligrams per square centimeter (mg/cm^2) 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 $0.5 \text{ mg}/\text{cm}^2$ 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] classified as positive unless laboratory analysis of paint chips[,] show them to be negative. Reports of laboratory results shall be reported in mg/cm^2 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^2 . 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.

[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 $0.5 \text{ mg}/\text{cm}^2$ and less than or equal to $0.9 \text{ mg}/\text{cm}^2$ 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, dwelling unit, or, on or after October 17, 2022, any supplemental address of a child of applicable age that is regulated by 24 RCNY Health Code Article 43 or 24 RCNY Health Code Article 47, 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.]

Supplemental address. “Supplemental address” shall mean any location where a child with a blood lead level equal to or in excess of [five (5)] three and a half (3.5) micrograms per deciliter spends five (5) or more hours per week.

**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: Reduction of Blood Lead Level for Mandatory Reporting and Investigation (Health Code Articles 11 and 173)

REFERENCE NUMBER: DOHMH-122

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/ Francisco X. Navarro
Mayor's Office of Operations

May 4, 2022
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: Reduction of Blood Lead Level for Mandatory Reporting and Investigation (Health Code Articles 11 and 173)

REFERENCE NUMBER: 2022 RG 039

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: May 4, 2022