

**CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

**Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The Department of Housing Preservation and Development (“HPD”) is proposing amendments to Chapter 11 of Title 28 of the Rules of the City of New York, concerning lead poisoning prevention and control, to implement recent legislative amendments to the New York City Childhood Lead Poisoning Prevention Act of 2003.

**When and where is the hearing?** HPD will hold a public hearing on the proposed rule online. The public hearing will take place from 10:00 AM to 11:00 AM on August 18, 2020. To participate in the public hearing, enter the Webex URL  
<https://nychpd.webex.com/nychpd/j.php?MTID=ma9db113dd40de1c3a74ca0bf9e1c9e12>

If prompted to provide a password or number, please enter the following: Meeting  
Number: 129 324 3180 Password: AKpafSvt847  
You may also join the hearing via device audio or dial-in via phone.  
Join by video system  
Dial 1293243180@webex.com  
You can also dial 173.243.2.68 and enter your meeting number.

To dial in via phone, please use the following dial in phone number and participant code:  
Join by phone  
+1-646-992-2010 United States Toll (New York City)  
+1-408-418-9388 United States Toll  
Access code: 129 324 3180  
Password if requested: (AKpafSvt847)

If you have low bandwidth or inconsistent internet connection, use the dial-in option for the hearing. This will reduce the possibility of dropped audio and stutters.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to HPD through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [rules@hpd.nyc.gov](mailto:rules@hpd.nyc.gov).
- **Mail.** You can mail comments to Deputy Commissioner AnnMarie Santiago, Department of Housing Preservation and Development, 100 Gold Street, Room 601, New York, N.Y. 10038.
- **Fax.** You can fax comments to AnnMarie Santiago at 212-863-7010.
- **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 212-863-8602 or by emailing at [rifenm@hpd.nyc.gov](mailto:rifenm@hpd.nyc.gov) by August 17, 2020 at 5:00 PM. While you will be given the opportunity during the hearing to indicate that you would like

to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

**Is there a deadline to submit comments?** The deadline for submission of comments is August 18, 2020..

**What if I need assistance to participate in the hearing?** You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at [rifenm@hpd.nyc.gov](mailto:rifenm@hpd.nyc.gov). You may also tell us by telephone at 212-863 8602. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by August 1, 2020. This hearing has the following accessibility options available: Simultaneous transcription for people who are deaf or hard of hearing and audio only access.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments concerning the proposed rules will be available to the public at the Office of Legal Affairs, 100 Gold Street, fifth floor, New York, N.Y. 10038.

**What authorizes HPD to make these rules?** Sections 1043 and 1802 of the New York City Charter (“City Charter”), Local Law 31 of 2020, and section 27-2090 of the Administrative Code of the City of New York authorize HPD to make these proposed rules. These rules were included in HPD’s regulatory agenda for this Fiscal Year.

**Where can I find HPD’s rules?** The agency’s rules are in title 28 of the Rules of the City of New York.

**What laws govern the rulemaking process?** HPD must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### **Statement of Basis and Purpose of Proposed Rules**

The proposed amendments to Chapter 11 of Title 28 of the Rules of the City of New York revise and clarify certain rules promulgated under the New York City Childhood Lead Poisoning Prevention Act of 2003 (Lead Law).

The Lead Law requires owners to retain records for 10 years of any notices required to be distributed and records of work performed under the law. Owners must transfer such records to a new owner, where applicable, and make the records available to HPD upon request.

The proposed rules add criteria, consistent with Local Law 31 of 2020, to clarify that owners must perform certain investigations within five years of the effective date of the law, and keep records regarding such investigations. The rules also make certain technical and plain language changes.

New material is underlined.  
[Deleted material is bracketed]

Section 1. Section 11-04 of Chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

**§ 11-04 Investigation for Lead-Based Paint Hazards.**

- (a) In any dwelling unit in a multiple dwelling erected prior to January [first, nineteen hundred sixty] 1, 1960 where a child of applicable age resides, and in any dwelling unit in a multiple dwelling erected on or after January [first, nineteen hundred sixty] 1, 1960 and before January [first, nineteen hundred seventy-eight] 1, 1978, where a child of applicable age resides and the owner has actual knowledge of the presence of lead-based paint, and in common areas of such multiple dwellings, the owner shall cause a visual inspection to be made for peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces. A visual inspection for lead-based paint hazards shall include every surface in every room in the dwelling unit, including the interiors of closets and cabinets. Such inspection shall be undertaken at least once a year and more often if necessary, such as when, in the exercise of reasonable care[.];
- (i) an owner knows or should have known of a condition that is reasonably foreseeable to cause a lead-based paint hazard, or
  - (ii) an occupant makes a complaint concerning a condition that is likely to cause a lead-based paint hazard or requests an inspection, or
  - (iii) the department issues a notice of violation or orders the correction of a violation that is likely to cause a lead-based paint hazard.
- (b) Within five years of the effective date of local law number 31 for the year 2020, or within one year after a child of applicable age comes to reside in a dwelling unit subject to the requirements of subdivision a of administrative code §27-2056.4 and subdivision (a) of this section, whichever is sooner, one investigation for the presence of lead-based paint undertaken pursuant to subdivision a of this section shall be performed by a person who (i) is not the owner or the agent of the owner or any contractor hired to perform work related to the remediation of lead-based paint hazards, and (ii) is certified as an inspector or risk assessor pursuant to section 745.226 of title 40 of the code of federal regulations. Such inspection shall consist of the use of an x-ray fluorescence analyzer on all types of surfaces in accordance with the procedures described in chapter 7 of the United States department of housing and urban development guidelines for the evaluation and control of lead-based paint hazards in housing, including on chewable surfaces, friction surfaces, and impact surfaces, to determine whether lead-based paint is present, and where such paint is located, in such dwelling unit. Provided, however, that the investigation specified by this subdivision shall not be required if an investigation that complies with the requirements of this subdivision was previously completed and the owner retains records of such investigation, or if the dwelling unit has an exemption from the presumption of lead paint, as provided in subdivision (b) of administrative code section 27-2056.5. If a new owner does not receive from the previous owner records of such investigation having been performed, such new owner shall perform the investigation required by subdivision (a-1) of administrative code section 27-2056 and retain records of such investigation. Such investigation by such new owner shall be performed within one year of the change in ownership or within the period of time otherwise required by this subdivision, whichever deadline is later.

[(b)] (c) (1) An owner shall maintain or transfer to a subsequent owner records of inspections of dwelling units performed pursuant to subdivisions a and b of this section. Such records shall include the location of such inspection and the results of such inspection for each surface in each room, as specified in [subdivision] subdivisions (a) and (b) of this section[, and]. An owner shall also keep a record of the actions taken as a result of [such] an inspection performed under subdivision a or b of this section pursuant to 28 RCNY §11-02 or 11-05.

(2) If an owner claims an inability to gain access to the unit for [such] an inspection, such records shall contain a statement describing the attempt made to gain access, including, but not limited to providing a written notice to the tenant, delivered by certified or registered mail, or by first class mail with proof of mailing from the United States Postal Service, informing the tenant of the necessity of access to the dwelling unit to perform the inspection, and the reason why access could not be gained. Such records shall be kept for a period of ten years from either the date of completion of the inspection, or from the date of the last attempt to gain access by the owner, or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request. In addition, the owner shall make such records available to the occupant of such dwelling unit upon request.

[(c)] (d) Nothing in this section [shall be deemed to preclude] precludes an owner from conducting any additional types of inspections for lead-based paint hazards, provided, however, that such owner shall correct any lead-based paint hazards identified pursuant to such inspection in accordance with the work practices specified in 28 RCNY §11-06.

§ 2. Subdivision (c) of section 11-05 of Chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

(c) An owner shall maintain or transfer to a subsequent owner records of work performed in dwelling units pursuant to this section in accordance with the recordkeeping requirements of 28 RCNY § 11-06(c) and § 11-12(h). In addition, the owner shall make such records available to the [new] occupant of such dwelling unit upon request.

§ 3. Subdivision (d) of section 11-12 of Chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

(d) Documentation Required under Records Audits. The documents that may be required to be submitted to the department for each year for any audit as specified by the department are set forth in subdivisions (e) through [(h)] (i) of this section. The department may make available on its website the forms or affidavits required for such submissions. [In the event that] If a new owner has acquired the building within the required audit period, and the documentation required to be kept was not provided to the new owner by the previous owner, the new owner must provide the required documentation for the actual years of ownership and an additional affidavit of missing records for the remaining period of time covering the audit period, accompanied by a copy of the deed of ownership.

§ 4. Subparagraph (i) of paragraph (1) of subdivision (e) of section 11-12 of Chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

- (i) An affidavit of Delivery/Email/Mail from an owner's delivery, mailing or email service company or the owner [(if sent directly by the owner)] providing the following information: Complete service's or owner's name, address, contact information, and date of the affidavit; name of the service's or owner's representative who performed the delivery/ mailing/ emailing on behalf of the owner of the annual notice required to be provided by 28 RCNY §11-03(b); and a sample copy of such annual notice in English and Spanish that was delivered/mailed/ emailed to occupants of the owner's building;

§ 5. Paragraph (1) of subdivision (h) of section 11-12 of Chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

- (1) An affidavit listing any dwelling units that have turned over in the audit period, which shall include the dates that the dwelling unit was vacated and reoccupied; and

§ 6. Section 11-12 of Chapter 11 of Title 28 of the Rules of the City of New York is amended by adding a new subdivision (i) to read as follows:

(i) Audit of Investigation for the Presence of Lead-Based Paint pursuant to Administrative Code § 27-2056.4(a-1). Upon an audit of the investigation required under administrative code § 27-2056.4(a-1), the owner shall provide:

- (1) Identification of each dwelling unit that was investigated;
- (2) Whether a child of applicable age resided in the dwelling unit and, if so, the date such child first came to reside in such unit;
- (3) Date of the investigation;
- (4) Documentation identifying the firm and individuals who performed the investigation pursuant to administrative code § 27-2056.4(a-1), including copies of certifications of such firm and individuals pursuant to section 745.226 of title 40 of the code of federal regulations;
- (5) Testing results from the investigation pursuant to administrative code § 27-2056.4(a-1) and 28 RCNY § 11-04(b); and
- (6) Identification of any dwelling units in the building that have been granted an exemption by the department pursuant to 28 RCNY § 11-08.

**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 Lead Paint Rules

**REFERENCE NUMBER:** 2020 RG 033

**RULEMAKING AGENCY:** Department of Housing Preservation and Development

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: 4/27/20

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

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Amendment of Lead Paint Rules**

**REFERENCE NUMBER: HPD-69**

**RULEMAKING AGENCY: Department of Housing Preservation and Development**

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

April 27, 2020  
Date