

**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 rules relating to lead poisoning prevention and control, to implement recently enacted legislation.

When and where is the hearing? HPD will hold a public hearing on the proposed rules. The public hearing will take place virtually on **January 17, 2025** from 10 AM to 11 AM:

To participate in the public hearing, enter the Webex URL:

<https://nychpd.webex.com/nychpd/j.php?MTID=me99f8be5aa1a4463b534a4ee75aeb334>

If prompted to provide a password or number, please enter the following:

Meeting number: **2348 169 8630** Password: **NkUhNtAu435**

You may also join via audio device or dial in via phone:

Join by video system: **23481698630@webex.com**

Dial

You can also dial **173.243.2.68** and enter your meeting number

To dial in by phone, please use the following dial-in phone number and participant access code:

United States Toll (New York City) **+1-646-992-2010**

United States Toll **+1-408-418-9388**

Access code: **2348 169 8630**

Password if requested: **NkUhNtAu435**

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.

- **Mail.** You can mail comments to Associate Commissioner Josh Cucchiaro, Department of Housing Preservation and Development, Room 5-Z7, 100 Gold Street, New York, N.Y. 10038.
- **Fax.** You can fax comments to Associate Commissioner Cucchiaro at 212- 863-8763.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 212 863-8340, or by emailing wallaca@hpd.nyc.gov before 5:00 PM on **January 15, 2025**. Although you can indicate during the hearing that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? The deadline for submission of comments is **January 17, 2025**.

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 wallaca@hpd.nyc.gov. You may also tell us by telephone at 212 863-8340. We request advance notice so that we have sufficient time to arrange the accommodation. Please tell us by **January 3, 2025**. 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 <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral 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”) authorize HPD to make these rules. The rule was included in the agency’s regulatory agenda.

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 comply with 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 Department of Housing Preservation and Development (HPD) is proposing amendments to its rules relating to lead poisoning prevention and control in Chapter 11 of Title 28 as the result of recently enacted amendments to Administrative Code sections 27-2056.4, 27-2056.8, 27-2056.9, and 27-2056.17, and the addition of new section 27-2056.6.1 by the City Council. The amendments incorporate requirements set forth in Local Laws 111, 122, 123 and 127 of 2023.

Local Law 111 amended section 27-2056.4 of the administrative code to require that, no later than August 9, 2025, owners include testing of common areas when they perform X-Ray Fluorescence (XRF) lead paint testing of dwelling units in their buildings, as required under subdivision a-1 of such section. XRF is a method of determining the elemental composition of materials. When it comes to housing and environmental safety, XRF analyzers are used to measure the concentration of lead in old paint.

The proposed amendments to the rules incorporate that requirement. The law also provides for HPD inspections of common areas, and makes the presence of lead-based paint in a common area of a multiple dwelling where a child of applicable age resides, that is peeling or on a deteriorated subsurface, a class C violation.

Local Law 122 amended section 27-2056.7 of the administrative code to provide that when an owner receives a lead hazard violation pursuant to section 27-2056.6, they must provide records of annual notice and investigations for lead-based paint hazards conducted in the previous year. The law and the proposed rules also incorporate a provision for dismissal of record keeping violations where an owner submits all records required to be kept under LL #122 for the last 10 years, or, in cases where the owner does not have all required records for the last 10 years, submits a dismissal request form with records required to be kept for the last 3 years, and a payment of \$1,000 for each year of the 10 years that the owner does not submit records.

Local Law 123 amended section 27-2056.8 of the administrative code to require that by July 1, 2027, where a child under age 6 resides, or within 3 years of the date that a child under age 6 comes to reside, in a dwelling unit in a pre-1960 multiple dwelling, the owner must comply with the turnover requirements for the dwelling unit, found in section 27-2056.8(a)(1 - 4). These requirements include the remediation of all lead based hazards and any underlying defects; making all bare floors, window sills and window wells in the dwelling unit smooth and cleanable; the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows. The required "turnover" work must be completed unless the unit is turned over prior to July 1, 2027 or within three years of a child under 6 beginning to reside in the unit. Work that is performed in occupied units must be performed in compliance with all applicable city and federal safe work requirements. If relocation of in-place occupants is necessary, and the occupant refuses to temporarily relocate, the owner may apply to HPD for a temporary exemption from doing such work upon approval by HPD of documentation demonstrating the owner's good faith effort to perform the required work and to show the occupant's refusal to relocate, as outlined in the amendments to these rules. Owners who receive a violation of section 27-2056.8 for failing to perform turnover work will be required to submit records of annual notice and lead-based paint investigations conducted, as required to be kept under section 27-2056.7 or section 27-2056.17. The proposed rules incorporate the amendments regarding compliance with the turnover requirements, relocation requirements,

and the ability of an owner to be exempt from such turnover requirements when a tenant refuses to temporarily relocate.

Local Law 127 amends section 27-2056.17 of the administrative code to modify the criteria that HPD uses for the selection of buildings to be audited for compliance with sections 27-2056.4, 27-2056.6, and 27-2056.8, by including, in addition to lead-based paint hazard violations and turnover violations, data on the prevalence of elevated blood lead levels in certain geographic areas identified by the Department of Health and Mental Hygiene. Turnover violations are issued when lead-based paint conditions are not corrected within a certain time after an apartment is leased to a new tenant if a child of applicable age resides there. The proposed amendments to the rules incorporate the new criteria.

The proposed rule also includes minor plain language edits throughout.

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.

Section 1. Section 11-02 of chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

§11-02 Owner's Responsibility to Remediate.

An owner [shall] must remediate all lead-based paint hazards and underlying defects in a dwelling unit and in the common areas of a dwelling where a child of applicable age resides in accordance with the applicable work practices set forth in §11-06 of these rules.

§2. Subdivisions b and c of section 11-04 of chapter 11 of Title 28 of the Rules of the City of New York are amended to read as follows:

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

(b) [Within five years after] No later than the earliest of August 9, [2020] 2025, [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,] or the issuance of an order by the department of health and mental hygiene as required by such order, one investigation for the presence of lead-based paint undertaken pursuant to subdivision a of this section [shall] must 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] must be conducted with 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 and in the common areas of such multiple dwellings. 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 or common area 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] must perform the investigation required by subdivision (a-1) of [administrative code] section [27-2056] 27-2056.4 of the administrative code and retain records of such investigation.

(c) (1) An owner [shall] must maintain and transfer to a subsequent owner records of inspections of dwelling units and common areas performed pursuant to subdivisions (a) and (b) of this section. Such records [shall] must include the location of such inspection, the results of such inspection for each surface in each room, as specified in subdivisions (a) and (b) of this section, and, for subdivision (b) of this section, for any such inspection that is performed after August 9, 2020, an affidavit from the lead inspector or risk assessor who performed the investigation for the presence of lead-based paint. An owner [shall] must also keep a record of the actions taken as a result of an inspection performed under subdivisions (a) or (b) of this section pursuant to [28 RCNY §§11-02] sections 11-02 or 11-05 of these rules.

(2) If an owner claims an inability to gain access to the unit for an inspection, such records [shall] must 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] must 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] must make such records available to the occupant of such dwelling unit upon request.

§3. Subdivisions a and b of section 11-05 of chapter 11 of Title 28 of the Rules of the City of New York are amended to read as follows:

§11-05 Turnover of Dwelling Units.

(a) Upon the earlier of (i) turnover of any dwelling unit in a multiple dwelling erected prior to January first, nineteen hundred and sixty[, or of a dwelling unit in a private dwelling erected prior to January first, nineteen hundred and sixty where each dwelling unit is to be occupied by persons other than the owner or the owner's family], (ii) by July 1, 2027 for any dwelling unit in such multiple dwelling where a child of applicable age resides as of January 1, 2025, or (iii) within 3 years after the date a child of applicable age begins to reside in any occupied dwelling unit in such a multiple dwelling prior to turnover, the owner shall within such dwelling unit have the responsibility to:

(1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist for each turnover of a dwelling unit and prior to turnover as provided in this subdivision;

(2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable for each turnover of a dwelling unit and prior to turnover as provided in this subdivision;

(3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and

(4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

(b) Such work [shall] must be performed in the time period commencing with the vacancy of the unit and [shall] must be completed prior to reoccupancy of such unit, or earlier, in occupied dwelling units where a child of applicable age resides as provided in subdivision a of this section. All work performed pursuant to this section upon turnover [shall] must be performed using the applicable safe work practices set forth in §11-06(g)(3) of these rules. All work performed pursuant to this section prior to turnover in a dwelling unit where a child of applicable age resides must be performed pursuant to safe work practices set forth in §11-06(a)-(g)(1) and (2) as applicable.

§4. Clause E of subparagraph ix of paragraph 1 of subdivision g of section 11-06 of chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

(E) *Relocation.* (a) An owner [shall] must request that an occupant temporarily relocate from a unit pending completion of work where it appears that work cannot be performed safely with occupants in residence. Such owner [shall] must offer a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards to such occupants for temporary relocation. Unreasonable refusal by such occupants to relocate pursuant to such offer shall constitute a refusal of access under housing maintenance code §§27-2009 and 27-2056.4(b), and, where applicable, 9 NYCRR §2524.3(e). Relocation shall not be required provided that work can be done safely with occupants in residence, and provided further that at the end of each day of work, the work area is properly cleaned as specified in subdivision (g)(1)(ix)(A) of this section; occupants have safe access to areas adequate for sleeping; occupants have bathroom and kitchen facilities available to them; occupants have safe access to entry/egress pathways; and the work does not create other safety hazards (e.g., exposed electrical wiring or holes in the floor).

(b) Where compliance with section 27-2056.8 of the administrative code would necessitate that an occupant of a dwelling unit where a child under age six resides temporarily relocate from the dwelling unit in accordance with the safe work practices in this section, and the occupant of such dwelling unit refuses to relocate, the owner shall be exempt from such compliance with section 27-2056.8 upon approval by the department of documentation demonstrating the owner's good faith effort to perform the required work and to show the occupant's refusal to relocate. Such exemption shall remain in effect until the dwelling unit is vacated by the previous occupant and turned over to a new occupant. Upon approval of such exemption, the department shall dismiss any violation of section 27-2056.8 which was the basis for the owner's request for the exemption, or which was issued after the exemption was granted and prior to the dwelling being turned over to a new occupant.

(c) An owner must submit the following documentation to apply for an exemption from compliance with §27-2056.8: (1) a copy of the notice to the tenant explaining the scope of work required to be done, the reasons that temporary relocation is necessary, and an offer of a suitable, decent, safe and similarly accessible dwelling unit; (2) a document detailing the scope of all work required to be done in the dwelling unit to comply with the requirements of §27-2056.8; (3) the reasons that the work cannot be done without the occupant temporarily relocating from the dwelling unit, including, but not limited to, why the owner cannot provide safe temporary access to the work area as required under clause F of subparagraph ix of paragraph 1 of subdivision g of section 11-06; (4) the offer of a suitable, decent, safe and similarly accessible dwelling unit that the owner conveyed to the occupant for temporary relocation; and (5) a document, signed by the occupant, refusing to temporarily relocate from the unit so that the work described in the scope of work can be performed, or, if the tenant has refused to

relocate and has refused to sign such document, an affidavit from the owner regarding such occupant's refusal, including the date and time of the owner's good faith effort to contact the occupant.

§5. Paragraph 3 of subdivision g of section 11-06 of chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

(3) *Work performed in a vacant dwelling unit on turnover in accordance with §27-2056.8 of article 14 of the housing maintenance code.*

(i) *Preparation.* The procedures described in subdivision (g)(2)(i)-(iv) of this section [shall] must be followed, unless the work is being performed during occupancy where a child under age six resides.

(ii) *Clean-up.* At the completion of work, the work area [shall] must be thoroughly wet-mopped or HEPA-vacuumed and a visual examination [shall] must be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris [shall] must be wet-mopped or HPEA-vacuumed. All rags, cloths and other supplies used in conjunction with chemical strippers or other flammable materials, or materials contaminated with lead dust or paint [shall] must be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(iii) *Lead-contaminated dust clearance testing.* Lead-contaminated dust clearance testing [shall] must be conducted in accordance with subdivision (g)(1)(ix)(C)-(D) of this section.

§6. Section 11-09 of chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

§11-09 Certification of Correction of Lead-Based Paint Hazard Violation.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent [shall] must submit a certification of correction of a lead-based paint hazard violation issued pursuant to [§27-2056.6] sections 27-2056.6 or 27-2056.6.1 of article 14 of the housing maintenance code and these rules within five (5) days of the date set for correction in the notice of violation. Such certification [shall] must be made in writing, under oath by the registered owner, a registered officer or director of a corporate owner or by the registered managing agent and [shall] must include the following:

(1) the date that the violation was corrected, and a statement that the violation was corrected in compliance with article 14 of the housing maintenance code and §11-06 of these rules;

(2) the results of laboratory tests performed by an independent laboratory certified by the state of New York for lead-contaminated dust clearance tests performed pursuant to §27-2056.11(b) and (d) of the housing maintenance code and §11-06(g)(1)(ix)(C) and (D) of these rules;

(3) a copy of the certificate of training required pursuant to §11-06(b)(2)(iii) qualifying the person who performed the lead-contaminated dust clearance testing; and

(4) a sworn statement by the person or firm who performed the work necessary to correct the violation that such work was performed in accordance with the applicable provisions of §27-2056.11 of article 14 of the housing maintenance code and the applicable provisions of §11-06 of these rules; and

(5) a copy of the certification by the United States environmental protection agency of the firm that performed the work as required pursuant to §11-06(b)(2)(i) of these rules.

(b) Certification of a lead-based paint hazard violation issued pursuant to sections 27-2056.6 or 27-2056.6.1 shall be rejected by the department unless the results of the laboratory tests for the required lead-contaminated dust clearance tests are submitted with the certification, and

such laboratory test results comply with the standards specified in §11-06(g)(1)(ix)(D) of these rules.

(c) Failure to file a certification of correction of such violation shall establish a prima facie case that such violation has not been corrected.

§7. Subdivision a of section 11-10 of chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

§11-10 Postponements.

(a) An owner may apply to the department in writing for postponement of the time to correct a lead-based paint hazard violation issued pursuant to [§27-2056.6] sections 27-2056.6 or 27-2056.6.1 of article 14 of the housing maintenance code within the five days preceding the date set for correction of such violation pursuant to §27-2115(l)(1).

§8. Section 11-12 of chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

§11-12 Additional Audits and Demands for Records.

(a) Upon the issuance by the department of a demand for records to determine compliance with the requirements of article 14 of the housing maintenance code, the department may require that an owner submit to it records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. The department may make such demands and perform such audits at any time, and, in addition, shall perform such audits for a minimum of 200 buildings each fiscal year. Such records must be submitted to the department within 45 days of written demand for such records by the department, or within such other time period not less than 45 days as shall be stated in writing to the owner, in the discretion of the department.

(b) The department may select the buildings required to be audited each fiscal year pursuant to subdivision (a) of this section using the following criteria, which shall include, but need not be limited to:

(i) buildings with peeling lead-based paint violations issued pursuant to §27-2056.6 of the administrative code as a result of a positive XRF test;

(ii) buildings with violations that have been issued for other indicators of deteriorated subsurfaces including, but not limited to, mold and leaks, and;

(iii) [buildings selected from a random sample of buildings based on data on the prevalence of elevated blood lead levels in certain geographic areas identified by the department of health and mental hygiene; and

(iv) buildings selected from a random sample of buildings that are subject to the presumption in section 27-2056.5 of article 14 of the housing maintenance code] buildings with violations that have been issued pursuant to section 27-2056.8.

The buildings selected may be subject to further selection criteria including building size, date of issuance of violations, percentage of units with housing maintenance code violations, and location. Further, in selecting buildings for audit from those buildings with violations identified within this subdivision, the department may consider the number of such violations and data on the prevalence of elevated blood lead levels in certain geographic areas identified by the department of health and mental hygiene.

(c) The department may undertake an inspection, and any enforcement action authorized by law, where an owner refuses or fails to produce the records required by the department pursuant to its audit demand or pursuant to any other proper order.

(d) *Documentation Required under Records Audits and other Demands for Records.* The documents that may be required to be submitted to the department for each year for any audit

as specified by the department or pursuant to a demand for records issued for a violation of sections 27-2056.6, 27-2056.6.1, 27-2056.8 or any other applicable provision of article 14 of the housing maintenance code are set forth in subdivisions (e) through (i) of this section. The department may make available on its website the forms or affidavits required for such submissions. 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.

(e) Audit or Demand for Records of Annual Notice Distribution and Investigation. Pursuant to subdivision (d) of this section, the owner [shall] must provide:

(1) Proof of delivery to the occupant of each dwelling unit of the annual notice required to be provided by section 11-03(b), including:

(i) An affidavit of Delivery/Email/Mail from the owner providing the following information: Complete owner's name, address, contact information, and date of the affidavit; name of the 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;

(ii) A complete list of recipient dwelling units with the building address, each dwelling unit number and the date of delivery to each dwelling unit or the date of the email/mail notice sent to each dwelling unit; and

(iii) Whenever applicable, a complete list of any dwelling units and common areas in the building for which there is a lead exemption obtained from the department [for the dwelling unit] that is in effect during the audit period; and a complete list of owner/shareholder-occupied cooperative or condominium dwelling units during the audit period, where the owner was not required to provide such annual notice to such owner/shareholder. Any such lists must be signed by the owner.

(2) Annual notice response received from the occupant of each dwelling unit, including:

(i) A list of the dwelling units that received the annual notice required to be provided by section 11-03(b), with an indication of whether each dwelling unit responded and, if so, the substance of such response, including whether a child under six resides in such dwelling unit, based on either the occupant's verbal or written response or the owner's inspection/knowledge;

(ii) Copies of the completed and returned annual notices, where received. Such annual notice must have the building address, dwelling unit number, and occupant's name, signature and date, where received; and

(iii) For those dwelling units that did not respond to such annual notice, the date when access was attempted to confirm whether a child under six resides in such therein or an indication that the owner had knowledge of a dwelling unit in which a child under six resides; and proof of providing written notice by certified or registered mail or by first class mail with proof of mailing of the need to access the unit; and a copy of the notice sent by the owner to the department of health and mental hygiene regarding failure to access any particular dwelling unit.

(3) Annual investigation reports conducted pursuant to responses by occupants to annual notices required to be provided by section 11-03(b), including:

(i) An affidavit stating that access was gained to conduct the visual inspection of the dwelling unit, that the inspection was conducted, the person who conducted such inspection, the date of inspection, and the dwelling unit number; and

(ii) For dwelling units that were inspected, the owner must provide copies of the inspection report including a statement of whether there was or was not peeling paint on all visually inspected components or similar documentation. The owner may use a sample form made available by the department for documentation of owner investigations, or a substantially similar

form containing the same information to provide a report of surface-by-surface, individual paint-containing building component investigation, including walls, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces in every room, including interiors of closets and cabinets;

(iii) On and after August 1, 2025, records of any x-ray fluorescence analysis conducted pursuant to subdivision a-1 of section 27-2056.4 of the administrative code and subdivision (b) of section 11-04 of these rules,
and

(iv) If access was not gained to a dwelling unit, an affidavit stating the dates that an attempt was made to gain access, including the date the owner provided written notice of the need for access by certified or registered mail or by first class mail with proof of mailing. For such units, the owner must also provide copies of the written notice to the occupant informing the occupant of the need to access the unit or similar documentation and a record regarding access attempts and the reasons for failure of access as set forth in subdivision (b) of section 11-04 of these rules.

(f) *Audit or Demand for Records of Work Performed to Correct Lead Based Paint Hazard Violations.*

For currently open and uncertified violations in the period, the owner must submit:

(1) An affidavit AF-5;

(2) An affidavit made by an EPA-certified abatement firm's authorized agent or individual who performed the work to correct the lead-based paint hazard violation(s) stating that the work was performed in accordance with section 27-2056.11 of article 14 of the housing maintenance code and section 11-06 of these rules; the start and completion date of the work; and the address and contact information (phone or fax) for the EPA-certified abatement firm that completed the work;

(3) A copy of the EPA certification for the EPA-certified abatement firm that performed the work to correct the lead-based paint hazard violation(s);

(4) A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of preparation and analysis of the samples;

(5) An affidavit from the individual who took the surface dust sample, verifying the date the sample was taken and indicating the address and dwelling unit where the sample was taken; and

(6) A copy of the Certificate of Training of the individual who took surface dust samples that is valid for the period when the dust samples were taken.

(g) *Audit or Demand for Records of Non-violation Work that Disturbed Lead Based Paint or Paint of Unknown Lead Content.* Upon a request by the department pursuant to subdivision (b) of this section, an owner must submit an affidavit that no non-violation work on such painted surfaces in apartments with children under six at the time of the repair was completed in the audit request period, or submit the following documents:

(1) Records for all non-violation work that disturbed lead-based paint or paint of unknown lead content on a surface greater than two square feet per room, in a dwelling unit where a child under six years of age resides, or in the common areas of the building, including documentation of the work practices used. Such records shall include:

(i) All documentation required under section 11-06(c) of these rules;

(ii) A copy of all licenses and training certificates, required for the firms and personnel who performed the work;

(iii) An affidavit made by an EPA-certified abatement or EPA-certified renovation firm's authorized agent or individual who performed the work stating that the work was performed in accordance with section 27-2056.11 of article 14 of the housing maintenance code and section 11-06 of these rules, including the start and completion date of the work, and the address and contact information (phone or fax) for such firm;

(iv) A copy of the certification for such firm;

(v) The location of the work performed in each room, including a description of such work or invoices for payment for such work;

(vi) A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of preparation and analysis of the samples;

(vii) An affidavit from the individual who took the surface dust samples, verifying the date the sample was taken and indicating the address/dwelling unit where the sample was taken;

(viii) A copy of the Certificate of Training of the individual who took surface dust samples that is valid for the period when the dust samples were taken; and

(ix) Checklists completed when and/if occupants were allowed temporary access to a work area.

(2) In addition to the documents required to be submitted by paragraph (1) of this subdivision, if the work that was performed disturbed greater than 100 square feet of lead based paint or paint of unknown lead content in a room in a dwelling unit where a child under age six resides, or involved the removal of two or more windows with lead based paint or paint of unknown lead content in such unit, the department may require the submission of the following additional documentation:

A copy of the owner's notice of commencement of work that was filed with the department of health and mental hygiene. Such notice [shall] must be signed by the owner or by a representative of the firm performing the work. Such notice [shall] must include: the name, address and telephone number of the owner of the premises in which the lead-based paint work is to be performed; the address of the building and the specific location of the lead-based paint work within the building; the name, address and telephone number of the EPA-certified abatement firm that will be responsible for performing the work; the date and time of commencement of the work, working or shift hours, and the expected date of completion; a complete description and identification of the surfaces and structures, and surface areas, subject to the work; and any changes in the information contained in such notice filed with the department of health and mental hygiene prior to commencement of work, or if work has already commenced, within 24 hours of any such change.

(h) *Audit or Demand for Records of Work Performed at Turnover of any Dwelling Unit or Prior to Turnover in Dwelling Units Occupied by a Child of Applicable Age:* Upon an audit of turnover of a dwelling unit, the owner [shall] must provide:

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

(2)(A) Where no work was necessary to comply with the requirements for turnover of any dwelling unit: An affidavit stating that the dwelling unit: (i) has a lead free exemption from HPD; (ii) has no painted friction surfaces and the floor, window sills and window wells are smooth and cleanable such that no turnover work or clearance activity was required; or (iii) was XRF tested by a EPA-certified risk assessor or lead inspector and no painted surfaces tested positive for lead-based paint, with a copy of the results of the XRF test and an affidavit from the risk assessor or lead inspector; or

(B) Where work was necessary to comply with the requirements for turnover of the dwelling unit:

(i) The name, address, and telephone number of the EPA-certified abatement or EPA-certified renovation firm that performed the work;

(ii) A copy of all licenses and training certificates required for the firms and personnel who performed work;

(iii) A sworn statement made by the EPA-certified abatement firm's or EPA-certified renovation firm's authorized agent or individual who performed the work on behalf of such firm stating that the work was performed in accordance with section 27-2056.11(a)(3) of article 14 of the housing maintenance code and section 11-06 of these rules, and the start and completion date of the work;

(iv) A copy of the certification for such firm ;

(v) The location of the work performed in each room, including a description of such work and components or parts of the dwelling unit that were replaced, or the invoices for payment for such work;

(vi) A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of preparation and analysis of the samples;

(vii) An affidavit from the individual who took the surface dust sample, verifying the date that the sample was taken and stating the address and dwelling unit where the sample was taken; [and]

(viii) A copy of the Certificate of Training of the individual who took surface dust samples that is valid for the period when the dust samples were taken; and

(ix) On and after August 1, 2025, records of any x-ray fluorescence analysis conducted pursuant to subdivision a-1 of section 27-2056.4 of the administrative code and subdivision (b) of section 11-04 of these rules.

(i) Audit or Demand for Records 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] must provide:

(1) Identification of each dwelling unit and common area 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.

(j) Dismissal of Record Keeping Violations. Notwithstanding any other provision of law, a violation issued to an owner of a multiple dwelling pursuant to sections 27-2056.4, 27-2056.7, or 27-2056.17 of the administrative code, which require keeping or producing records for 10 years, shall be dismissed as having been corrected if the owner submits:

(1) a record production order dismissal request form for such violation with the required consecutive 10 years of records, including records for the year in which the owner is submitting the dismissal request; or

(2) the appropriate violation dismissal request form for such violation with documentation demonstrating that the owner has kept the required records for a period of at least 3 consecutive years, including such records for the year in which the owner is submitting the dismissal request, and upon notification from the department that such submitted documentation is sufficient, a payment of \$1,000 for each year of the 10 years that the owner does not submit documentation.

**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 Rules Relating to Lead Poisoning Prevention and Control

REFERENCE NUMBER: 2024 RG 040

RULEMAKING AGENCY: 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: October 22, 2024

**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 Rules Relating to Lead Poisoning Prevention and Control

REFERENCE NUMBER: HPD-94

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 the violation poses significant risks to public health/safety; the violation poses significant risks of environment hazards; and a cure period is not practicable under the circumstances.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 23, 2024
Date