

**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 to establish a process to allow property owners to contest certain violations based on the results of an x-ray fluorescence (“XRF”) test demonstrating the presence of lead-based paint. To contest the violation, an owner must submit the results of a separate laboratory analysis of a paint sample from the same surface to challenge the results of the XRF test and, based on these results, request dismissal of the violation. The proposed amendments also clarify that when filing an application for exemption from the presumption of the presence of lead-based paint, such application can be submitted either by paper or by use of HPD’s online portal.

When and where is the hearing? HPD will hold a public hearing on the proposed rules. The public hearing will take place virtually on **September 9, 2025 from 10 AM to 11 AM:**

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

<https://nychpd.webex.com/nychpd/j.php?MTID=m0f2601c48281c30327860568ab24a1ff>

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

Meeting number: **2334 605 1149** Password: **cpBEZwQM343**

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

Join by video system: **Dial 23346051149@webex.com**

Dial

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

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

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

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

Access code: **2334 605 1149**

Password if requested: **cpBEZwQM343**

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

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

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

Is there a deadline to submit comments? The deadline for submission of comments is **September 9, 2025**.

What if I need assistance to participate in the hearing? You must tell HPD if you need a reasonable accommodation of a disability at the hearing. You can tell us by mail at the address given above or by email at wallaca@hpd.nyc.gov. You may also tell us by telephone at 212 863-8340. We request advance notice so that we have sufficient time to arrange the accommodation. Please tell us by **September 3, 2025**. This hearing has the following accessibility options available: Simultaneous transcription for people who are deaf or hard of hearing and audio-only access.

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

What authorizes HPD to make these rules? Sections 1043 and 1802 of the New York City Charter (“City Charter”) authorize HPD to make these rules. The rule was included in the agency's regulatory agenda.

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

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

Statement of Basis and Purpose of Proposed Rules

The Department of Housing Preservation and Development (“HPD”) is proposing amendments to its rules related to lead poisoning prevention and control. The proposed amendments would establish a process to allow property owners to challenge certain violations based on the results of an x-ray fluorescence (“XRF”) test demonstrating the presence of lead-based paint (“LBP”). HPD’s proposal will add a new section 11-07.1 to Chapter 11 of Title 28 of the Rules of the City of New York to permit a registered owner, registered officer or director of a corporate owner or a registered managing agent of a multiple dwelling to challenge a violation issued pursuant to § 27-2056.6 or § 27-2056.6.1 of the Administrative Code of the City of New York that is based on a positive XRF test result on a surface where the substrate is either metal or ceramic. Per the proposed amendments, such registered owner, registered officer or director of a corporate owner or a registered managing agent of a multiple dwelling will be required to submit a sworn written statement from the person who performed the paint chip sampling, a copy of that person’s certification as a certified LBP inspector or risk assessor, a copy of the inspection report provided by the person who performed the paint chip sampling, and the laboratory analysis of a paint chip sample. HPD’s proposed amendments also reference existing definitions in statute and rules defining LBP, which must be followed in submitting a challenge based upon the testing of a paint chip sample.

In addition, HPD proposes to amend § 11-08(a) to clarify that an application for exemption from the presumption of the presence of LBP can be made either in writing or by using HPD’s online portal.

New material is underlined.

[Deleted material is in brackets.]

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

Section 1. Chapter 11 of Title 28 of the Rules of the City of New York is amended by adding a new section 11-07.1 to read as follows:

§11-07.1 Challenges to Violations Based on Certain X-Ray Fluorescence Readings

(a) (1) A violation issued pursuant to § 27-2056.6 or § 27-2056.6.1 of the administrative code of the city of New York based on a positive XRF reading for lead-based paint in accordance with the PCS and where the XRF test was taken on a surface with a metal or ceramic substrate may only be challenged 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 not later than the date set for correction in the notice of violation:

(i) a sworn written statement by the person who performed the paint chip sampling stating the date, time and location at which the sampling was conducted and stating that such testing was performed in accordance with 40 CFR § 745.227(a) and (b), or successor provisions, and the United States Department of Housing and Urban Development (“HUD”) Guidelines for the Evaluation and Control of Lead-Based Paint in Housing;

(ii) a copy of such person’s certificate of training as a certified lead-based paint inspector or risk assessor, in accordance with subparts L and Q of 40 CFR part 745 or successor provisions;

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

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

(2) Where laboratory sampling is performed to challenge a violation, as permitted in this section, the performance of such testing or sampling shall be in accordance with the applicable definition for lead-based paint established in §11-01(t) of these rules and §27-2056.2(7) of article 14 of the housing maintenance code. 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 as provided in such applicable lead-based paint definition.

§ 2. Subdivision (a) of section 11-08 of chapter 11 of Title 28 of the Rules of the City of New York is amended to read as follows:

(a) A registered owner or registered officer or director of a corporate owner, a registered managing agent of a multiple dwelling erected prior to January first, nineteen hundred sixty, an authorized representative of a governmental agency as approved by the department, 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 or by an online portal made available by the department for such an application, for a lead free or a lead safe exemption of the application of the presumption established under Article 14 of the Housing Maintenance Code and 28 RCNY § 11-07 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.

§ 3. This rule shall take effect thirty days after publication of its notice of adoption, except that section 1 takes effect on December 1, 2025.

**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: Paint Chip Sample Challenge of XRF Test Results

REFERENCE NUMBER: 2025 RG 036

RULEMAKING AGENCY: Housing Preservation and Development

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

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

/s/ STEVEN GOULDEN
Senior Counsel

Date: June 18, 2025

**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: Paint Chip Sample Challenge of XRF Test Results

REFERENCE NUMBER: HPD-103

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

June 24, 2025
Date