

**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 (the “Charter”) and pursuant to the authority granted to the Board of Health by §558 of the Charter, notice of the proposed amendment of Article 173 (Hazardous Substances) of the New York City Health Code was published in the City Record on September 22, 2008 and a public hearing was held on October 29, 2008. No one testified at the hearing and no written comments were received. At its meeting on December 16, 2008, 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 Department’s authority extends. Section 1043 of the Charter grants the DOHMH rulemaking powers.

STATEMENT OF BASIS AND PURPOSE

INTRODUCTION

As part of a comprehensive review of the Health Code to assess its efficacy in protecting the public health, the DOHMH proposed that the Board of Health amend Article 173, Hazardous Substances, to better reflect practice and the regulatory environment, provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize its provisions with related provisions of federal and state law. Pursuant to this review and assessment of the Health Code, the Department proposed that the Board amend certain of the provisions of current Article 173 as described below.

§173.01 (Definitions) has been repealed and reenacted. It changes or amends definitions for the terms “hazardous substance,” “toxic,” “highly toxic,” “flammable,” “combustible,” “corrosive,” “irritant,” “label,” “electrical hazard,” “mechanical hazard,” “thermal hazard” and “art material.” These changes modernize the terms used in the Article, incorporating corresponding definitions from the Federal Hazardous Substances Act (15 USCA §1261 et seq.), and related regulations (16 CFR Part 1500).

§173.05 (Labeling).

Subdivision (a) has been amended to delete exceptions for Articles 71, 75 and 77.

Subdivision (b) has been amended to harmonize with corresponding provisions in the Federal Hazardous Substances Act (15 USCA §1261 et seq.) and its related regulations (16 CFR Part 1500), and regulations that may be adopted by the United States Consumer Product Safety Commission.

Subdivision (c) has been amended to delete paragraphs (1) through (3) and refers to highly toxic substances as defined in this Article. Elimination of paragraphs (1) through (3) obviates the need for subdivision (d), which has accordingly been deleted.

New subdivision (d) requires labeling of art materials in accordance with the Federal Hazardous Substances Act and related federal regulations to protect the health and safety of persons using art materials.

New subdivision (e) is a general provision requiring labeling not otherwise required under federal, state or local law. The remaining subdivisions have been relettered accordingly.

Current subdivision (g) on changing labeling requirements pursuant to the discretion of the Commissioner is deleted, and former subdivision (f) is relettered as (g). Deference will be given to labeling requirements as set forth in the Federal Hazardous Substances Act and its related federal regulations.

Current subdivision (i) has been amended to add the term “conspicuous” to characterize required labeling, reflecting the language in the Federal Hazardous Substances Act and related regulations.

§173.051 (Exemptions) has been repealed, as an exemption for pressurized products is no longer necessary with the repeal of §173.06.

§173.06 (Pressurized Products) has been repealed as unnecessary because pressurized products are currently subject to New York City Fire Department regulations. See, 3 RCNY §32-01.

§173.07 (False or misleading advertising or labeling) has been amended to delete references to pressurized products.

§173.08 (Carbon tetrachloride; prohibited for household use and in fire extinguishers) has been repealed as the use of carbon tetrachloride, as noted, is prohibited by Fire Department rules for use in pressurized containers, and for at least the past 30 years, the FDA has banned carbon tetrachloride in any product to be used in the home. See, 3 RCNY §32-01 and 16 CFR §1500.17.

§173.09 (Rodenticides and insecticides) has been repealed, as pesticide use is comprehensively regulated by both the New York Environmental Conservation Law and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §136.

§173.11 (Fire extinguishers containing methyl bromide) has been repealed as neither the Fire Department nor National Fire Protection Association Standard 10 consider a fire extinguisher containing methyl bromide acceptable. See, 3 RCNY §15-02.

§173.13 (Lead Paint) has been amended to specify that orders for remediation of lead hazards in soil, authorized in paragraph (1) of subdivision (d) may be issued when a child under six years of age resides in or uses the premises appurtenant to the leaded soil.

§173.14 (Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint) has been amended to delete references to §45.12, now §43.23, and §47.44, now §47.63. Amendments have been incorporated in the Table of Contents and subdivisions (a), (b), (c) and (e). Subdivision (a) was amended after the public comment period to correct a technical omission in the proposal published.

§173.16 (Lye intended for household use) has been repealed as §173.05 has been amended to provide for and address the labeling provisions as set forth in this section.

The proposal is as follows:

Note –Matter in brackets [] to be deleted

Matter underlined is new

RESOLVED, that the list of section headings of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, as last amended by resolution adopted on the thirteenth of December nineteen hundred ninety-nine, be and the same hereby is further amended, to be printed together with explanatory notes to read as follows:

Article 173

Hazardous Substances

§173.01 Definitions.

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

§173.05 Labeling.

[§173.051 Exemptions

§173.06 Pressurized products.]

§173.07 False or misleading advertising or labeling.

[§173.08 Carbon tetrachloride; prohibited for household use and in fire extinguishers.

§173.09 Rodenticides and insecticides.

§173.11 Fire extinguishers containing methyl bromide.]

§173.13 Lead Paint

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

§173.15 Reserved.

[§173.16 Lye intended for household use.]

§173.17 Plastic Bags.

§173.19 Glues and cements containing volatile solvents.

Introductory Notes:

* * *

As part of a comprehensive review of the Code to assess the efficacy of its provisions in protecting the public health, Article 173 was amended on December 16, 2008 to better reflect practice and the regulatory environment, assure that the revised provisions provide adequate legal tools to effectively address the health and safety needs of the public and to harmonize such provisions with related provisions of federal

and state law. As a result of this review, §§173.051, 173.06, 173.08, 173.09, 173.11 and 173.16 were repealed; §173.01 was repealed and reenacted, and §173.05 was amended, to reflect current federal law; §173.13 was amended to authorize the Commissioner to order remediation of leaded soil in properties used by children under six years of age; and §173.14 was amended to reference provisions in a new Article 43 and a repealed and reenacted Article 47.

RESOLVED, that §173.01 (Definitions) of Article 173 (Hazardous Substances) 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, repealed and reenacted, to be printed together with explanatory notes, to read as follows:

§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 which 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 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 the Federal Consumer Product Safety Commission determines meets the requirements of section 2(f)(1)(A) of the Federal Hazardous Substances Act;

(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.

(5) 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.

Notes:

Section 173.01 was repealed and reenacted by resolution adopted on December 16, 2008 as part of a comprehensive revision of the Health Code, to reflect current concepts and applicable law. Many definitions are derived from the Federal Hazardous Substances Act and the definition of labeling is similar to that found in Federal Food, Drug, and Cosmetic Act §321(m), Education Law §6802 and Agriculture and Markets Law §198.

RESOLVED that §173.05 (Labeling) of Article 173 (Hazardous Substances) 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 together with explanatory notes to read as follows:

§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. [The provisions of this article shall not apply to a drug or cosmetic as defined in §71.03(b) and (d) and labeled pursuant to Articles 71, 75 or 77.] 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 [the] 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 [or], 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 explosive. The signal word “Danger” shall also be used for toxic substances which produce death within 14 days in half or more than half of a group of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of one gram or less per kilogram of body weight when orally administered; or produce death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of 1,000 parts per million or less by volume of gas or vapor or ten milligrams or less per liter of mist or dust; or produce death within 14 days in half or more than half of a group of ten or more rabbits tested in a dosage of one gram or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less. The signal word “Warning” or “Caution” shall be used for substances which present a lesser hazard than those required to

be labeled “Danger.” In addition, the label of a substance, which, defined in terms of acute lethal dosage by mouth, has a fatal effect in amounts greater than five grams per kilogram of body weight, shall bear the signal word “Warning” or “Caution” when the Commissioner finds such a substance to be detrimental to public health unless so labeled.] 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, [when it falls into one of the following categories:

(1) A substance which produces death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight when orally administered; or,

(2) A substance which produces death within 14 days in half or more than half of a group of ten or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume of gas or vapor or two milligrams or less per liter of mist or dust; or,

(3) A substance which produces death within 14 days in half or more than half of a group of ten or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.] if such hazardous substance is highly toxic as defined in this Article.

[(d) The Commissioner may require a hazardous substance to be labeled pursuant to subsection (c) of this section or may exempt a hazardous substance from the labeling requirements of subsection (c) of this section, when he finds that available data on human experience with the substance in the dosages or

concentrations specified in subsection (c) (1), (2) or (3) of this section indicate results different from those obtained on animals.]

(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) When, in the opinion of the Commissioner, a substance is a strong sensitizer then upon order of the Commissioner and written notice to the manufacturer or distributor, such substance shall be so labeled pursuant to this article. The Commissioner shall consider the frequency and severity of the sensitization reaction in determining whether a substance offers a significant potential for causing injury.]

(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.

(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.

[(f) Subsections] (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.”

[(g) When the size of the package or container makes it impossible to include all the information required by subsection (b) of this section, the information required by subsection (b) (5) may be abbreviated and the information required by subsection (b) (7) or (b) (8) may be abbreviated or, upon approval of the Department, omitted.]

(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 [to appear] on the label or labeling shall appear in a prominent place in the English language and in [a] 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 [either of them] the label, container or wrapper shall also appear thereon in the foreign language.

Notes:

Section 173.05 was amended by resolution adopted on December 16, 2008. Subdivision (a) was amended to delete the exemption for substances regulated pursuant to Articles 71, 75 or 77.

Subdivision (b) was amended by adding to paragraph (2) reference to US Consumer Product Safety Commissioner regulations. Paragraph (3), instead of permitting a free choice of the signal word to indicate the degree of hazard, requires the word “Danger” on the most hazardous substances, and either “Warning” or “Caution” on those presenting a lesser hazard, and is consistent with the Federal Hazardous Substances Act and related regulations. See 15 USCA § 1261 et seq. and 16 C.F.R. Part 1500.

Subdivision (c) was amended by deleting specific references to dose-related sequelae, and substituting a reference to when a hazardous substance is highly toxic as defined in this Article.

Subdivision (d) was deleted and a new subdivision (d) was added to require art materials to be labeled in accordance with the Federal Hazardous Substances Act and related federal regulations to protect the health and safety of persons using art materials.

Subdivision (e) was deleted and a new subdivision (e) was added, authorizing the Commissioner to order labeling where the Department determines that the warning signals on existing labels are inadequate.

Subdivision (f) is new and refers to labeling required for substances that are strong sensitizers.

Former subdivision (f) was relettered as subdivision (g), and former subdivision (g) which authorized abbreviating or omitting information was deleted.

Subdivision (i) was amended to add the term “conspicuous” to the label display.

RESOLVED that §173.051 (Exemptions) 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 is hereby is repealed.

RESOLVED, that §173.06 (Pressurized Products) 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 repealed.

RESOLVED, that §173.07 (False or misleading advertising or labeling) 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 together with explanatory notes as follows:

§173.07 False or misleading advertising or labeling.

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

(b) No person shall sell or hold for sale any hazardous substance [or pressurized product] 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 [or pressurized product] is false or misleading, [there shall be taken into account, among other things, not only] the Department shall consider the representations made or suggested by the label's statement, word, picture, design[,] or emblem[, sound or any combination thereof, but also] and the extent to which the labeling or advertisement fails to reveal material facts [material in the light of such representations or material with respect to consequences which may result from the use of the substance or product to which the labeling or advertisement relates] about the substance.

Notes:

This section was amended by resolution adopted on December 16, 2008 to delete references to pressurized products and to clarify how the Department will determine if labels are false or misleading.

RESOLVED, that §173.08 (Carbon tetrachloride) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, added by resolution adopted on the twenty-second of October one thousand nine hundred seventy, be and the same hereby is repealed.

RESOLVED, that §173.09 (Rodenticides and insecticides) 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 repealed.

RESOLVED, that §173.11 (Fire extinguishers containing methyl bromide) 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 repealed.

RESOLVED, that paragraph (1) of subdivision (d) (*Orders for abatement or remediation*) of §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 as last amended by resolution adopted on the twenty-second of July, two thousand four, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

§173.13 Lead Paint.

* * *

(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.

* * *

Notes:

Subdivision (d) was amended by resolution adopted on December 16, 2008 by adding to paragraph (1) a provision authorizing the Department to order the removal of leaded soil from areas surrounding children's homes, and other places used by children, such as grounds of child care services and schools.

RESOLVED, that the Table of Contents, and subdivisions (a), (b), (c) and (e) of §173.14 (Safety standards for lead-based paint abatement and remediation, and work that disturbs lead-based paint) of Article 173 of the New York City Health Code found in Title 24 of the Rules of the City of New York as last amended by resolution adopted on the twenty-second of July, two thousand four, be, and the same hereby is amended, to be printed together with explanatory notes to read as follows:

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

Table of Contents for §173.14

* * *

(e) Occupant protection

(1) Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a [day] child care service or kindergarten pursuant to [§§47.44 or 45.12] §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

* * *

(2) Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §§17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or [§§45.12 or 47.44] §43.23 or §47.63 of the Health Code.

* * *

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

(b) *Definitions.* When used in this Article, or in [§§45.12 or 47.44] §43.23 or §47.63 of this Code, the following terms shall have the following meanings:

* * *

(c) *Administrative requirements*

(1) *Filing procedures.*

* * *

(2) *Training and certification.*

* * *

(A) *Abatement.*

* * *

(B) *Other than abatement work.*

(i) *Other work to remediate lead-based paint hazards that is ordered by the Department or HPD, or work that disturbs large amounts of lead-based paint.* All work ordered by the Department, or by the HPD in accordance with § 27-2056.11(a)(1) of the Administrative Code, or work that disturbs over 100 square feet per room conducted in accordance with §17-911 of the Administrative Code, or [§§45.12 or 47.44] §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: * * *

(ii) *Work not ordered by the Department or HPD that disturbs a small amount of paint in a multiple dwelling or in a [day] 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 [§§45.12 and 47.44] §43.23 or §47.63 of this Code, shall be performed by workers trained in accordance with the following requirements:

* * *

(e) *Occupant protection.*

(1) Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a [day] child care service or kindergarten pursuant to [§§47.44 or 45.12] §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:

* * *

(2) Work that disturbs between two (2) and 100 square feet of lead-based paint per room that is being performed in accordance with §§17-911 and 27-2056.11(a)(2)(i) of the Administrative Code, or [§§45.12 or 47.44] §43.23 or §47.63 of the Health Code.

* * *

Notes:

The Table of Contents and subdivisions (a) (Purpose, scope and applicability), (b) (Definitions), (c) (Administrative requirements) and (e) (Occupant protection) were amended by resolution adopted on December 16, 2008 to update cross references for lead-based paint hazard control in Article 47 (Child Care Services) and a new Article 43 (School-Based Programs for Children Ages Three through Five).

RESOLVED, that §173.16 (Lye intended for household use) of Article 173 of the New York City Health Code, found in Title 24 of the Rules of the City of New York, as last amended by resolution on the thirteenth of December nineteen hundred ninety-nine be, and the same hereby is, repealed.