

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

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

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

When and where is the hearing? HPD will hold a public hearing on the proposed rule online. The public hearing will take place from 10:00 AM to 11:00 AM on December 29, 2020. To participate in the public hearing, enter the Webex URL:
<https://nychpd.webex.com/nychpd/j.php?MTID=mffd20bee1f9f8e25da2bc8689efe3d31>

If prompted to provide a password or number, please enter the following:
Meeting Number: 173 513 4875 Password: uaRswu37n4F

You may also join the hearing via audio device or dial in via phone.

Join by video system

Dial 1735134875@webex.com

You can also dial 173.243.2.68 and enter your meeting number.

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

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

+1-408-418-9388 United States Toll

Access code: 173 513 4875

Password if requested: (uaRswu37n4F)

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 Deputy Commissioner AnnMarie Santiago, Department of Housing Preservation and Development, 100 Gold Street, Room 601, New York, N.Y. 10038.
- **Fax.** You can fax comments to AnnMarie Santiago at 212-863-7010.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling

212-863-8602 or by emailing at rifenm@hpd.nyc.gov by December 28, 2020 at 5:00 PM. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit comments? The deadline for submission of comments is December 29, 2020.

What if I need assistance to participate in the hearing? You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at rifenm@hpd.nyc.gov. You may also tell us by telephone at 212-863 8602. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by December 10, 2020. This hearing has the following accessibility options available: Simultaneous transcription for people who are deaf or hard of hearing and audio only access.

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

What authorizes HPD to make these rules? Sections 1043 and 1802 of the New York City Charter ("City Charter"), Local Law 29 of 2020, Local Law 28 of 2020, and section 27-2090 of the Administrative Code of the City of New York authorize HPD to make these proposed rules. These rules were included in HPD's regulatory agenda for this Fiscal Year.

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

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

Statement of Basis and Purpose of Proposed Rules

The proposed amendments to Chapter 11 of Title 28 of the Rules of the City of New York revise and clarify certain rules promulgated under the New York City Childhood Lead Poisoning Prevention Act of 2003 (Lead Law). The amendments clarify that all of the provisions of the Lead Law will also apply to private dwellings where there is a tenant in occupancy, pursuant to Local Law 29 of 2020. The proposed amendments add criteria implementing Local Law 28 of 2020 regarding violations of the requirements for turnover of dwelling units, and additionally make technical amendments to the rules.

New material is underlined.
[Deleted material is bracketed]

Section 1. Section 11-01 of chapter 11 of title 28 of the rules of the city of New York is amended by adding a new paragraph (a-1) to read as follows:

(a-1) Effective February 10, 2021, for the purposes of this chapter, the term "multiple dwelling" includes a private dwelling where at least one dwelling unit within such dwelling is occupied by persons other than the owner of such dwelling or a member of such owner's family, provided, however, that the provisions of this chapter, shall not apply to a dwelling unit that is occupied by such owner or a member of such owner's family, except otherwise provided by law.

§ 2. Paragraph (1) of subdivision c of section 11-04 of chapter 11 of title 28 of the rules of the city of New York is amended to read as follows:

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

§ 3. Section 11-05 of chapter 11 of title 28 of the rules of the city of New York is amended by adding a new subdivision e to read as follows:

(e) An owner may submit evidence regarding the date of a current tenant's signing of a lease, or agreement to lease, or commencement of occupancy of a unit to the department to rebut the issuance of a violation for failure to comply with § 27-2056.8 of article 14 of the housing maintenance code and this section.

§ 4. Subparagraph (i) of paragraph (1) of subdivision e of section 11-12 of chapter 11 of title 28 of the rules of the city of New York is amended to read as follows:

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

§ 5. Paragraph 2(A) of subdivision h of section 11-12 of chapter 11 of title 28 of the rules of the city of New York is amended to read as follows

(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

§ 6. Appendix B of chapter 11 of title 28 of the rules of the city of New York is amended to read as follows:

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 six years of age resides or will reside in your dwelling unit (apartment). Beginning on January 1, 2020, the term "resides" means that a child under six routinely spends 10 or more hours per week in the dwelling unit. 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 six years of age resides there.

If a child under six 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 six years of age resides 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 [March 1st] February 15th. Keep one copy of this form for your records.

CHECK ONE: A child under six years of age resides in the unit
 A child under [seven] six years of age does not reside in the unit

(Occupant signature)

Print occupant's name, address and apartment number:

RETURN THIS FORM TO:

Owner representative name: _____

Address: _____

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 dueño si un niño menor de seis años de edad está viviendo o vivirá con usted en su unidad de vivienda (apartamento). A partir del 1 de enero de 2020, el término "residir" significa que un niño menor de seis años pasa 10 horas o más por semana en la unidad de vivienda. Si tal niño empieza a residir en la unidad, el dueño del edificio esta requerido hacer una inspección visual anualmente de la unidad para determinar la

presencia peligrosa de plomo en la pintura. POR ESO ES IMPORTANTE QUE USTED LE DEVUELVAS ESTE AVISO AL DUEÑO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NIÑO. Si usted no informa al dueño, el dueño está requerido inspeccionar su apartamento para descubrir si un niño menor de seis años de edad está viviendo en el apartamento.

Si un niño menor de seis 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 también debe de informarle al dueño por escrito si el niño menor de seis años de edad vive en la unidad y si usted observa que durante el año la pintura se deteriora o está por pelarse sobre la superficie de la unidad, usted tiene que informarle al dueño inmediatamente. Usted puede solicitar que el dueño le dé 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 Marzo 1] del 15 de Febrero. Mantenga una copia de este formulario para su información.

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

(Firma del inquilino)

Nombre del inquilino, Dirección, Apartamento: _____

DEVUELVA ESTE FORMULARIO A:

Nombre del representante del propietario: _____

Dirección: _____

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

:

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Lead Paint Rules

REFERENCE NUMBER: 2020 RG 096

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: October 29, 2020

**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 Lead Paint Rules

REFERENCE NUMBER: HPD-77

RULEMAKING AGENCY: Department of Housing Preservation and Development

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

October 29, 2020
Date