

**NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Public Hearing and Opportunity to Comment on
Proposed Amendments of Article 173 of the New York City Health Code**

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department” or “DOHMH”) is proposing that the Board of Health (“Board”) amend Article 173 of the New York City Health Code (“Health Code”) to make explicit that the Department’s investigations in response to reports of children with elevated blood lead levels include inspection of any location where the child regularly spends significant time, to clarify that the Department has the authority to order abatement or remediation of lead-based paint and dust in locations occupied by children under age six, and to extend the unsafe lead paint hazard standard to certain childcare programs attended by a child with an elevated blood lead level.

When and where is the hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00A.M. to 12PM on Friday, May 21, 2021. The hearing will be conducted by video conference:

Internet Video and Audio. To participate in the public hearing, enter to register at Webex URL:

<https://nycdohmh.webex.com/nycdohmh/onstage/g.php?MTID=e85c4819554efbc61a413810edd6d7187>

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

Event Number: 129 757 1736; Password: Health

- **Phone.** For access, dial: **(408) 418-9388; Access code: 129 757 1736; Password: Health**

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

- **Website.** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN 30
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the Department at 347-396-6087.
- **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 Svetlana Burdeynik at 347-396-6078 or by emailing at resolutioncomments@health.nyc.gov before the hearing begins at 10:00 a.m. on May 21, 2021. 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 written comments? Written comments must be received on or before 5:00 p.m. on May 21, 2021.

What if I need assistance to participate in the hearing? You must tell the Department’s Office of General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by e-mail or by mail at the address given above. You may also tell us by telephone at 347-396-6078. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by May 7, 2021.

Can I review the comments made on the proposed amendments? You may review the comments made online at <https://rules.cityofnewyork.us/proposed-rules/> on the proposed amendments by going to the website at <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department to make these amendments? Section 558(b), (c), and (g) of the New York City Charter ("Charter") empowers the Board to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043(a) of the Charter grants rulemaking powers to the Department.

Where can I find the Department rules and the Health Code? The Department's rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter.

The proposed amendments were not included in the Department's regulatory agenda for this fiscal year because they were not contemplated when the Department published the agenda.

Statement of Basis and Purpose

New York City has been on the forefront of action to protect New Yorkers from lead paint hazards since 1960. Most recently, in 2019, the Board amended Article 173 of the Health Code with significant new safeguards for children by, among other things, lowering both the childhood blood lead level triggering mandatory Department investigations and the lead dust action level for paint that is not intact in the homes of children with elevated blood lead levels (EBLL).¹

On August 20, 2020, the Board received a petition, submitted pursuant to Health Code Article 9, to amend Article 173 with respect to lead-based paint. The petition proposed (1) to make explicit that the Department's investigations of places where a child spends five or more hours per week be conducted for children with a blood lead level at or above five mcg/dL, rather than 15 mcg/dL, and (2) to clarify in the Health Code that the Department has the authority to order abatement or remediation of lead-based paint and dust in locations frequented by children under age six other than their homes. Both proposals would bring the Health Code into alignment with Department practice. Indeed, for over 25 years, it has been Department practice to investigate all locations frequented by children with known EBLLs to identify and order remediation of lead-based paint hazards. And for many years, these investigations have included locations where children spend more five or more hours per week.

In addition, the City Council recently adopted new lead poisoning prevention provisions that become effective in October of 2022. Pursuant to these changes, Administrative Code § 27-2056.2(7)(c) will provide that the more protective unsafe lead paint standard of 0.5 milligram per square centimeter applies to any location regulated under Health Code Article 43 or 47 where a child under the age of six with an elevated blood lead level spends 10 or more hours per week.

¹ New York City Record, June 19, 2019, at 3049 *et seq.*

To align the Health Code with this change to the Local Law, as well as with Department practice for investigations as requested by the petition, the Department proposes adding a new definition of “supplemental address” to mean locations where a child with an EBLL spends five or more hours, and amending the definition of “unsafe lead paint hazard” as of October 17, 2022, to include such hazards in supplemental addresses regulated by Articles 43 and 47 of the Health Code. The Department is also proposing to remove provisions regarding lead dust action levels that will no longer be applicable as of June 1, 2021. The new, more protective lead dust action levels were already added to the Health Code in 2019 with a June 1, 2021 effective date.

Statutory Authority

These amendments to the Health Code are promulgated pursuant to Sections 558 and 1043 of the New York City Charter. Section 558 empowers the Board to amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 1043 grants the Department rulemaking authority.

The proposal is as follows:

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

RESOLVED, that subdivision (a) of section 173.13 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to add a new paragraph as follows:

(4) Investigations. Whenever a report has been made to the Department of a child under 18 years of age with a blood lead level of five (5) micrograms per deciliter or higher, the Department shall conduct such investigation as may be necessary to identify potential sources of the elevated blood lead level, including but not limited to, an inspection of the dwelling unit where such child resides and any supplemental address of that child.

RESOLVED, that paragraphs (1) and (2) of subdivision (d) of section 173.13) of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

(1) *Generally.* When the Department finds that there is lead-based paint, or dust with a lead content in excess of the clearance levels specified in § 173.14(e) of this Code, on the interior of any dwelling, supplemental address, or other premises, such premises including but not limited to, child care services, schools, and recreational facilities primarily used or occupied by children under the age of six years, or concentrations of lead in the paint on the exterior of a dwelling, that may be creating a danger to health, it may in such cases as it deems essential, order the abatement or remediation of any such condition in a manner and under such safety conditions as it may specify. The Department may also order the removal or covering of soil appurtenant to any dwelling or other premises,

including but not limited to, child care services, schools, and recreational facilities primarily used or occupied by children under the age of six years when it determines that there are concentrations of lead in such soil which exceed allowable limits of the U.S. Environmental Protection Agency found in 40 C.F.R. Part 745, or successor regulations, and further determines that such concentrations may be dangerous to health.

(2) *In [a] the dwelling [where] of a child with a blood lead level of five (5) micrograms per deciliter or greater [resides].* When the Department finds that [there is] the interior of any dwelling of a child under 18 years of age with a blood lead level of five (5) micrograms per deciliter or higher [residing in any dwelling and further finds that the interior of such dwelling] has a lead-based paint hazard because of its condition, location or accessibility to children, the Department shall order the abatement of any such condition in a manner and under such safety conditions as it may specify; in addition, until HPD adopts regulations described by paragraph (b) of subdivision (7) of section 27-2056.2 of the Administrative Code, the Department is authorized to order abatement when an unsafe lead paint hazard is present in such dwelling.

RESOLVED, that the definitions of “dwelling” and “unsafe lead paint hazard” in subdivision b of section 173.14 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended, and a definition of “supplemental address” be added in alphabetical order, to read as follows:

Dwelling. "Dwelling" shall mean any building or structure or portion thereof, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings. For the purpose of investigations and orders issued by the Commissioner pursuant to § 173.13 of this Code, dwelling shall include exteriors, yards or other areas of the building[, and shall also include any structure in which a child with a blood lead level equal to or in excess of 15 micrograms per deciliter spends more than five hours per week].

...

Supplemental address. “Supplemental address” shall mean any location where a child with a blood lead level equal to or in excess of five (5) micrograms per deciliter spends five (5) or more hours per week.

...

Unsafe lead paint hazard. "Unsafe lead paint hazard" shall mean any condition in a dwelling, [or] dwelling unit, or, on or after October 17, 2022, any supplemental address of a child of applicable age that is regulated by Article 43 or 47 of this Code, that causes exposure to lead from unsafe lead paint that is peeling or present on chewable surfaces, deteriorated subsurfaces, friction surfaces, or impact surfaces that could result in adverse human health effects.

RESOLVED, that subdivision e of section 173.14 of Article 173 of the New York City Health Code, set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

(e) *Occupant protection.* All requirements of this subdivision that apply to lead-based paint or lead-based paint hazards shall also apply to unsafe lead paint and unsafe lead paint hazards, respectively.

(1) *Work ordered by the Department, or work that disturbs over 100 square feet of lead-based paint per room, regardless of whether such work is ordered by the Department, which is conducted in a child care service or kindergarten pursuant to § 47.63 or § 43.23 of this Code or § 17-911 of the Administrative Code, or work ordered by HPD in accordance with § 27-2056.11(a)(1) of the*

Administrative Code, or work performed pursuant to § 27-2056.11 (a)(2)(ii) of the Administrative Code:

...

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

...

(iv) *Clearance for permanent re-occupancy after completion of work.* Dust lead 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. [Until May 31, 2021, areas where every sample result is below the following dust lead levels may be cleared for permanent re-occupancy:

Floors:	10 micrograms of lead per square foot.
Window Sills:	50 micrograms of lead per square foot.
Window Wells:	100 micrograms of lead per square foot.

On and after June 1, 2021, areas] Areas where every sample result is below the following dust lead levels may be cleared for permanent re-occupancy:

Floors:	5 micrograms of lead per square foot.
Window Sills:	40 micrograms of lead per square foot.
Window Wells:	100 micrograms of lead per square foot.

Provided that, if EPA or HUD adopts lower definitions of lead-contaminated dust, those definitions shall apply for purposes of this subdivision. 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 §173.14(e)(1)(l)(i),(ii) and (iii). The owner shall provide a copy of all lead-contaminated dust clearance test results to the occupants of the dwelling or dwelling unit. Copies of lead-contaminated dust wipe clearance test results shall be submitted to the Department whenever abatement or remediation of lead-based paint hazards has been ordered by the Department or Commissioner.

**NEW YORK CITY MAYOR’S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Governing Lead Paint Inspections (Art 173)

REFERENCE NUMBER: DOHMH-114

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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

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

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

April 7, 2021
Date

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

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

RULE TITLE: Amendment of Rules Governing Lead Paint Inspections (Art 173)

REFERENCE NUMBER: 2021 RG 010

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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: April 7, 2021