

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

Notice of Adoption

Notice of Adoption of amendments to rules relating to 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”).

NOTICE IS HEREBY GIVEN pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (“HPD”) by sections 1043 and 1802 of the New York City Charter and in accordance with the requirements of New York City Charter section 1043, that the Department adds new section 11-07.1 and promulgates amendments to section 11-08 of Chapter 11 Title 28 of the Rules of the City of New York relating to lead-based paint poisoning prevention and control. A notice of proposed rulemaking was published in the City Record on July 29, 2025. HPD held a public hearing on the proposed rule amendments on September 9, 2025. Six (6) comments were received; one inquired about resolution of a specific violation unrelated to the proposed rules, two comments recommended a change that would have created confusion with existing practice of the City of New York, two comments supported the proposed rules; and the sixth comment included three recommendations. The first recommendation was to include specific language that the paint chip sample could not be collected by the owner, their agent, or anyone who has been hired to perform lead-based paint remediation work for the owner. This limitation aligns with HPD’s intent and with existing HPD requirements. HPD has revised the adopted amendments to reflect this requirement. The second recommendation was to allow tenants to contest a challenge made by an owner. This would extend the process with an uncertain benefit and has not been included. The third recommendation requested additional language regarding criteria to evaluate lab tests, which HPD has determined would be unnecessary given the proposed criteria for the collection of the paint sample and the performance of the lab test. To allow for the implementation of this new challenge category, HPD will extend the effective date from the proposed date of December 1, 2025 until January 1, 2026.

Statement of Basis and Purpose

The Department of Housing Preservation and Development (“HPD”) is adopting amendments to its rules related to lead poisoning prevention and control. The amendments 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 amendments 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 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 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 is amending § 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, and that such person is not an agent of the owner of such multiple dwelling or of any contractor hired by such owner to perform work related to the remediation of lead-based paint hazards of such multiple dwelling;

(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 January 1, 2026.