

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

**Notice of Adoption of Amendments to Rules Regarding
Lead Poisoning Prevention and Control**

Notice is hereby given that pursuant to the authority vested in the Commissioner of the Department of Housing Preservation and Development (HPD) by New York City Charter sections 1043 and 1802, Local Laws 64, 66, and 70 of 2019, and sections 27-2090, 27-2056.10 and 27-2056.17 of the Administrative Code of the City of New York HPD is adopting amendments to Chapter 11 of Title 28 of the Rules of the City of New York, concerning lead poisoning prevention and control, to update certain definitions and auditing and exemption processes established under the New York City Childhood Lead Poisoning Prevention Act of 2003.

Statement of Basis and Purpose of Adopted Rules

The 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 Lead Law requires owners to retain records of any notices required to be distributed and records of work performed under the law for 10 years. Owners must transfer such records to a new owner, where applicable, and make the records available to HPD upon request.

The adopted rules add criteria, consistent with Local Law 70 of 2019, to clarify that HPD shall audit owners' compliance with the Lead Law by requiring submission of the records required to be kept for a minimum of 200 buildings per fiscal year. The criteria are intended to both target buildings where there appears to be a failure to comply with the requirements of the Lead Law and to determine, based on a random sample, whether property owners in general are complying with the record keeping requirements. The adopted rules set criteria for when such records must be submitted, but do not limit the agency from requiring records under any other circumstances where it deems it necessary to do so, as authorized by Local Law 70. The adopted rules also describe the documentation required to be kept and submitted upon a written audit demand.

In addition, the adopted rules:

- Clarify definitions for “lead-contaminated dust,” “applicable age,” and “lead-based paint,” and add a definition for the term “resides,” consistent with the amendments effected by Local Laws 64 and 66 of 2019;
- Clarify that exemptions from the lead-based paint presumption established under the Lead Law may be submitted for a determination whether a particular multiple dwelling or part thereof is lead safe (lead-based paint may have been removed and is also contained or encapsulated) or lead free (all lead-based paint has been removed so that there is no lead-based paint);
- Clarify who may submit a request for an exemption and under what circumstances exemptions will be revoked; and
- Make other revisions to clarify language.

New material is underlined

[Deleted material is bracketed]

Section one. Subdivisions (b), (t), and (u) of section 11-01 of chapter 11 of title 28 of the rules of the city of New York are amended to read as follows:

(b) Applicable age. "Applicable age" shall mean under [seven] six 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].

(t) Lead-based paint. "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)] (July 2012) 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 percent of metallic lead, based on the non-volatile content of the paint or other similar surface-coating material.

(u) (i) Lead-contaminated dust. "Lead-contaminated dust" shall mean dust containing lead at a mass per area concentration of [40] 10 or more micrograms per square foot on a floor, [250] 50 or more micrograms per square foot on window sills, and [400] 100 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, the board of health, or as otherwise provided by local law.

(ii) Notwithstanding paragraph (i) of this subdivision, on and after June 1, 2021, "lead-contaminated dust" shall mean dust containing lead at a mass per area concentration of 5 or more micrograms per square foot on a floor, 40 or more micrograms per square foot on window sills, and 100 or more micrograms per square foot on window wells, or such more stringent

standards as may be adopted by the board of health, provided that, if the federal environmental protection agency or a successor agency, or the federal department of housing and urban development or a successor agency, adopts lower definitions of lead-contaminated dust, the board of health shall define in the health code such lower levels as required by local law.

§2. Subdivisions (bb) through (jj) of section 11-01 of chapter 11 of title 28 of the rules of the city of New York are amended to read as follows:

(bb) Resides. "Resides" shall mean to routinely spend 10 or more hours per week in a dwelling unit, provided however, that this subdivision shall not take effect until January 1, 2020.

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

[(cc)] (dd) Stabilization. "Stabilization" [means] shall mean 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, and includes compliance with all applicable safe work practices.

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

[(ee)] (ff) Turnover. "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)] (gg) Underlying defect. "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)] (hh) Wet sanding or wet scraping. "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)] (ii) Window. "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)] (jj) Work. "Work" shall mean any activity performed in accordance with article 14 of the housing maintenance code that disturbs paint.

[(jj)] (kk) Work area. "Work area" shall mean that part of a building where paint is being disturbed.

§3. Clause (D) of subparagraph (ix) of paragraph (1) of subdivision (g) of section 11-06 of chapter 11 of title 28 of the rules of the city of New York is amended to read as follows:

(D) Clearance for re-occupancy. (a) 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] 10 micrograms of lead per square foot.

Window Sills:

[250] 50 micrograms of lead per square foot.

Window Wells:

[400] 100 micrograms of lead per square foot.

(b) 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.

(c) On and after June 1, 2021, 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, unless the board of health adopts more stringent standards in accordance with local law:

Floors:

5 or more micrograms of lead per square foot.

Window Sills:

40 or more micrograms of lead per square foot.

Window Wells:

100 or more micrograms per square foot.

§4. Subdivision (c) of section 11-07 of chapter 11 of title 28 of the rules of the city of New York is amended to read as follows:

(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)] §11-01(t) 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 as provided in such lead-based paint definition. 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.

§5. Section 11-08 of chapter 11 of title 28 of the rules of the city of New York is amended to read as follows:

§11-08 Exemption from Presumption—Lead Free and Lead Safe.

(a) A registered owner or registered officer or director of a corporate owner [or, 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, for [an] a lead free or a lead safe 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] (1) Lead Free Exemption. A lead free exemption will 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 (2012), 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, or in a common area of a multiple dwelling, (i) is free of lead-based paint as defined in [§11-01(s)] §11-01(t) 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] (ii) has been made free of lead-based paint through the complete removal of lead-based paint from any surface or component, or the removal or replacement of any surface or component that may have contained lead-based paint. In applying for a lead free exemption, such owner or other specified person shall confirm in the exemption application that, to the best of his or her knowledge, no surfaces in the dwelling unit, dwelling, or common area for which the exemption is sought that contain paint have been encapsulated or contained.

(2) Lead Safe Exemption. A lead safe exemption will be granted where the 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 (2012), that lead-based paint on each surface and component (i) in each dwelling unit from which lead-based paint was not fully removed or replaced, or (ii) in each dwelling unit in a property if the exemption is based upon the

appropriate sampling combination of components and surfaces in each unit, or (iii) in a common area of a multiple dwelling, has been contained so that each surface tested is negative for such lead-based paint or has been encapsulated. For purposes of this section, the term "contained" shall mean that every surface containing lead-based paint has been temporarily 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.

[Where] (3) For purposes of an application for an exemption pursuant to paragraphs (1) or (2) of this subdivision, 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 or common area 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 (2012) Lead Based Paint Inspection, V. Inspections in Multi-family Housing, Table 7-3, Number of Units to be tested in Multi-family Building or Developments. In the absence of such documentation by the owner, or visual inspection by the certified individual, the certified individual must test each dwelling unit in order to provide the required certification. In addition, a list of any building components that would reasonably be expected to contain paint that have not been tested, and the reason that such building component has not been tested, must be included in the exemption application submission, along with a sketch or sketches of the rooms tested that is consistent with the XRF report of testing locations. [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 or common area where encapsulation or containment has been applied to a surface for the purpose of qualifying such dwelling unit or dwelling or common area for [an] a lead safe 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 or contained; the name of the encapsulant that has been used, which [shall be limited to those] adheres to the standards for encapsulants issued by the American Society for Testing and Materials (ASTM International) or is 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 or on which containments are used shall be subject to periodic monitoring by the owner for a period of 20 years or the life of the surface or component, whichever is longer, to ensure that they remain undamaged and intact, provided further, that the owner of such dwelling unit or dwelling shall submit to the department and comply with a plan for periodic monitoring of such encapsulated or contained surfaces in accordance with Chapters 12 and 13 of the department of housing and urban development's Guidelines for Evaluation and Control of Lead-Based Paint Hazards in Housing (2012), and shall keep records of [any] monitoring of such encapsulated and contained surfaces for a period of at least ten years [and] which shall be 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 a lead free or lead safe exemption shall include: the address of the multiple dwelling; the number of units; the dates, if known, when substantial alterations, where applicable, were made to the dwelling unit(s) and a description of the work performed; the date of the inspection resulting in the determination that the dwelling unit or multiple dwelling, common area or other part thereof is lead free or lead safe; 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. The department may also require additional information and affidavits to be submitted with the application for exemption as provided in such application form.

(e)(1) Upon submission of a complete application for exemption to the department, such multiple dwelling or common area or other part thereof, or dwelling unit, [shall be deemed to be exempt] the department shall review such application and notify the applicant whether the multiple dwelling, or common area or other part thereof, or dwelling unit, has been granted a lead safe or lead free exemption from application of the presumption established under article 14 of the housing maintenance code and §11-07 of these rules.

(2) (i) The department may revoke [an] a lead safe 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].

(ii) The department may revoke a lead safe or lead free exemption upon failure by an owner to provide records related to encapsulation or containment monitoring as requested by the Department.

(3) The department shall revoke a lead safe or lead free exemption upon the:

(i) issuance of a denial of a rebuttal of a lead-based paint violation based upon the presumption of lead paint for such dwelling unit filed pursuant to subdivision a of section 27-2056.5 where the department finds that lead-based paint was present on a surface that was subject to such exemption,

(ii) issuance of a lead-based paint violation based upon testing by the department for such dwelling unit,

(iii) issuance of an order to abate lead-based paint hazards or unsafe lead-based paint by the department of health and mental hygiene,

(iv) issuance of a denial of an objection to such a commissioner's order to abate filed pursuant to section 173.13 of the health code, or

(v) issuance of a determination that the exemption was based upon fraud, mistake, or misrepresentation.

(4) For exemptions that were approved prior to the effective date of the rule promulgated by the department pursuant to paragraph (b) of subdivision (7) of section 27-2056.2 of the administrative code, a lead free or lead safe exemption shall be deemed revoked upon the turnover of a dwelling unit on or after such effective date and subject to subdivision (f) of this section.

(5) The department shall provide written notification to the owner upon making [such] a determination to revoke a lead safe or lead free exemption, and such multiple dwelling or part thereof, or dwelling unit shall be subject to all applicable provisions of article 14 of the housing maintenance code.

(6) Absent fraud, mistake or misrepresentation in the initial application, an owner may reapply for the lead safe exemption by showing that the surface for which the lead-based paint was no longer contained or encapsulated has been repaired and resealed, and that the surfaces found to test positive for the presence of lead based paint subsequent to revocation of the lead safe exemption no longer test positive for such paint, where applicable, or have been properly encapsulated or contained. Alternatively, such owner may submit an application for a lead free exemption. The application must include testing to show that the surfaces found to test positive for the presence of lead-based paint subsequent to revocation of the lead free exemption no longer test positive for lead-based paint.

(f)[Results of lead-based paint testing or evidence of application of encapsulants to surfaces performed prior to the effective date of 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] (1) On or after the effective date of the rule promulgated by the department pursuant to paragraph (b) of subdivision (7) of section 27-2056.2 of the administrative code, an owner who had received a lead free or lead safe exemption prior to such date must notify the department whenever an exempted unit becomes vacant. The exemption from the presumption for such vacant unit shall be deemed revoked on the date of the vacancy, regardless of whether an owner has failed to provide the required notification, and such unit shall be subject to all of the requirements of law relating to units that are not exempt from the presumption of lead-based paint. The owner of such unit may apply for a new exemption by submitting an application as provided in this section, and the testing required pursuant to this section shall be performed using the definition of lead-based paint in effect on and after such date.

(2) An owner may also apply for a lead free or lead safe exemption for the first time on or after the effective date of the rule promulgated by the department pursuant to paragraph (b) of subdivision (7) of section 27-2056.2 of the administrative code as provided in this section, and the testing required pursuant to this section shall be performed using the definition of lead-based paint in effect on and after such date.

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

§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, but shall be no less than 45 days.

(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, or where an owner refuses or fails to produce

any of the required records as required by these rules or pursuant to any proper order. [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.]

§7. Section 11-12 of chapter 11 of title 28 of the rules of the city of New York is renumbered as section 11-13, and a new section 11-12 is added to read as follows:

§11-12 Additional Audits

(a) Upon the issuance by the department of a demand for records to determine compliance with the requirements of article 14 of the housing maintenance code, the department may require that an owner submit to it records required to be kept by such owner pursuant to article 14 of the housing maintenance code and these rules. The department may perform such audits at any time, and, in addition, shall perform such audits for a minimum of 200 buildings each fiscal year. Such records must be submitted to the department within 45 days of written demand for such records by the department, or within such other time period not less than 45 days as shall be stated in writing to the owner, in the discretion of the department.

(b) The department may select the buildings required to be audited each fiscal year pursuant to subdivision (a) of this section using the following criteria, which shall include, but need not be limited to:

(i) buildings with peeling lead based paint violations issued as a result of a positive XRF test;

(ii) buildings with violations that have been issued for other indicators of deteriorated subsurfaces including, but not limited to, mold and leaks;

(iii) buildings selected from a random sample of buildings based on data on the prevalence of elevated blood lead levels in certain geographic areas identified by the department of health and mental hygiene; and

(iv) buildings selected from a random sample of buildings that are subject to the presumption in section 27-2056.5 of article 14 of the housing maintenance code.

The buildings selected may be subject to further selection criteria including building size, date of issuance of violations, percentage of units with housing maintenance code violations, and location.

(c) The department may undertake an inspection, and any enforcement action authorized by law, where an owner refuses or fails to produce the records required by the department pursuant to its audit demand or pursuant to any other proper order.

(d) Documentation Required under Records Audits

The documents that may be required to be submitted to the department for each year for any audit as specified by the department are set forth in subdivisions (e) through (h) of this section.

The department may make available on its website the forms or affidavits required for such submissions. In the event that a new owner has acquired the building within the required audit period, and the documentation required to be kept was not provided to the new owner by the previous owner, the new owner must provide the required documentation for the actual years of ownership and an additional affidavit of missing records for the remaining period of time covering the audit period, accompanied by a copy of the deed of ownership.

(e) Audit of Annual Notice Distribution and Investigation. Pursuant to subdivision (d) of this section, the owner shall provide:

(1) Proof of delivery to the occupant of each dwelling unit of the annual notice required to be provided by section 11-03(b), including:

(i) An affidavit of Delivery/Email/Mail from an owner's delivery, mailing or email service company or the owner (if sent directly by 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 section 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;

(ii) A complete list of recipient dwelling units with the building address, each dwelling unit number and the date of delivery to each dwelling unit or the date of the email/mail notice sent to each dwelling unit; and

(iii) Whenever applicable, a complete list of any dwelling units in the building for which there is a lead exemption obtained from the department for the dwelling unit that is in effect during the audit period; and a complete list of owner/shareholder-occupied cooperative or condominium dwelling units during the audit period, where the owner was not required to provide such annual notice to such owner/shareholder. Any such lists must be signed by the owner.

(2) Annual notice response received from the occupant of each dwelling unit, including:

(i) A list of the dwelling units that received the annual notice required to be provided by section 11-03(b), with an indication of whether each dwelling unit responded and, if so, the substance of such response, including whether a child under six resides in such dwelling unit, based on either the occupant's verbal or written response or the owner's inspection/knowledge;

(ii) Copies of the completed and returned annual notices, where received. Such annual notice must have the building address, dwelling unit number, and occupant's name, signature and date, where received; and

(iii) For those dwelling units that did not respond to such annual notice, the date when access was attempted to confirm whether a child under six resides in such therein or an indication that the owner had knowledge of a dwelling unit in which a child under six resides; and proof of providing written notice by certified or registered mail or by first class mail with proof of mailing of the need to access the unit; and a copy of the notice sent by the owner to the department of health and mental hygiene regarding failure to access any particular dwelling unit.

(3) Annual investigation reports conducted pursuant to responses by occupants to annual notices required to be provided by section 11-03(b), including:

(i) An affidavit stating that access was gained to conduct the visual inspection of the dwelling unit, that the inspection was conducted, the person who conducted such inspection, the date of inspection, and the dwelling unit number; and

(ii) For dwelling units that were inspected, the owner must provide copies of the inspection report including a statement of whether there was or was not peeling paint on all visually inspected components or similar documentation. The owner may use a sample form made available by the department for documentation of owner investigations, or a substantially similar form containing the same information to provide a report of surface-by-surface, individual paint-containing building component investigation, including walls, chewable surfaces, deteriorated subsurfaces, friction surfaces and impact surfaces in every room, including interiors of closets and cabinets; and

(iii) If access was not gained to a dwelling unit, an affidavit stating the dates that an attempt was made to gain access, including the date the owner provided written notice of the need for access by certified or registered mail or by first class mail with proof of mailing. For such units,

the owner must also provide copies of the written notice to the occupant informing the occupant of the need to access the unit or similar documentation and a record regarding access attempts and the reasons for failure of access as set forth in subdivision (b) of section 11-04 of these rules.

(f) Audit of Work Performed to Correct Lead Based Paint Hazard Violations.

For currently open and uncertified violations in the period, the owner must submit:

(1) An affidavit AF-5;

(2) An affidavit made by an EPA-certified abatement firm's authorized agent or individual who performed the work to correct the lead-based paint hazard violation(s) stating that the work was performed in accordance with section 27-2056.11 of article 14 of the housing maintenance code and section 11-06 of these rules; the start and completion date of the work; and the address and contact information (phone or fax) for the EPA-certified abatement firm that completed the work;

(3) A copy of the EPA certification for the EPA-certified abatement firm that performed the work to correct the lead-based paint hazard violation(s);

(4) A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of preparation and analysis of the samples;

(5) An affidavit from the individual who took the surface dust sample, verifying the date the sample was taken and indicating the address and dwelling unit where the sample was taken;
and

(6) A copy of the Certificate of Training of the individual who took surface dust samples that is valid for the period when the dust samples were taken.

(g) Audit of Non-violation Work that Disturbed Lead Based Paint or Paint of Unknown Lead Content. Upon a request by the department pursuant to subdivision (b) of this section, an owner must submit an affidavit that no non-violation work on such painted surfaces in apartments with children under six at the time of the repair was completed in the audit request period, or submit the following documents:

(1) Records for all non-violation work that disturbed lead-based paint or paint of unknown lead content on a surface greater than two square feet per room, in a dwelling unit where a child under six years of age resides, or in the common areas of the building, including documentation of the work practices used. Such records shall include:

(i) All documentation required under section 11-06(c) of these rules;

(ii) A copy of all licenses and training certificates, required for the firms and personnel who performed the work;

(iii) An affidavit made by an EPA-certified abatement or EPA-certified renovation firm's authorized agent or individual who performed the work stating that the work was performed in accordance with section 27-2056.11 of article 14 of the housing maintenance code and section 11-06 of these rules, including the start and completion date of the work, and the address and contact information (phone or fax) for such firm;

(iv) A copy of the certification for such firm;

(v) The location of the work performed in each room, including a description of such work or invoices for payment for such work;

(vi) A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of preparation and analysis of the samples;

(vii) An affidavit from the individual who took the surface dust samples, verifying the date the sample was taken and indicating the address/dwelling unit where the sample was taken;

- (viii) A copy of the Certificate of Training of the individual who took surface dust samples that is valid for the period when the dust samples were taken; and
- (ix) Checklists completed when and/if occupants were allowed temporary access to a work area.

(2) In addition to the documents required to be submitted by paragraph (1) of this subdivision, if the work that was performed disturbed greater than 100 square feet of lead based paint or paint of unknown lead content in a room in a dwelling unit where a child under age six resides, or involved the removal of two or more windows with lead based paint or paint of unknown lead content in such unit, the department may require the submission of the following additional documentation:

A copy of the owner's notice of commencement of work that was filed with the department of health and mental hygiene. Such notice shall be signed by the owner or by a representative of the firm performing the work. Such notice shall include: the name, address and telephone number of the owner of the premises in which the lead-based paint work is to be performed; the address of the building and the specific location of the lead-based paint work within the building; the name, address and telephone number of the EPA-certified abatement firm that will be responsible for performing the work; the date and time of commencement of the work, working or shift hours, and the expected date of completion; a complete description and identification of the surfaces and structures, and surface areas, subject to the work; and any changes in the information contained in such notice 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.

(h) Audit of Work Performed at Turnover of any Dwelling Unit: Upon an audit of turnover of a dwelling unit, the owner shall provide:

(1) An affidavit listing any dwelling units that have turned over in the audit period; and

(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 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

(B) Where work was necessary to comply with the requirements for turnover of the dwelling unit:

(i) The name, address, and telephone number of the EPA-certified abatement or EPA-certified renovation firm that performed the work;

(ii) A copy of all licenses and training certificates required for the firms and personnel who performed work;

(iii) A sworn statement made by the EPA-certified abatement firm's or EPA-certified renovation firm's authorized agent or individual who performed the work on behalf of such firm stating that the work was performed in accordance with section 27-2056.11(a)(3) of article 14 of the housing maintenance code and section 11-06 of these rules, and the start and completion date of the work;

(iv) A copy of the certification for such firm ;

(v) The location of the work performed in each room, including a description of such work and components or parts of the dwelling unit that were replaced, or the invoices for payment for such work;

(vi) A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of preparation and analysis of the samples;

(vii) An affidavit from the individual who took the surface dust sample, verifying the date that the sample was taken and stating the address and dwelling unit where the sample was taken; and
(viii) A copy of the Certificate of Training of the individual who took surface dust samples that is valid for the period when the dust samples were taken.

§8. Appendices A and B of chapter 11 of title 28 of the rules of the city of New York are amended to read as follows:

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] six years of age resides or will reside in the dwelling unit (apartment) for which you are signing this lease/commencing occupancy. 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 [seven] six years of age resides there.

If a child under [seven] six years of age does not reside in the unit now, but does come to [live] reside in it at any time during the year, you must inform the owner in writing immediately. If a child under [seven] six 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.

Whether or not a child under age six will reside in the apartment, the owner of the building is also required to fix all lead-based paint hazards and underlying defects that may cause paint to peel, make floors, window sills and window wells smooth and cleanable, remove or cover all lead-based paint on friction surfaces of doors and door frames, and remove or cover all lead-based paint on friction surfaces of windows or install window channels or slides. This work should be performed before you move into the apartment, and the owner must properly clean the apartment after the work is completed.

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 explaining about lead based paint hazards when you sign your lease/commence occupancy.

CHECK ONE: A child under [seven] 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: _____

(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:

Owner representative name: _____

Address: _____

OCCUPANT: KEEP ONE COPY FOR YOUR RECORDS

OWNER COPY/OCCUPANT COPY

APENDICE A

CONTRATO/COMIENZO DE OCUPACIÓN Y 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 [siete] seis años de edad está viviendo o vivirá con usted en la unidad de vivienda (apartamento) para la cual usted va a firmar un contrato de ocupación. 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 DEVEUELVA ESTE AVISO AL DUEÑO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NIÑO.** Si usted no informa al dueño, el dueño esta requerido inspeccionar su apartamento para descubrir si un niño menor de seis años de edad está viviendo en el apartamento.

Si un niño de [siete] 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 a la dirección proveída abajo. Usted también debe de informarle al dueño por escrito si un niño menor de [siete] 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.

Más allá de que un niño menor de seis años resida o no en el apartamento, el dueño del edificio también debe reparar todos los peligros de pintura a base de plomo y todos los defectos subyacentes que puedan causar que la pintura se descascare, debe hacer que los pisos, los alféizares y huecos de las ventanas sean lisos y de fácil limpieza, debe quitar o cubrir toda la pintura a base de plomo en las superficies de puertas y marcos de puertas en las que haya fricción, y debe quitar o cubrir toda la pintura a base de plomo en las superficies de ventanas en las que haya fricción o instalar perfiles para ventanas o ventanas deslizantes. Este trabajo debe hacerse antes de mudarse al apartamento, y el dueño debe limpiar correctamente el apartamento una vez que se haya completado el trabajo.

Por favor de llenar este formulario y devolver una copia al dueño del edificio o al agente o representante cuando usted firme el contrato o empiece a ocupar la unidad. Mantenga una copia de este formulario para sus archivos. Al firmar su contrato de ocupación usted recibirá un panfleto hecho por el Departamento de Salud y Salud Mental de la Ciudad de Nueva York, explicando el peligro de plomo en pintura.

MARQUE UNO: Vive un niño menor de [siete] seis años de edad en la unidad.

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

(Firma del inquilino)

Nombre del inquilino, Dirección, Apartamento: _____

(Esto no es aplicable para un renovamiento del contrato de alquiler.) Certificación de dueño: Yo certifico que he cumplido con la provisión de §27-2056.8 del Artículo 14 del código y reglas de Vivienda y Mantenimiento (Housing Maintenance Code) relacionado con mis obligaciones sobre las unidades vacante, y yo le he dado al ocupante una copia del panfleto del Departamento de Salud y Salud Mental de la Ciudad de Nueva York sobre el peligro de plomo en pintura.

(Firma del dueño)

DEVUELVA ESTE FORMULARIO A:

Nombre del representante del propietario: _____

Dirección: _____

INQUILINO: MANTENGA UNA COPIA PARA LOS ARCHIVOS

COPIA DEL DUEÑO/COPIA DEL INQUILINO

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] 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 [seven] six years of age resides there.

If a child under [seven] 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 [seven] 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. Keep one copy of this form for your records.

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

CHECK ONE: 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 [siete] 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 DEVEUELVA ESTE AVISO AL DUEÑO O AGENTE AUTORIZADO DEL EDIFICIO PARA PROTEGER LA SALUD DE SU NIÑO.** Si usted no informa al dueño, el dueño esta requerido inspeccionar su apartamento para descubrir si un niño menor de [siete] seis años de edad está viviendo en el apartamento.

Si un niño menor de [siete] 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 [siete] 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. Mantenga una copia de este formulario para su información.

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

_____ (Firma del inquilino)

Nombre del inquilino, Dirección, Apartamento: _____

DEVUELVA ESTE FORMULARIO A:

Nombre del representate del propietario: _____

Dirección: _____

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