

**DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT
NOTICE OF PROMULGATION
OF RULES PERTAINING TO
THE NEW YORK CITY CHILDHOOD LEAD POISONING PREVENTION ACT OF 2003
(Local Law #1 of 2004)**

NOTICE IS HEREBY GIVEN pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development ("Department") by Chapter 61 of the New York City Charter and Article 14 of Subchapter 2 of Chapter 2 of Title 27 of the New York City Administrative Code and in accordance with the requirements of New York City Charter §1043, that the Department hereby repeals Chapter 11 of Title 28 of the Official Compilation of Rules of the City of New York concerning lead-based paint and promulgates a new Chapter 11 of Title 28 to implement the New York City Childhood Lead Poisoning Prevention Act of 2003 (Local Law #1 of 2004). The Department also promulgates an amendment to §5-08 of Chapter 5 of Title 28 of the Official Compilation of Rules of the City of New York concerning J-51 tax benefits. These rules have been approved by Thomas R. Frieden, M.D., M.P.H., Commissioner, New York City Department of Health and Mental Hygiene, in accordance with New York City Administrative Code §27-2056.10.

Section one. Chapter 11 of Title 28 of the Rules of the City of New York concerning lead-based paint is repealed, and a new Chapter 11 is added to read as follows:

§11-01 Definitions. Whenever used in this chapter:

(a) "Abatement" shall mean any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards. Abatement includes: (i) the removal of lead-based paint and dust lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and (ii) all preparation, cleanup, disposal and post abatement clearance testing associated with such measures. Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(b) "Applicable age" shall mean under seven years of age for at least one calendar year from August 2, 2004. Upon the expiration of such one year period, in accordance with the procedures by which the health code is amended, the board of health may determine whether or not the provisions of article 14 of the housing maintenance code should apply to children of age six, and based on this determination, may redefine "applicable age" for the purposes of some or all of the provisions of such article 14 to mean under six years of age. In the event that the board of health makes such determination, the term "applicable age" shall mean under six years of age.

(c) "CFR" shall mean the Code of Federal Regulations.

(d) "Chewable surface" shall mean a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of applicable age resides and which is readily accessible to such child. "Chewable surface" shall also mean any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child of applicable age who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.

(e) "Commissioner" shall mean the Commissioner of the New York city department of housing preservation and development or of its successor agency.

(f) "Common area" shall mean a portion of a multiple dwelling that is not within a dwelling unit and is regularly used by occupants for access to and egress from any dwelling unit within such multiple dwelling.

(g) "Contractor" shall mean any person engaged to perform work that disturbs lead-based paint pursuant to this chapter.

(h) "Department" shall mean the New York city department of housing preservation and development or its successor agency.

(i) "Deteriorated subsurface" shall mean an unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.

(j) "Disturb" shall mean any action taken, which breaks down, alters or changes lead-based paint. Lead-based paint disturbances shall include, but not be limited to wet sanding or scraping or routine painting and maintenance.

(k) "Door" shall mean every door in a dwelling unit including, but not limited to, the entrance door to the unit, closet doors, and cabinet doors where such cabinets are affixed to the walls of the dwelling unit.

(l) "Encapsulation" shall mean the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. Only encapsulants approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable may be used for performing encapsulation.

(m) "Enclosure" shall mean the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(n) "Firm" shall mean a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the United States environmental protection agency has issued a certificate of approval pursuant to 40 CFR 745.226(f).

(o) "Friction surface" shall mean any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.

(p) "HEPA-vacuum" shall mean a vacuum cleaner device equipped with a high efficiency particulate air filter capable of filtering out monodispersive particles of 0.3 microns or greater in diameter from a body of air at 99.97 percent efficiency or greater.

(q) "Housing maintenance code" shall mean chapter two of title 27 of the administrative code of the city of New York.

(r) "Impact surface" shall mean any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.

(s) "Lead-based paint hazard" shall mean any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling, or from lead-based paint that is present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

(t) "Lead-based paint" shall mean paint or other similar surface coating material containing 1.0 milligrams of lead per square centimeter or greater, as determined by laboratory analysis, or by an x-ray fluorescence analyzer. If an x-ray fluorescence analyzer is used, readings shall be corrected for substrate bias when necessary as specified by the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings shall be classified as positive, negative or inconclusive in accordance with the United States department of housing and urban development "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing" (June 1995, revised 1997) and the performance characteristic sheets released by the United States environmental protection agency and the United States department of housing and urban development for the specific x-ray fluorescence analyzer used. X-ray fluorescence readings that fall within the inconclusive zone, as determined by the performance characteristic sheets, shall be confirmed by laboratory analysis of paint chips, results shall be reported in milligrams of lead per square centimeter and the measure of such laboratory analysis shall be definitive. If laboratory analysis is used to determine lead content, results shall be reported in milligrams of lead per square centimeter. Where the surface area of a paint chip sample cannot be accurately measured or if an accurately measured paint chip sample cannot be removed, a laboratory analysis may be reported in percent by weight. In such case, lead-based paint shall mean any paint or other similar surface-coating material containing more than 0.5% of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

(u) "Lead-contaminated dust" shall mean dust containing lead at a mass per area concentration of 40 or more micrograms per square foot on a floor, 250 or more micrograms per square foot on window sills, and 400 or more micrograms per square foot on window wells, or such more stringent standards as may be adopted by the department of health and mental hygiene.

(v) "Lead contaminated dust clearance test" shall mean a test for lead-contaminated dust on floors, window wells, and window sills in a dwelling, that is made in accordance with §27-2056.11 of the housing maintenance code.

(w) "Peeling" shall mean that the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface.

(x) "Permanent" shall mean an expected design life of at least 20 years.

(y) "Remediation" or "Remediate" shall mean the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the commissioner of the department of health and mental hygiene.

(z) "Removal" shall mean a method of abatement that completely eliminates lead-based paint from surfaces.

(aa) "Replacement" shall mean a strategy or method of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

(bb) "Rule" or "rules" shall mean a rule or rules promulgated pursuant to section 1043 of the New York city charter.

(cc) "Stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, and removing loose paint and other material from the surface to be treated.

(dd) "Substrate" means the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

(ee) "Turnover" shall mean the occupancy of a dwelling unit subsequent to the termination of a tenancy and the vacatur by a prior tenant of such dwelling unit. Such term shall not mean temporary relocation of an occupant for purposes of performing work pursuant to article 14 of the housing maintenance code.

(ff) "Underlying defect" shall mean a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to intrude into a dwelling or dwelling unit.

(gg) “Wet sanding” or “wet scraping” shall mean a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

(hh) “Window” shall mean the non-glass parts of a window, including but not limited to any window sash, window well, window jamb, window sill, or window molding.

(ii) “Work” shall mean any activity performed in accordance with article 14 of the housing maintenance code that disturbs paint.

(ij) “Work area” shall mean that part of a building where paint is being disturbed.

§11-02 Owner’s Responsibility to Remediate. An owner shall remediate all lead-based paint hazards and underlying defects in a dwelling unit where a child of applicable age resides in accordance with the applicable work practices set forth in §11-06 of these rules.

§11-03 Notice Inquiring About the Residency of a Child of Applicable Age.

(a) Notice upon signing of a lease, including a renewal lease, if any, or upon any agreement to lease or at the commencement of occupancy if there is no lease.

(1) The owner of a multiple dwelling erected prior to January first, nineteen hundred sixty or of a multiple dwelling erected on or after January first, nineteen hundred sixty and before January first, nineteen hundred seventy-eight, where an owner has actual knowledge of the presence of lead-based paint, shall provide to an occupant of a dwelling unit at the signing of a lease, including a renewal lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, a notice in English and Spanish inquiring whether a child of applicable age resides or will reside therein. If there is a lease, such notice will be attached as a rider to the lease. In addition, such owner shall deliver to the occupant at the time the occupant signs a lease, if any, or upon any agreement to lease, or, at the commencement of occupancy if there is no lease, the pamphlet developed by the department of health and mental hygiene pursuant to §17-179(b) of the administrative code of the city of New York. Such notice shall be printed on a single form, the content of which shall be as specified in Appendix A hereto, and shall be printed in not less than ten point type, and shall bear the title “Prevention of Lead-based Paint Hazards—Inquiry Regarding Child”. Such notice shall be in duplicate, one copy of which will be for the occupant’s records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt 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. The notice provided at the signing of a lease, or upon any agreement to lease, or at the commencement of occupancy if there is no lease, shall also contain a statement, signed by such owner, stating that he or she has complied with the provisions concerning apartments at turnover pursuant to §27-2056.8 of Article 14 of the housing maintenance code and §11-05 of these rules, and that he or she has delivered such pamphlet developed by the department of health and mental hygiene to the occupant.

(2) No occupant in a dwelling unit in such multiple dwelling shall refuse or unreasonably fail to provide accurate and truthful information regarding the residency of a child of applicable age therein, nor shall an occupant refuse access to the owner at a reasonable time and upon reasonable prior notice to any part of the dwelling unit for the purpose of investigation and repair of lead-based paint hazards.

(3) Where an occupant has responded to the notice provided by the owner pursuant to paragraph (1) of this subdivision by indicating that no child of applicable age resides therein or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time during the immediately following year prior to the delivery of the annual notice by the owner pursuant to subdivision (b) of this section, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(b) Annual Notice.

(1) Each year an owner of a multiple dwelling erected prior to January first, nineteen hundred sixty shall cause to be delivered to each residential unit a notice in English and Spanish inquiring as to whether a child of applicable age resides therein and advising the occupant of his or her duty to report the presence of such child in writing.

(2) Such notice shall be delivered as provided in §27-2056.4(e) of article 14 of the housing maintenance code, no earlier than January first and no later than January sixteenth, provided, however, that if such notice is enclosed with the January rent bill, such notice may be delivered no sooner than December fifteenth and no later than January sixteenth.

(3) Such notice shall be printed on a single form, the content of which shall be as specified in Appendix B hereto, and shall be printed in not less than ten point type, and shall bear the title "Prevention of Lead-based Paint Hazards—Inquiry Regarding Child". Such notice may be combined with the annual window guard notice required by 24 RCNY Chapter 12 in a form approved by the department of health and mental hygiene. Such notice shall be in duplicate, one copy of which will be for the occupant's records, and one copy of which will be returned to the owner. Such notice shall be kept for a period of ten years from the date of receipt 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.

(4) Upon receipt of such notice, the occupant shall have the duty to deliver a written response to the owner indicating whether a child of applicable age resides in the dwelling unit, by February fifteenth of the year in which the notice is sent. Where an occupant has responded to the notice provided by the owner pursuant to paragraph one of this subdivision by indicating that no child of applicable age resides therein, or has failed to respond to such notice, if a child of applicable age subsequently comes to reside in such dwelling unit at any time prior to delivery of the next annual notice, the occupant shall have the duty to inform the owner in writing that such child has come to reside therein.

(5) If, subsequent to the delivery of such annual notice, the owner does not receive a written response by February fifteenth, and does not otherwise have actual knowledge as to whether a child of applicable age resides therein, then the owner shall at reasonable times and upon reasonable notice inspect the occupant's dwelling unit to ascertain whether a child of applicable age resides therein. Where, between February sixteenth and March first of that year the owner has made reasonable attempt to gain access to the dwelling unit and was unable to gain access, the owner shall notify the department of health and mental hygiene of that circumstance in writing.

(c) The wording of the notices specified in this section shall not be altered or varied in any manner, unless otherwise approved by the department or the department of health and mental hygiene, provided, however, that such owner may provide such notice in any languages in addition to English and Spanish as such owner believes will be of assistance in ensuring communication of the content of such notice to the occupants of the multiple dwelling.

§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 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 and before January first, nineteen hundred seventy-eight, 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, an owner knows or should have known of a condition that is reasonably foreseeable to cause a lead-based paint hazard, or an occupant makes a complaint concerning a condition that is likely to cause a lead-based paint hazard or requests an inspection, or 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) An owner shall maintain or transfer to a subsequent owner records of inspections of dwelling units performed pursuant to 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 (a) of this section, and the actions taken as a result of such inspection pursuant to §11-02 of these rules. If an owner claims an inability to gain access to the unit for such 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) Nothing in this section shall be deemed to preclude 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 §11-06 of these rules.

§11-05 Turnover of Dwelling Units.

(a) Upon 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, 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;

(2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;

(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 be performed in the time period commencing with the vacancy of the unit and shall be completed prior to reoccupancy of such unit. All work performed pursuant to this section shall be performed using the applicable safe work practices set forth in §11-06(g)(3) of these rules.

(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 section 11-06(c) of these rules. In addition, the owner shall make such records available to the new occupant of such dwelling unit upon request.

(d) An owner shall certify that he or she has complied with §27-2056.8 of article 14 of the housing maintenance code and this section in the notice provided to an occupant upon signing of lease, if any, or upon any agreement to lease, or at the commencement of occupancy if there is no lease pursuant to subdivision (a) of §11-03 of these rules.

§11-06 Safe Work Practices.

(a) Filing procedures. Not less than ten days prior to commencement of work that will disturb lead-based paint pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, an owner shall file with the department of health and mental hygiene a notice of the commencement of the work. Such notice shall be signed by the owner or by a representative of the firm performing the work. Where work is required to be commenced in a lesser period of time than that specified herein for the filing of a notice of commencement of work, then such filing shall be made as soon as practicable but prior to the commencement of work. Such notice shall be in a form satisfactory to or prescribed by the department of health and mental hygiene and shall set forth at a minimum the following information:

(1) The name, address and telephone number of the owner of the premises in which the lead-based paint work is to be performed;

(2) The address of the building and the specific location of the lead-based paint work within the building;

(3) The name, address and telephone number of the firm who will be responsible for performing the work;

(4) The date and time of commencement of the work, working or shift hours, and the expected date of completion;

(5) A complete description and identification of the surfaces and structures, and surface areas, subject to the work; and

(6) Any changes in the information contained in the notice required by this section shall be 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.

(b) Licensing and training.

(1) Abatement. All work conducted as part of an abatement as defined in this chapter shall be performed by firms and personnel certified to perform lead-based paint activities in accordance with regulations issued by the United States environmental protection agency at subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.

(2) Work ordered by the department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work

performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:

(i) Firm requirements. Firms conducting such work shall be certified to perform lead abatement by the United States environmental protection agency in accordance with subpart L of 40 CFR part 745 for the abatement of lead hazards, or successor rule.

(ii) Worker requirements. Workers conducting such work shall be trained, at a minimum, in accordance with the regulations issued by the United States department of housing and urban development at 24 CFR §35.1330(a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(iii) Clearance dust testing. No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. All personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained, at a minimum, in accordance with regulations issued by the United States department of housing and urban development at 24 CFR §35.1340 (b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(3) Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code, shall be performed in accordance with the following requirements:

(i) Worker requirements. Workers conducting such work shall be trained under regulations issued by the United States department of housing and urban development at 24 CFR §35.1330 (a)(4), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(ii) Clearance dust testing. No person shall perform a lead-contaminated dust clearance test pursuant to this section unless such person is a third party, who is independent of the owner and any individual or firm that performs such work. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340 (b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(4) Work performed in a dwelling unit upon turnover in accordance with §27-2056.8 of article 14 of the housing maintenance code. No person shall perform a lead-contaminated dust clearance test pursuant to this paragraph unless such person is a third party, who is independent of the owner and any individual or firm that performs the work upon turnover. Personnel performing lead-contaminated dust clearance testing after completion of such work shall be trained in accordance with regulations issued by the department of housing and urban development at 24 CFR §35.1340 (b)(1), or successor rule, or under an equivalent program approved by the department or the department of health and mental hygiene.

(c) Recordkeeping. An owner shall keep a record of the following information for all work performed pursuant to this section:

(1) The name, address, and telephone number of the person or entity who performed the work; the start date and completion date for the work;

(2) A copy of all licenses and training certificates, required pursuant to subdivision (b) of this section, for the firms and personnel who performed work and lead-contaminated dust clearance testing;

(3) The location of the work performed in each room including a description of such work and invoices for payment for such work;

(4) Results of lead-contaminated dust clearance tests analyzed by an independent laboratory certified by the state of New York;

(5) Checklists completed pursuant to (g)(1)(ix)(F)(f) when occupants are allowed temporary access to a work area; and

(6) Such records shall be maintained by such owner for a period of ten years from the date of completion of such work or transferred to a subsequent owner and maintained by such subsequent owner during such time period, and made available to the department upon request.

(d) Work methods.

(1) Minimizing dust dispersion. Work that disturbs lead-based paint as defined in this chapter shall be carried out in such a manner as to minimize the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building or adjacent outdoor areas.

(2) An area designated as a clean changing area shall be segregated from the work area by a physical barrier to prevent the penetration or dispersal of lead contaminants or lead-contaminated materials from the work area to other areas of the dwelling unit and building and to prevent occupant exposure to materials containing lead.

(3) Repair of lead-based paint hazard violations may be performed by wet sanding, wet scraping, removal, enclosure, encapsulation, replacement or abatement except where otherwise specified in article 14 of the housing maintenance code or these rules.

(e) Prohibited methods. The following methods shall not be used while performing work in accordance with these rules that disturbs lead-based paint or paint of unknown lead content:

(1) Open flame burning or torching.

(2) Machine sanding or grinding without HEPA local exhaust control.

(3) Abrasive blasting or sandblasting without HEPA local exhaust control.

(4) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(5) Dry sanding or dry scraping.

(6) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the United States consumer product safety commission at 16 CFR §1500.3, and/or a hazardous chemical in accordance with the United States occupational safety and health administration regulations at 29 CFR §§1910.1200 or 1926.59, as applicable to the work.

(f) Work practices and surface finishing.

(1) All tools and materials used when disturbing paint shall be used in accordance with the manufacturer's instructions.

(2) Wet sanding, wet scraping, removal, enclosure, encapsulation, replacement, abatement and other maintenance and repair activities shall be performed using standard construction and treatment methods, and in accordance with manufacturer's instructions, where applicable.

(3) All surfaces where paint has been disturbed shall be sealed and finished with appropriate materials. Underlying surface substrates shall be dry and protected from future moisture before applying a new protective coating or paint, and all paints and coatings shall be applied in accordance with the manufacturer's recommendations.

(g) Occupant protection.

(1) Work ordered by the Department to correct a lead-based paint hazard violation in accordance with §27-2056.11(a)(1) of article 14 of the housing maintenance code, or work performed pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code.

(i) Postings. The following information shall be conspicuously posted no later than twenty-four hours prior to beginning work and shall remain in place until the work area has been cleared for re-occupancy:

(A) Notice of commencement of work information submitted to the department of health and mental hygiene pursuant to §27-2056.11(a)(2)(ii) of article 14 of the housing maintenance code. Such information shall be posted at the entrance to the dwelling and at the entrance to the dwelling unit.

(B) A warning sign of at least 8-1/2" by 11" with letters at least one inch high, reading as follows: WARNING: LEAD WORK AREA - POISON - NO SMOKING OR EATING. Such information shall be posted adjacent to the work area.

(ii) Pre-cleaning and protecting moveable items. All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with two layers of six-mil disposable polyethylene sheeting before work begins. Such sheeting shall be taped together with waterproof tape, and taped to the floors or bottom of the walls or baseboards, so as to form a continuous barrier to the penetration of dust.

(iii) Sealing vents. Forced-air systems within the room where work that disturbs lead-based paint is occurring shall be turned off and covered with two layers of six-mil polyethylene sheeting and waterproof tape to prevent lead contamination and lead dispersal to other areas.

(iv) Affixing doorway entrance flap. After all moveable objects have been removed, the work area shall be sealed off from non-work areas by taping with waterproof tape, two layers of disposable, six-mil polyethylene sheeting over every entrance or doorway to the work area, as follows: To deter the dispersal of lead dust one sheet shall be taped along all sides of the doorway and a slit shall be cut down the middle of the sheeting, leaving intact at least six inches of sheeting on the top and six inches of sheeting on the bottom of the doorway. A second sheet of polyethylene large enough to cover the doorway, shall be attached to the top of the doorway in the room or area where work is being conducted and shall act as a flap opening into the work area.

(v) Covering floors. The floor of the work area shall be covered with at least two sheets of disposable six-mil polyethylene sheeting. Such sheeting shall be taped together with waterproof tape, and taped to the bottom of the walls or baseboard, so as to form a continuous barrier to the penetration of dust to the floor. The furniture and non-moveable furnishings, such as counters, cabinets, and radiators in the work area shall be removed or covered with such taped sheeting.

(vi) Sealing openings. All openings, including windows, except those required to be open for ventilation, not sealed off or covered in accordance with subdivision (g)(1)(iii) of this section, shall be sealed with two layers of six-mil polyethylene sheeting and waterproof tape to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

Instructing occupants.

(vii) Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clearance levels have been achieved.

(viii) Hazardous materials. All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

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

(A) Daily clean-up. At the completion of work each day, the work area shall be thoroughly wet-mopped or HEPA-vacuumed. No polyethylene sheeting, drop cloths, or other materials that are potentially hazardous to young children or infants shall be accessible outside the work area. In addition, any work area and other adjoining area exposed to lead or lead-contaminated materials shall be cleaned as follows:

(a) Large debris. Large demolition-type debris (e.g., door, windows, trim) shall be wrapped in six-mil polyethylene, sealed with waterproof tape, and moved to the area designated for trash storage on the property to be properly disposed of in a lawful manner.

(b) Small debris. Small debris shall be HEPA-vacuumed or wet swept and collected. Before wet sweeping occurs, the affected surfaces shall be sprayed with a fine mist of water to keep surface dust from becoming airborne. Dry sweeping is prohibited. The swept debris and all disposable clothing and equipment shall be placed in double four-mil or single six-mil plastic bags which shall be sealed and stored along with other contaminated debris in the work area and shall be properly disposed of in a lawful manner.

(c) Clean-up adjacent to the work area. On a daily basis, as well as during final clean-up, the area adjacent and exterior to the work area shall be examined visually to ensure that no lead debris has escaped containment. Any such debris shall be wet swept and HEPA-vacuumed, collected and disposed of as described above.

(d) Supply storage. Upon finishing work for the day, 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 be stored at the end of each work day in sealed containers or removed from the premises, in a lawful manner.

(B) Final clean-up. Final cleaning shall be performed as follows, in the following sequence:

(a) The final cleaning process shall start no sooner than one (1) hour after lead-based paint disturbance activities have been completed, but before repainting, if necessary.

(b) First, all polyethylene sheeting shall be sprayed with water mist and swept prior to removal. Polyethylene sheeting shall be removed by starting with upper-level polyethylene, such as that on windows, cabinets and counters, folding the corners, ends to the middle, and placing in double four-mil or single six-mil plastic bags. Plastic bags shall be sealed and properly disposed of in a lawful manner.

(c) Second, all surfaces in the work area shall be HEPA-vacuumed. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(d) Third, all surfaces in the work area shall be washed with a detergent solution. Washing shall begin with the ceiling and proceed down the walls to the floor. Wash water shall be properly disposed of in a lawful manner.

(e) Fourth, all surfaces exposed to lead dust generated by the lead-based paint disturbance process shall be HEPA-vacuumed again. Vacuuming shall begin with ceilings and proceed down the walls to the floors and include furniture and carpets.

(f) Fifth, all surfaces shall be inspected to ensure that all surfaces have been cleaned and all visible dust and debris have been removed. If all visible dust and debris have not been removed, affected surfaces shall be re-cleaned.

(C) Final inspection. After final clean-up, and re-painting if necessary, has been completed, a final inspection shall be made by a third party retained by the owner who is independent of the owner and the contractor. The final clearance evaluation shall include a visual inspection and lead-contaminated dust clearance testing. Three wipe samples shall be collected and tested from each room or area where work has been conducted; one wipe sample each shall be taken from a window well, a window sill and the floor. In addition, lead-contaminated dust clearance samples shall be collected and tested from the floor in rooms or areas immediately adjacent to the work area.

(D) Clearance for re-occupancy. Lead-contaminated dust levels in excess of the following constitute contamination and require repetition of the clean-up and testing process in all areas where such levels are found. Areas where every lead-contaminated dust sample result is below the following levels may be cleared for re-occupancy:

Floors: 40 micrograms of lead per square foot.

Window Sills: 250 micrograms of lead per square foot.

Window Wells: 400 micrograms of lead per square foot.

Only upon receipt of laboratory test results showing that the above dust lead levels are not exceeded in the dwelling may the work area be cleared for permanent re-occupancy. However, temporary access to work areas may be allowed, provided that clean-up is completed and dust test samples have been collected in compliance with this section. The owner shall provide all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit.

(E) Relocation. An owner shall 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 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).

(F) Temporary access to the work area when occupants not relocated. When occupants are not relocated, temporary access may be allowed to areas in which work is in progress after work has ceased for the day, provided that at the end of each work day:

(a) Any work area to be accessed is properly cleaned as specified in the daily clean-up requirements of subdivision (g)(1)(ix)(A) of this section and the final clean-up requirements of subdivision (g)(1)(ix)(B)(b) through (d) and (f);

(b) There are no safety hazards (including, but not limited to, exposed electric wiring or holes in the floor) or covered vents;

(c) Floor coverings containing leaded dust and debris and hazardous materials are removed;

(d) Floors in the work area are re-covered with a non-skid floor covering securely taped to the floor;

(e) Work areas are prepared in accordance with the requirements above when work recommences; and

(f) At the end of each workday, and before access is permitted, a checklist indicating compliance with these conditions is completed and signed by the person responsible for overseeing the work. No person shall make a false, untrue or misleading statement or forge the signature of another person on any document or record required to be prepared pursuant to these rules.

(g) Temporary access in accordance with these provisions may be allowed for no longer than five days. If work has not resumed within five days, temporary access may continue only if the person responsible for overseeing the work has repeated the actions required by clauses (a) through (f) of this subparagraph (F). Nothing herein shall extend the time for compliance with any violation issued pursuant to article 14 of the housing maintenance code.

(2) Work performed in accordance with §27-2056.11(a)(2)(i) of article 14 of the housing maintenance code that disturbs lead-based paint.

(i) Postings. A warning sign shall be posted in accordance with subdivision (g)(1)(i)(B) of this section and caution tape shall be placed across the entrance to the work area.

(ii) Pre-cleaning and protecting moveable items. All floors, moveable furniture, draperies, carpets, or other objects in the work area shall be HEPA-vacuumed or washed; all moveable items shall then be moved out of the work area or otherwise covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work.

(iii) Covering floors. The floor of the work area shall be covered with polyethylene plastic or equivalent sheeting. All plastic or equivalent sheeting used during the performance of the work shall be of sufficient thickness and durability to prevent tearing during the performance of the work. Such sheeting shall be of sufficient length and width to prevent dust and other debris generated by the work from spreading to areas unprotected by such sheeting. Such sheeting must be adequately secured to prevent movement of the sheeting during the performance of the work. Multiple layers of polyethylene sheeting shall be used as needed to prevent dust from contaminating the floor.

(iv) Sealing openings. Where applicable, forced air systems in the work area shall be turned off and any openings in the work area shall be sealed with polyethylene or equivalent sheeting to prevent the penetration or dispersal of lead contaminants or lead-contaminated material.

(v) Instructing occupants. Occupants shall be instructed by the owner and contractor to avoid entering the work area until final clean up has been completed.

(vi) Hazardous materials. All paints, thinners, solvents, chemical strippers or other flammable materials shall be delivered to the building and maintained during the course of the work in their original containers bearing the manufacturer's labels, and all material safety data sheets, as may be required by law, shall be on-site and shall be made available upon request to the occupants of the dwelling unit.

(vii) Clean-up and lead-contaminated dust clearance testing shall be conducted in accordance with subdivision (g)(1)(ix) of this section.

(viii) Relocation and temporary access to work areas when occupants are not relocated, where provided, shall be performed in accordance with (g)(1)(ix)(E) and (F) of this section.

(3) Work performed in a dwelling unit on turnover in accordance §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 be followed.

(ii) Clean-up. At the completion of work, the work area shall be thoroughly wet-mopped or HEPA-vacuumed and a visual examination shall be conducted in the work area and the area adjacent and exterior to the work area. Any noted lead-contaminated dust or debris shall be wet-mopped or HEPA-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 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 be conducted in accordance with subdivision (g)(1)(ix)(C)-(D) of this section.

§11-07 Presumption.

(a) In any multiple dwelling erected prior to January first, nineteen hundred sixty, it shall be presumed that the paint or other similar surface-coating material in any dwelling unit where a child of applicable age resides or in the common areas of such multiple dwelling is lead-based paint.

(b)(1)The presumption established in this section may only be rebutted as provided in paragraph (2) of this subdivision by the registered owner, registered officer or director of a corporate owner or by a registered managing agent of such multiple dwelling by submitting to the department:

(i) a sworn written statement, supported by lead-based paint testing or sampling results, including a description of the testing methodology and manufacturer and model of instrument used to perform such testing or sampling;

(ii) a sworn written statement by the person who performed the testing if performed by an employee or agent of the owner which shall include a copy of the certificate of training as a certified lead-based paint inspector or risk assessor as provided in subdivision (d) of this section;

(iii) a copy of the inspection report provided by the person who performed the testing or sampling which shall include a description of the surfaces in each room where such testing or sampling was performed; and

(iv) a copy of the results of such testing and/or such laboratory tests of paint chip samples performed by an independent laboratory certified by the state of New York where such testing has been performed.

(2) Such written statement and all supporting documentation shall be submitted to the department not later than six (6) days before the date set for correction in the notice of violation in accordance with paragraph (1) of this subdivision, and may only be submitted to rebut the presumption where the department has not performed an XRF test prior to issuing such violation. Receipt by the department of a complete application in accordance with this subdivision including such written statement and such supporting documentation shall toll the time period to correct the violation. Receipt of an incomplete application shall not toll the time period for correction of the violation.

(3) The department shall notify the registered owner, registered officer or director of a corporate owner or registered managing agent of such multiple dwelling of its determination in writing, and, if the department determines that such presumption has not been rebutted, such notice shall set a date for correction of the violation.

(c) Where testing or sampling is performed to rebut the presumption established in this section, the performance of such testing shall be in accordance with the definition for lead-based paint established in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code. Laboratory analysis for paint chip samples shall be permitted only where XRF tests fall within the inconclusive zone for the particular XRF machine or where the configuration of the surface or component to be tested is such that an XRF machine cannot accurately measure the lead content of such surface or component. Laboratory tests of paint chip samples, where performed, shall be reported in mg/cm², unless the surface area of a paint chip sample cannot be accurately measured, or if an accurately measured paint chip sample cannot be removed, in which circumstance the laboratory test may be reported in percent by weight. Where paint chip sampling has been performed, the sworn written statement by the person who performed the testing shall include a statement that such sampling was done in accordance with 40 CFR §745.227 or successor provisions.

(d) Testing performed to rebut the presumption may only be performed by a person who has been certified as a lead-based paint inspector or risk assessor in accordance with subparts L and Q of 40 CFR part 745 or successor provisions and such testing shall be performed in accordance with 40 CFR §745.227(a) and (b) or successor provisions.

§11-08 Exemption from Presumption.

(a) A registered owner or registered officer or director of a corporate owner or registered managing agent of a multiple dwelling erected prior to January first, nineteen hundred sixty or, where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, a representative of the corporation or the condominium board of managers may apply to the department, in writing, for an exemption of the application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules with respect to such multiple dwelling or any part thereof, provided further, that where title to such multiple dwelling is held by a cooperative housing corporation or the units in such multiple dwelling are owned as condominium units, the shareholder of record on the proprietary lease or the owner of record of such condominium unit, as is applicable, may apply to the department for such exemption for his or her individual unit where such presumption is or may become applicable.

(b) Except as otherwise provided in subdivision (c), such exemption shall be granted only where such owner or such other person specified in subdivision (a) of this section submits a written determination made by a lead-based paint inspector or risk assessor certified pursuant to subparts L and Q of 40 CFR part 745 or successor provisions, and in accordance with 40 CFR §745.227(b), or Chapter 7 of the department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing that each tested surface and component in each dwelling unit in such multiple dwelling or in the individual dwelling unit, if applying for an exemption of a particular dwelling unit in such multiple dwelling, is free of lead-based paint as defined in §11-01(s) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code, or, that as a result of a substantial alteration of each dwelling unit such lead-based paint on each surface and component in each dwelling unit has been contained so that each surface tested is negative for such lead-based paint. Where surfaces or components within the dwelling unit can be demonstrated by the owner, to the satisfaction of the department, to have a common construction and painting history, the lead-based paint inspector or risk assessor performing such testing may test a sample of the surfaces and components having such common construction and painting history within the dwelling unit to make such determination, in accordance with 40 CFR §745.227(b), or Chapter 7 of the

department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing. For purposes of this section, the term "contained" shall mean that every surface containing lead-based paint has been permanently covered, enclosed and sealed with sheetrock or similar durable construction material to eliminate gaps which may allow access to or dispersion of dust or other matter from the underlying surface.

(c) For any surface within a dwelling unit or dwelling where encapsulation has been applied to a surface for the purpose of qualifying such dwelling unit or dwelling for an exemption under this section, in addition to the information required to be provided to the department pursuant to subdivision (d) of this section, such application shall include: the location of each surface that has been encapsulated; the name of the encapsulant that has been used, which shall be limited to those approved by the New York state department of health or by another federal or state agency or jurisdiction which the department has designated as acceptable; and a statement by the person who applied such encapsulant, who shall be certified to perform abatement pursuant to 40 CFR part 745 or successor provisions, that it has been applied in accordance with the manufacturer's instructions. The surfaces to which such encapsulants are applied shall be subject to periodic monitoring by the owner to ensure that they remain undamaged and intact, provided further, that the owner of such dwelling unit or dwelling shall keep records of any monitoring of such encapsulated surfaces for a period of ten years and produced by the owner upon request by the department.

(d) In addition to the information required by subdivision (c) of this section, where applicable, an application for exemption shall include: the address of the multiple dwelling; the number of units; the dates, if known, when substantial alterations were made to the dwelling unit(s) and a description of the work performed; the date of the inspection resulting in the determination; and a copy of the inspection report. Such inspection report shall contain a description of the surfaces tested and the results of such testing. Such application shall also include a copy of the certificate of training of the person who performed such testing.

(e) Upon submission of a complete application for exemption to the department, such multiple dwelling or part thereof, or dwelling unit, shall be deemed to be exempt from application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules. The department may revoke an exemption granted pursuant to this section where the department determines, after inspection, that a surface in any dwelling unit for which lead-based paint was contained or to which an encapsulant was applied is no longer intact or sealed or that such exemption was determined to be based upon fraud, mistake or misrepresentation. The department shall provide written notification to the owner upon making such determination. Absent fraud, mistake or misrepresentation in the initial application, an owner may reapply for the exemption by showing that the surface for which the lead-based paint was no longer contained or encapsulated has been repaired and resealed.

(f) Results of lead-based paint testing or evidence of application of encapsulants to surfaces performed prior to the effective date these rules, that conforms with the requirements of this section, may be submitted to qualify for an exemption from the presumption pursuant to this section.

§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 submit a certification of correction of a lead-based paint hazard violation

issued pursuant to §27-2056.6 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 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 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 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.

§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 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).

(b) Grant of a postponement shall be in the sole discretion of the department, and will be limited to circumstances where a showing has been made by the owner, to the satisfaction of the department, that such owner has taken steps to correct the violation promptly but that full correction could not be completed expeditiously because of the existence of a serious technical difficulty, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit or other area of the building necessary to make the required repair. An application for postponement shall contain a detailed statement by the registered owner or agent, or registered managing agent, explaining the steps taken to correct the violation promptly and the specific circumstances surrounding the inability to fully correct the violation within the time set for correction of the violation. Where an owner claims inability to gain access, such application shall include a description of the steps taken to gain access, including but not limited to providing a written notice to the tenant, delivered by certified or registered mail, informing the tenant of the necessity of access to the dwelling unit to correct the violation and the reason why access could not be gained.

(c)(1) The department shall make a determination in writing whether the postponement shall be granted or denied, and the reasons therefor. The department may include such other conditions as are deemed necessary to insure correction of the violation within the time set by the postponement. If the postponement is granted, a new date for correction shall be set, which shall not exceed fourteen days from the date set for correction in the notice of violation, provided, however, that the department may grant an additional postponement of fourteen days where the department determines that the conditions which is the subject of the violation has been stabilized.

(2) The department may grant a postponement of the time to correct a lead-based paint hazard violation in excess of the twenty-eight days provided for in paragraph (1) of this subdivision, where the department determines that the work to be done to remediate the violation includes one or more substantial capital improvements to be made in conjunction with such work, and that such improvements will significantly reduce the presence of lead-based paint in such multiple dwelling or dwelling unit, provided that the paint which is the subject of the violation is stabilized. An owner who applies for such longer postponement shall submit an application within the time period specified in subdivision (a) of this section, and shall include with such application such documentation as the department may require to make its determination, which may include, but is not limited to, written contracts for work, building permits, plans filed with the department of buildings; invoices for materials purchased; and evidence that work has commenced and substantial progress has been made.

§11-11 Audit and Inspection by the Department.

(a) Upon the issuance of a commissioner's order to abate by the commissioner of the department of health and mental hygiene pursuant to New York city health code §173.13, the department shall require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. At such other times as the department may deem it necessary, the department may require that an owner submit to it all records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. If such order to abate has been issued, such records shall be submitted to the department within 45 days of written demand for such records by the department. In all other cases, the time period for submission shall be stated in writing to the owner, and shall be in the discretion of the department.

(b) The department may undertake any inspection and enforcement actions it deems necessary under applicable law and these rules based upon its review of the records submitted by an owner pursuant to subdivision (a) of this section. The department may also undertake any inspection or enforcement action authorized by law where an owner refuses or fails to produce any of the records required to be kept pursuant to article 14 of the housing maintenance code, these rules, and other applicable law.

§11-12 Dwelling units in cooperative housing corporations and condominiums

Where the department has issued a violation pursuant to article 14 of the housing maintenance code for a dwelling unit in a multiple dwelling where (i) title to such multiple dwelling is held by a cooperative housing corporation or such dwelling unit is owned as a condominium unit, and (ii) such dwelling unit is occupied by the shareholder of record on the proprietary lease for such dwelling unit or the owner of record of such condominium unit, as is applicable, or the shareholder's or record owner's family, the cooperative housing corporation or the condominium board of managers may apply to the department to have such violation reissued. Such application shall include a sworn affidavit from a representative of the cooperative housing

corporation or condominium board of managers attesting to the status of such multiple dwelling as either a cooperative or condominium, and a sworn affidavit from the shareholder of record on the proprietary lease of the unit or the owner of record of the condominium unit for which the violation was issued, attesting to his or her occupancy of the unit.

§2. Item 13 of subdivision (a) of the Itemized Cost Breakdown Schedule contained in section 5-08 of chapter 5 of title 28 of the Rules of the City of New York and accompanying footnote 5 are hereby amended, and new items 13(a) and 13(b) and accompanying footnote 5a, are hereby added, to read as follows:

Item	Units	Allowance [Per Contract] <u>Applicable Allowance plus 10%</u>
*(13) <u>[Deleading] Abatement of lead-based paint hazards⁵</u>		
*(13a) <u>Inspection for Lead-Based Paint Hazards</u>	<u>dwelling units</u>	<u>400.</u>
*(13b) <u>Risk Assessment of Lead-Based Paint Hazards^{5a}</u>	<u>dwelling units</u>	<u>250.</u>

⁵ [Requires] For construction commenced on or after August 2, 2004, requires (a) "an abatement" of lead-based paint hazards, as defined in 40 Code of Federal Regulations Part 745 or any successor regulations, (b) proof of lead-based paint hazards pursuant to an "inspection" and/or "risk assessment", as defined in 40 Code of Federal Regulations Part 745 or any successor regulations, and (c) proof that the dwelling unit in which such abatement occurred is occupied by a child of applicable age, as established in accordance with section 27-2056.18 of the Administrative Code. Notwithstanding the foregoing, no such benefit shall be given for any abatement performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter two of title 27 of the Administrative Code.

Furthermore, the deleading of lead-based paint hazards pursuant to a NYC Dept. of Health and Mental Hygiene order[,] that is commenced prior to August 2, 2004 will continue to be eligible for J-51 benefits provided that there is an approved contract and sign-off. The allowance for such deleading of lead-based paint hazards will be per contract.

^{5a} In order to qualify for benefits pursuant to 13a or 13b above, (a) must be "inspection" or "risk assessment" as defined in 40 Code of Federal Regulations Part 745 or any successor regulations, (b) inspection or risk assessment must have determined that lead-based paint hazards exist in such dwelling unit, (c) dwelling unit in which such inspection or risk assessment occurred must be occupied by a child of applicable age, as established in accordance with section 27-2056.18 of the Administrative Code, and (d) must also have performed an "abatement" of lead-based paint hazards, as defined in 40 Code of Federal Regulations Part 745 or any successor regulations, in response to such inspection or risk assessment determination. Notwithstanding the foregoing, no such benefit shall be given for any abatement performed to comply with a notice of violation issued for a violation of article fourteen of subchapter two of chapter two of title 27 of the Administrative Code. Furthermore, such benefits for

STATEMENT OF BASIS AND PURPOSE

The purpose of these rules is to implement Article 14 of the Housing Maintenance Code relating to lead poisoning prevention and control. Among the many provisions, the rules detail the responsibilities of owners of multiple dwellings and occupants of dwelling units in which children under the applicable age reside with reference to the prevention of lead-based paint hazards, maintenance of painted surfaces in such dwelling units, notification and investigation for the presence of children and of lead-based paint hazards and the correction of lead-based paint hazards and lead-based paint hazard violations using trained workers and safe work practices. The rules also specify work practices to be used by owners when disturbing lead paint or paint of unknown lead content in multiple dwelling units where a child of applicable age resides. Other provisions concern procedures for certification of correction of violations, exemption from the presumption of lead paint, applications for postponements of time to perform work to remediate violations, recordkeeping requirements, and audit of building records by the Department under certain circumstances. Finally, these rules amend the J-51 rules to provide for benefits when an abatement of lead-based paint hazards is performed under the specified circumstances. These rules repeal and replace the rules promulgated pursuant to former LL #38 of 1999.

inspection or risk assessment of lead-based paint hazards shall only be given for such inspections or risk assessments commenced on or after August 2, 2004.

APPENDIX A

LEASE/COMMENCEMENT OF OCCUPANCY NOTICE FOR PREVENTION OF LEAD-BASED PAINT HAZARDS—INQUIRY REGARDING CHILD

You are required by law to inform the owner if a child under seven years of age resides or will reside in the dwelling unit (apartment) for which you are signing this lease/commencing occupancy. If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. **IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD.** If you do not respond to this notice, the owner is required to attempt to inspect your apartment to determine if a child under seven years of age resides there.

If a child under seven years of age does not reside in the unit now, but does come to live in it at any time during the year, you must inform the owner in writing immediately. If a child under seven years of age resides in the unit, you should also inform the owner immediately at the address below if you notice any peeling paint or deteriorated subsurfaces in the unit during the year.

Please complete this form and return one copy to the owner or his or her agent or representative when you sign the lease/commence occupancy of the unit. Keep one copy of this form for your records. You should also receive a copy of a pamphlet developed by the New York City Department of Health and Mental Hygiene explaining about lead-based paint hazards when you sign your lease/commence occupancy.

- CHECK ONE:
- A child under seven years of age resides in the unit
 - A child under seven years of age does not reside in the unit.

_____ (Occupant signature)

Print occupant's name, address and apartment number: _____

(NOT APPLICABLE TO RENEWAL LEASE) Certification by owner: I certify that I have complied with the provisions of §27-2056.8 of Article 14 of the Housing Maintenance Code and the rules promulgated thereunder relating to duties to be performed in vacant units, and that I have provided a copy of the New York City Department of Health and Mental Hygiene pamphlet concerning lead-based paint hazards to the occupant.

_____ (Owner signature)

RETURN THIS FORM TO: _____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS
OWNER COPY/OCCUPANT COPY

APPENDIX B
ANNUAL NOTICE FOR PREVENTION OF LEAD-BASED PAINT HAZARDS—INQUIRY
REGARDING CHILD

You are required by law to inform the owner if a child under seven years of age resides or will reside in your dwelling unit (apartment). If such a child resides or will reside in the unit, the owner of the building is required to perform an annual visual inspection of the unit to determine the presence of lead-based paint hazards. **IT IS IMPORTANT THAT YOU RETURN THIS FORM TO THE OWNER OR MANAGING AGENT OF YOUR BUILDING TO PROTECT THE HEALTH OF YOUR CHILD.** If you do not respond to this notice, the owner is required to attempt to inspect your apartment to determine if a child under seven years of age resides there.

If a child under seven years of age does not reside in the unit now, but does come to reside in it at any time during the year, you must inform the owner in writing immediately. If a child under seven years of age lives in the unit you should also inform the owner immediately if you notice any peeling paint or deteriorated surfaces in the unit during the year. You may request that the owner provide you with a copy of any records required to be kept as a result of a visual inspection of your unit.

Please complete this form and return one copy to the owner or his or her agent or representative by February 15th. Keep one copy of this form for your records.

CHECK ONE: A child under seven years of age resides in the unit

A child under seven years of age does not reside in the unit.

_____ (Occupant signature)

Print occupant's name, address and apartment number: _____

RETURN THIS FORM TO: _____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS
OWNER COPY/OCCUPANT COPY

APENDICE B
AVISO AÑUAL PARA MEDIDAS DE PRECAUCION CON LOS PELIGROS DE PLOMO
EN LA PINTURA-ENCUESTA RESPECTO AL NIÑO

Usted esta requerido por ley informarle al dueno si un niño menor de siete años de edad esta viviendo o vivirá con usted en su unidad de vivienda (apartamento). Si tal niño vive en la unidad, el dueño del edificio esta requerido hacer una inspección visual añualmente de la unidad para determinar la presencia peligrosa de plomo en la pintura. POR ESO ES IMPORTANTE QUE USTED LE DEVUELVA ESTE AVISO AL DUEÑO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NIÑO. Si usted no informa al dueno, el dueno esta requerido inspeccionar su apartamento para descubrir si un niño menor de siete años de edad esta viviendo en el apartamento.

Si un niño menor de siete años de edad no vive en la unidad ahora, pero viene a vivir en cualquier tiempo durante el año, usted debe de informarle al dueño por escrito inmediatamente. Usted tambien debe de informarle al dueño por escrito si el niño menor de siete años de edad vive en la unidad y si usted observa que durante el año la pintura se deteriora o esta por pelarse sobre la superficie de la unidad, usted tiene que informarle al dueño inmediatamente. Usted puede solicitar que el dueño le de una copia de los archivos de la inspección visual hecha en su unidad.

Por favor de llenar este formulario y devolver una copia al dueño del edificio o al agente o representante antes de Febrero 15. Mantenga una copia de este formulario para su informacion.

MARQUE UNO: Vive un niño menor de siete años de edad en la unidad.
 No vive un niño menor de siete años de edad en la unidad.

_____ (Firma del inquilino)

Nombre del inquilino, Dirección, Apartamento: _____

DEVUELVA ESTE FORMULARIO A: _____

INQUILINO: MANTENGA UNA COPIA PARA SU INFORMACION
COPIA DEL DUEÑO/COPIA DEL INQUILINO