

DISTRICT DEPARTMENT OF THE ENVIRONMENT

SECOND NOTICE OF PROPOSED RULEMAKING

Regulations to Implement the Lead Hazard Prevention and Elimination Act of 2008 and the Lead Hazard Prevention and Elimination Amendment Act of 2010

The Director of the District Department of the Environment (DDOE), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq.* (2008 Repl. & 2012 Supp.)), the Childhood Lead Screening Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-265; D.C. Official Code § 7-871.03 (2012 Supp.)), the Transfer of Lead Poison Prevention Program to the District Department of the Environment Amendment Act of 2008, effective August 18, 2008 (D.C. Law 17-219; 55 DCR 7602 (July 18, 2008)), the Lead-Hazard Prevention and Elimination Act of 2008, effective March 31, 2009 (D.C. Law 17-381; D.C. Official Code § 8-231.01 *et seq.* (2012 Supp.)), Mayor's Order 2009-113, dated June 18, 2009, and the Lead Hazard Prevention and Elimination Amendment Act of 2010 ("2011 Amendments"), effective March 31, 2011 (D.C. Law 18-348; 58 DCR 717 (January 28, 2011)), collectively referred to as the "Acts", hereby gives notice of the intent to adopt the proposed rulemaking to add a new Chapter 33, entitled Regulation of Lead-Based Paint Activities, to Title 20 of the District of Columbia Municipal Regulations (DCMR).

At the end of this rulemaking document are two (2) proposed amendments to the regulations governing the Childhood Lead Poisoning Prevention Program, which are located in chapter 73 of subtitle B of title 22 of the District of Columbia Municipal Regulations (DCMR). The D.C. Council transferred the Childhood Lead Poisoning Prevention Program, formerly with the Department of Health, to DDOE in 2008. The first amendment to the screening rules would make the rules conform with D.C. Law 16-265, the "Childhood Lead Screening Amendment Act of 2006," effective March 14, 2007 (D.C. Official Code § 7-871.03 (2012 Supp.)). Consistent with current standard practices nationwide, the second proposed amendment to the screening rules would limit the method by which laboratories are required to report blood lead data to the Childhood Lead Poisoning Prevention Program.

Lead is a powerful neurotoxin that can produce irreversible health effects for those who are exposed to it. Children younger than six (6) years old and pregnant women are particularly at risk for harm caused by lead poisoning. Lead is prevalent in paint sold before 1978, the year that the Consumer Product Safety Commission banned its use for residential purposes. Nearly ninety percent (90%) of the District of Columbia's housing stock was built prior to 1978. The federal government considers the District a high-risk jurisdiction with respect to the likelihood of the presence of lead paint in residential housing.

It is generally acknowledged that lead safety can be increased by property owners maintaining paint in intact condition, and by ensuring that contractors and others who disturb paint in or on pre-1978 structures use lead-safe work practices, thereby preventing lead-based paint hazards from being generated. The proposed regulations establish the legal landscape that promotes these desired outcomes.

I. Summary of the Proposed Rules and the Acts

The proposed rules will allow DDOE to fulfill the intent of the Acts in a manner that is effective and protective of public health, without unduly burdening the regulated community. These proposed rules implement provisions of the Acts, which require all dwelling units, common areas of multifamily properties, and child-occupied facilities constructed before 1978 to be maintained free of lead-based paint hazards.

The Acts require property owners to disclose the presence of any lead-based paint or lead-based paint hazards “reasonably known to the owner” before a tenant or purchaser may be obligated on a lease or contract of sale. Owners must also disclose if there is any District government action pending against the owner related to enforcement of the Acts. Under certain circumstances, in tenant households that include a child under the age of six (6) or a pregnant woman, either as a member of the household or as a regular visitor to the home, the owner is required to provide the tenant with a clearance report that confirms lead safety.

The Acts and the proposed rules mandate that lead-safe work practices be followed when any worker is involved in eliminating lead-based paint hazards or in disturbing any paint on any pre-1978 residential property or child-occupied facility. When lead-based paint hazards are being eliminated, the proposed rules require clearance procedures after the work has been completed, to ensure the hazards have been effectively eliminated. The scope of those clearance procedures varies, based upon the specific circumstances triggering the hazard elimination activities.

The Acts and § 3317 of the proposed rules implement the procedures governing access by DDOE personnel, landlords, and their agents to properties under the Acts. DDOE has the authority to inspect property reasonably believed to be subject to the Acts.

The Acts establish certain basic certification requirements for each of the particular disciplines that perform lead-based paint activities. DDOE proposes additional criteria and procedures for certification in § 3307. The proposed rules continue the current requirement that an abatement permit be obtained before performing abatement, but also establishes three discrete exceptions to those requirements, as specified in § 3316.2. The proposed rules also clarify in § 3316 when the raze or demolition of a pre-1978 building triggers an abatement permit.

DDOE may enforce the law through issuance of a Notice of Violation and an Order to Eliminate Lead-Based Paint Hazards, which require the owner to perform specific measures for elimination of any identified lead-based paint hazards and underlying conditions, or any other action necessary to protect the health and safety of the property occupants, including relocation. The proposed rules further define the instances in which the District government is authorized to seek reimbursement for its costs, including reimbursement for the costs of taking any action when the owner has failed to comply with DDOE directives. Reimbursement for costs is in addition to any fines or other penalties that may be imposed on the owner.

II. Proposed Regulations Published on July 22, 2011

DDOE published proposed regulations to implement the Acts on July 22, 2011 (58 DCR 6029). Public review of these proposed regulations during the 30-day comment period included several meetings DDOE staff held with stakeholders. Public comments received by DDOE regarding the July 22, 2011 Proposed Rules (hereinafter “July 2011 rulemaking”) contained requests for substantive changes. DDOE reviewed and considered all comments received, and also took into account comments aired at the stakeholder meetings.

Some of the commenters argued for viable alternative approaches, some of which have been incorporated into this second set of proposed regulations. In so doing, DDOE also consulted with key sister agencies, such as the Department of Consumer and Regulatory Affairs and the Office of the Tenant Advocate. DDOE also decided to re-organize the proposed regulations into a new sequence that conforms more closely to the standard sequential format for regulations.

III. DDOE Draft Revisions to the July Proposed Rules and Subsequent Public Input

Draft revisions to the July 2011 rulemaking were placed on DDOE’s website on April 3, 2012, and notification that they were available for public scrutiny was sent that same day to hundreds of stakeholders, including lead training providers, abatement contractors, lead-based paint inspectors and risk assessors, lead project designers, residential property owners and managers, the DC Building Industry Association (DCBIA), the Apartment and Office Building Association (AOBA), and environmental health advocates. This stakeholder notification also included an invitation to review the draft revisions and attend a broad, informal meeting on April 18, 2012, at which DDOE would present its draft revisions to the July 2011 rulemaking and receive additional feedback regarding the draft revisions and any changes offered by participants for DDOE’s consideration. The April 18 meeting was attended by a broad array of stakeholders. DDOE also held an April 24, 2012 meeting, requested by AOBA to afford AOBA members and staff an opportunity to comment on the draft revisions and propose other changes. On May 16, AOBA submitted additional written comments to DDOE. DDOE has considered all public comments on the July 2011 rulemaking as well as the draft revisions in amending the proposed regulations, which reflect a balance of health protections and economic and practical considerations, all within the confines of the Acts.

DDOE has reviewed and thoroughly considered all comments received on the July 2011 rulemaking and at the public meetings. Overall, stakeholders provided valuable insights and feedback, enabling DDOE to refine and significantly improve its earlier proposed rule and draft revisions. These proposed rules supersede those published on July 22, 2011.

IV. Major Changes to the 2011 Proposed Regulations

A. Scope of Abatement Permit Requirement

1. Abatement is a lead-based paint activity that can trigger the Acts’ requirement that a permit be obtained before any hazard mitigation work can begin. *See* D.C. Official Code § 8-231.03(d)(1)(B) (2012 Supp.). Under proposed § 3305.1 as published in the July 2011

rulemaking, DDOE would have required a permit before a lead-based paint hazard abatement activity is performed on any structure, not just residential housing and child-occupied facilities. DDOE believed this was justified because abatement activities pose an equally hazardous risk of toxic exposure to lead whether they are performed in residential housing or in commercial or other non-residential settings. *See* D.C. Official Code § 8-231.11(d) (2012 Supp.). In response to public comments questioning the basis for such expanded authority of DDOE, the agency has eliminated the provisions which proposed extending a permit requirement to abatement activities undertaken in commercial or industrial structures.

Nevertheless, DDOE believes that work that disturbs paint in a pre-1978 commercial property such as a children's clothing store should be performed with great care, to avoid generating lead-based paint hazards that can cause serious adverse health effects for those exposed to them, and to ensure the property is lead safe after the work has been completed. The US Centers for Disease Control and Prevention (CDC) recently adopted a new reference value of five (5) micrograms of lead per deciliter of blood, in recognition of the well-established fact that there is no "safe" level of lead in anybody's blood. Accordingly, any -- even minimal -- exposure to lead is hazardous to one's health.

2. Under proposed § 3305.2(b) as published in the July 2011 rulemaking, DDOE had proposed three exceptions to the lead abatement permit requirement: (1) comprehensive window replacements; (2) simple door replacements; and (3) the covering of any lead-contaminated soil that contains less than one thousand parts per million (1000 ppm) of lead. The agency received several comments questioning the appropriateness of these exceptions. In response to these comments, DDOE has narrowed the proposed exceptions to include only the latter two and has deleted the exception related to window replacements.

DDOE believes that neither taking a door off its hinges nor covering moderately lead-contaminated soil (containing less than one thousand parts per million of lead) should trigger the need for a DDOE lead abatement permit. Instead, DDOE is hopeful that the cost savings these exceptions generate will result in careful workmanship and a professional commitment to eliminate any lead-based paint hazard associated with these activities. Accordingly, proposed § 3316.2 sets forth a performance-based standard for these two exceptions to the lead abatement permit requirement. DDOE requires documentation that the performance of these activities leaves no lead-based paint hazard behind in the work area and clearance testing in conformance with currently proposed §§ 3310.2, 3310.3, and 3310.4.

3. Proposed § 3316.2(c) would create a new *de minimis* exception to the abatement permit requirement, for lead abatement activities involving less than two square feet (2 sq. ft.) of deteriorated paint on an interior surface or less than twenty square feet (20 sq. ft.) of deteriorated paint on an exterior surface. Pursuant to this proposed exception, such work, while exempt from the permit requirement, will still need to be performed by someone trained in lead-safe work practices and will also need to include clearance testing to verify that no lead-based paint hazards remain after the job has been completed.
4. Finally, § 3305.2(c) as proposed in July 2011 rulemaking, stated that "demolition activities involving painted surfaces within or on a pre-1978 structure are abatement activities that

trigger the permit requirements in § 3305.1.” In response to several comments, DDOE revised this provision and redesigned its regulatory approach to demolition/raze activities. Accordingly, the currently proposed rules incorporate the principal alternative recommendations offered by commenters, coupled with new Department of Consumer and Regulatory Affairs-compatible definitions for the relevant key terms “demolition” and “raze.” (See proposed §§ 3316.3, 3316.4, 3316.10, and 3399.)

B. Definition of a “lead-free unit”

1. DDOE specifically requested public comment on § 3311.5 proposed in the July 2011 rulemaking, in which the agency clarified the definition provided in the Acts of a “lead-free unit.” While DDOE received no comments at all on this issue during the formal public comment period, the agency nevertheless thought it appropriate, after engaging several property owners and private sector lead inspectors on the topic, to propose a new provision that grandfathers in units that have already been determined to be lead-free by a lead-based paint inspector, provided that determination was made in a manner consistent with the 1997 amendments of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing. (See §§ 3313.5(a) and 3314.7(a).)
2. DDOE also received informal feedback from experienced lead-based paint inspectors, who pointed out that in some cases, the standard equipment used to determine the presence of lead-based paint, known as an X-Ray Fluorescence Analyzer, or an “XRF,” is unable to detect lead-based paint that was abated via the enclosure technique, which leaves lead-based paint in place and covers it with a mechanically fastened enclosure material. In such cases, where an XRF detects no lead-based paint in a unit, DDOE allows for the unit to be declared a “lead-free unit” for purposes of these rules, but by the same token DDOE requires the property owner to both disclose the known presence of enclosed lead-based paint in the unit, and to produce an Operations and Maintenance Plan that describes the process by which this paint will remain enclosed over time. (See §§ 3314.7(b) and 3314.8.)

C. Renovation, Repair and Painting Rule Requirements

DDOE requested public comment on the adequacy of its proposed rules to establish the regulatory framework sufficient to form the basis for U.S. Environmental Protection Agency (EPA) authorization for the District to administer the Renovation, Repair and Painting (RRP) program, pursuant to 40 CFR §§ 745.320, 745.324, 745.326, and 745.327. DDOE also sought comment on its proposed strengthening of the federal RRP rules, as set forth in §§ 3306.1, 3306.2, and 3320.1(b) of the July 2011 rulemaking. DDOE received several comments on §§ 3306.1 and 3306.2.

1. One commenter identified some missing elements in the DDOE proposed regulations that would be necessary to add for the agency to be able to establish the required regulatory baseline to secure EPA authorization to run a local RRP program. DDOE has added these missing elements to the already detailed list of lead-safe work practices required by the federal RRP Rule. (See § 3302.3.)

2. DDOE received both positive and negative feedback regarding DDOE's strengthening of the RRP rules. The comments received in response to the July 2011 rulemaking expressed strong support of a permit requirement coupled with clearance testing, in certain limited high-risk situations. Those comments also recommended expanding the scope of DDOE's proposed rules to encompass additional activities that would trigger the proposed permitting and clearance testing requirements. DDOE has rejected this latter suggestion because the agency believes the more tempered approach it proposed covers the most high-risk situations without unduly burdening those seeking to renovate older housing on a smaller scale.

In contrast, other stakeholders voiced opposition to any strengthening of the RRP rules, stating that DDOE's proposed rules were overly burdensome, would impede renovation work in the District, and might result in multiple permit requirements for the same job. DDOE addressed these concerns by making some adjustments to the relevant provisions in these proposed regulations, but the agency stands firm in its conviction that the remaining, limited permitting and clearance testing requirements it has retained are needed to ensure lead safety for the residents of the District of Columbia.

The currently proposed § 3310.1 strikes what DDOE believes is a fair balance in its regulation of activities that disturb painted surfaces in the District's older housing. Rather than require a DDOE permit and clearance requirements in every situation that could potentially generate significant lead-based paint exposure hazards, the agency has limited its regulatory reach to those situations involving either (a) substantial amounts of paint disturbance, exceeding five hundred square feet (500 sq. ft.) of paint for a given structure, or (b) a contract for at least \$20,000 worth of work directly involving the disturbance of painted surfaces. DDOE believes that both these situations represent a relatively slim portion of the renovation work taking place in the District involving pre-1978 residential housing, and that the proposed rules to address them are not unduly burdensome.

Moreover, DDOE believes that both these situations serve as indicators that a significant lead exposure threat could arise from the renovation work if not performed using appropriate lead safety precautions. The permit requirement is intended to ensure that lead-safe work practices will be used in these high-risk situations. The clearance testing requirement is intended to ensure that after such substantial paint-related work has been completed, sufficient cleanup has occurred so that no hazardous lead dust is left behind to pose a health threat to occupants or to others who might be exposed to it. DDOE is convinced these are reasonable requirements, designed to ensure lead safety under very limited circumstances, when a significant amount of paint disturbance is occurring at an older residential property.

3. DDOE is clarifying that buildings that will be razed, or where demolition work will occur, are exempt from these requirements, because they are covered by other provisions of the proposed rules. (*See* §§ 3310.2, 3316.3 and 3316.4.)

D. Clearance Requirements

DDOE received no comments during the formal comment period on the agency's proposed range of clearance requirements. However, during the April 2012 stakeholder meeting, pertinent

feedback was provided to DDOE on this subject matter. Two experienced lead-based paint inspectors recommended that DDOE eliminate the requirement that spike samples be included in clearance examination samples provided for analysis to qualified laboratories. In addition, a property owner with a small inventory of units argued that the proposed regulations would entail high costs for small “mom and pop” owners and asked that DDOE consider ways to lighten this burden with respect to cost.

Accordingly, DDOE has eliminated altogether the requirement for submitting a spike sample throughout these proposed regulations, and has additionally eliminated the requirement for submitting a blank sample for analysis by a lab when submitting environmental samples as part of the clearance requirements at change of occupancy in rental units. (*See* § 3314.9) Both these adjustments will result in a small reduction in the cost of clearance examinations in the District of Columbia for all property owners.

E. Significant Outcomes of Other Comments and Feedback

DDOE received several other noteworthy comments from members of the public, as well as additional informal feedback from well-informed stakeholders, which have resulted in substantive changes and additions to the previously proposed regulations. These changes and additions include:

- New enforcement-related provisions (*See* §§ 3320 and 3321);
- Clarification that risk assessor refresher courses must include a review of the essential elements of both the initial lead-based paint inspector and the initial risk assessor courses (*See* § 3305.11);
- An amnesty period of ninety (90) days for individuals who neglect to renew their certification in a timely manner (*See* § 3306.7);
- A new requirement to provide DDOE with advance written notice prior to conducting dust testing (*See* §§ 3310.3(f), 3314.11, 3315.6, 3316.10(e), 3316.11(d), and 3318.7(c));
- Clarification of what exterior surfaces need to be tested as a prerequisite for a lead-free determination (*See* § 3314.6(a)(1));
- Clarification of what the appropriate dust testing protocol is for determining the lead safety of approaches to lead-free units (*See* § 3314.6(b));
- Granting, under certain circumstances, a waiver of the abatement permit requirement for liability insurance coverage (*See* § 3316.7(f));
- Clarifications in §§ 3316.10(c), 3316.11(c)(4), 3316.11(c)(5), 3318.7(a)(6), and 3318.7(a)(8), that exterior environmental sampling only need occur on the same property that is subject to the clearance requirement, or on a neighbor’s property provided the neighbor grants permission;
- Clarification of where common-area dust sampling must occur (*See* § 3316.10(d)(2)); and
- Clarification of what rights and responsibilities attach to property owners and to tenants, with respect to access to units for the purpose of conducting lead-based paint activities (*See* § 3317).

V. Submitting Comments and Obtaining Copies of the Federal Rules Incorporated by Reference

Interested persons may submit written comments on this rulemaking by mail to:

Pierre Erville, Associate Director
District Department of the Environment
Lead and Healthy Housing Division
1200 First St. NE / 5th Floor
Washington DC 20002

Or, via email, to: pierre.erville@dc.gov

To be considered, all comments must be in writing and must be received or postmarked no later than thirty (30) days from the date of publication of this Second Notice of Proposed Rulemaking in the *D.C. Register*.

VI. Additional Copies

Additional copies of this rulemaking may be obtained by either: (1) visiting DDOE's website, www.ddoe.dc.gov, and clicking on "Regulation & Law," then "Public Notices & Hearings," then clicking on the announcement for this rulemaking, and following directions to download the document in PDF "cut-and-paste" format; (2) e-mailing a request to pierre.erville@dc.gov with "Request copy of proposed lead rules" in the subject line; (3) stopping by DDOE's offices and asking for a copy at the 5th floor reception desk at the following address (mention "DDOE Lead Rules"); or (4) writing DDOE Lead and Healthy Housing Division, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, "Attention: Lead Rules, requesting a copy" on the outside of the letter.

The federal regulations incorporated by reference in the rulemaking can be obtained in hard copy at the Office of the Federal Register (OFR), 800 North Capitol St., NW, Ste. 700, Washington, DC 20001 or the Library of Congress, 101 Independence Ave., SE, Washington, DC 20540, and electronically on the OFR or the U.S. Government Printing Office (GPO) websites. OFR's website address is www.ofr.gov and GPO's website address is <http://www.gpoaccess.gov>.

TITLE 20 DCMR (ENVIRONMENT) is amended as follows:

CHAPTER 8 (ASBESTOS, SULFUR , NITROGEN OXIDES AND LEAD) is amended by repealing section 806 (CONTROL OF LEAD).

A new CHAPTER 33 (REGULATION OF LEAD-BASED PAINT ACTIVITIES) is added to read as follows:

3300 GENERAL

3300.1 This chapter governs lead-based paint hazard elimination and prevention activities in the District of Columbia and implements the Lead Hazard Prevention and Elimination Act of 2008 and the Lead Hazard Prevention and Elimination Amendment Act of 2010 (“the Acts”).

3300.2 The Acts and these regulations require owners of the following structures in the District of Columbia built before 1978 to be maintained free of lead-based paint hazards:

- (a) Residential dwelling units, including those in multifamily properties;
- (b) Common areas of multifamily properties; and
- (c) Child-occupied facilities for children under the age of six (6) years, such as daycare centers, preschool programs, or kindergarten classrooms.

3301 PRESUMPTION OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS

3301.1 The interior and exterior of dwelling units and child-occupied facilities, and common areas of multifamily properties, are presumed to contain lead-based paint if constructed prior to 1978, and any paint that is deteriorated, chipping, peeling, or otherwise not in intact condition is considered to be a lead-based paint hazard and is prohibited.

3301.2 This presumption may be rebutted by documentation prepared by a lead-based paint inspector or risk assessor that the paint in question is not lead-based paint.

3301.3 The presence of deteriorated paint in residential premises and child-occupied facilities constructed prior to 1978, which constitutes a lead-based paint hazard if no documentation is produced proving it is not lead-based paint, shall trigger enforcement action.

3302 LEAD-SAFE WORK PRACTICES: GENERAL

3302.1 Except as provided in § 3303, any individual, firm or entity engaged in an activity that disturbs a painted surface and that by so doing may generate a lead-based paint hazard, such as paint chips, dust, or debris, shall use lead-safe work

practices as set forth in this chapter and D.C. Official Code § 8-231.11 whenever the property or facility was built prior to 1978.

3302.2 Except as provided in § 3303, the use of lead-safe work practices, as set forth in this chapter and D.C. Official Code § 8-231.01 *et seq.*, is required of individuals, firms, or business entities performing renovation, remodeling, maintenance, repairs, gut rehab, demolition, carpentry, HVAC, roofing, siding, plumbing, painting, or electrical work, inside or on the exterior surfaces of a dwelling unit or a child-occupied facility, if there is a danger of lead-based paint hazards being generated.

3302.3 An owner, individual, firm, or business entity shall:

- (a) Prepare interior work areas by removing personal belongings, rugs, and window coverings, or by covering same with plastic whose seams and edges are taped or otherwise sealed;
- (b) Prepare exterior work areas by removing any moveable items or by covering them with plastic whose seams and edges are taped or otherwise sealed;
- (c) Post signs that clearly define each work area, warn occupants and others who are not involved in the work to remain outside of the work area, to the extent practicable are in the primary language of the occupants, are posted before the work begins, and remain readable and in place until the work has been completed, including the completion of the appropriate cleaning verification process;
- (d) Cover the floor and any furniture with a taped-down plastic covering of at least six (6) mil thickness that will not tear easily;
- (e) For interior work, the secure covering shall extend at least six feet (6 ft.) beyond the perimeter of surfaces where work that disturbs painted surfaces is taking place;
- (f) For exterior work, cover the soil, grass, or concrete with a taped-down or otherwise secured plastic of at least six (6) mil thickness that will not tear easily, and extend the covering to at least ten feet (10 ft.) beyond the perimeter of surfaces where work that disturbs painted surfaces is taking place;
- (g) For work that will affect surfaces within ten feet (10 ft.) of the property line, erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the work does not contaminate adjacent buildings or migrate to adjacent properties;

- (h) Isolate interior work areas so that no dust or debris leaves the work areas while work is being performed, while ensuring that such containment does not interfere with occupant and worker egress in case of an emergency;
- (i) For exterior work, close all doors and windows within twenty feet (20 ft.) of any area where work that disturbs painted surfaces is taking place, and all doors and windows on any floors directly below the work areas, within a horizontal plane of twenty feet (20 ft.) from any work area;
- (j) Take reasonable measures to ensure all work clothes, shoes, tools, and other items, including the exteriors of waste containers, are free of dust and debris before workers exit or items are removed from the work area;
- (k) Cover doors located within the area of containment with plastic so that workers can pass through, while confining dust and debris to the work area;
- (l) Take the necessary precautions to ensure no dust or debris migrates over to neighboring properties or structures;
- (m) Use a spray bottle to mist any painted surfaces with water prior to scraping, sanding, drilling, or cutting any painted surfaces;
- (n) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;
- (o) At least once at the end of each work day, spray-mist and collect all paint chips and debris and seal them in a heavy-duty bag that will not tear easily, without dispersing any paint chips or debris;
- (p) Upon completion of work disturbing painted surfaces, spray-mist and fold all plastic coverings, dirty-side inwards, taping the folded plastic coverings shut or sealing them in heavy-duty bags that do not tear easily;
- (q) At the end of each work day and at the conclusion of all work, store all waste that has been collected under containment in an enclosure or behind a barrier that prevents release of dust and debris out of the work area and that prevents access to dust and debris;
- (r) Cover any chute, if one is used to remove waste from the work area, to prevent any of the waste from escaping and dispersing;
- (s) Contain all waste, when it is being transported from the work areas, to prevent any release of dust or debris;
- (t) Upon completion of work disturbing painted surfaces, clean all objects and surfaces in the work area and within six feet (6 ft.) of the impacted surface; and

- (u) Ensure that the work area and those areas within six feet (6 ft.) of the impacted surface have no visible dust or debris left after the final work area cleanup has been completed.

3302.4 In addition, any owner, individual, firm, or business entity shall:

- (a) Comply with the following work practice standards, as applicable:
 - (1) Work practice standards in 40 CFR § 745.226 and 40 CFR § 745.227, or any successor regulation of EPA;
 - (2) U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) standards relating to lead, including those standards found at 29 CFR § 1926.62 and 29 CFR § 1910.1025, and any successor regulations;
 - (3) U.S. Department of Housing and Urban Development (HUD) Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities contained in 24 CFR Part 35, and any successor regulations; and
 - (4) Any other standards required under this chapter;
- (b) Adhere to the prohibition of unsafe practices listed at 24 CFR § 35.140 and with § 3304 of these rules;
- (c) Prevent paint dust, chips, debris, or residue from being dispersed onto adjacent property or increasing the risk of public exposure to lead-based paint; and
- (d) Adhere to other requirements for renovations listed in 40 CFR §§ 745.80 through 745.92, including the standards for post-renovation cleaning verification and the reporting and recordkeeping requirements.

3303 LEAD-SAFE WORK PRACTICES: EXCEPTIONS

3303.1 The lead-safe work practices in § 3302 are not required for the following:

- (a) Individuals who perform lead-based paint activities in residences that they own; provided, that the residence is occupied by the owner or by the owner's immediate family, and there is no child under six (6) years of age and no pregnant woman residing therein; and
- (b) Performance of maintenance, repair, or renovation work resulting in disturbances of lead-based paint in a total of two square feet (2 sq. ft.) or less of surface area per interior room, or twenty square feet (20 sq. ft) or less of exterior surface area, provided such work does not include full or

partial window removal or replacement, which activities shall always trigger the use of lead-safe work practices.

3304 PROHIBITED PRACTICES

3304.1 The practices listed in this subsection are prohibited when performing any lead-based paint activity or any renovation activity that disturbs presumed lead-based paint. No individual or entity shall use:

- (a) Open flame burning or torching of paint;
- (b) Machine sanding, planing, or grinding, or use of a needle gun to remove paint or other surface coatings, without a high-efficiency particulate air (HEPA) local exhaust control and without a shroud or containment system that allows no visible dust or release of air to occur outside the shroud or containment system;
- (c) Abrasive blasting, water blasting, or sandblasting without HEPA local exhaust control or an effective containment system;
- (d) Heat guns operating at or above eleven hundred degrees Fahrenheit (1100 °F) or charring the paint;
- (e) Dry sanding or dry scraping, except:
 - (1) Dry scraping within one foot (1 ft.) of electrical outlets;
 - (2) Dry scraping in conjunction with heat guns operating below eleven hundred degrees Fahrenheit (1100 °F); or
 - (3) Dry scraping when treating defective paint spots totaling no more than two square feet (2 sq. ft) in any one interior room or space;
- (f) Methylene chloride;
- (g) Stripping paint in a poorly ventilated space using a volatile stripper that is a hazardous substance as defined in 16 CFR § 1500.3, or any chemical that is a physical hazard or a health hazard; and
- (h) Scraping, sanding, drilling into, cutting, or otherwise disturbing more than two square feet (2 sq. ft.) of paint in or on a residential property or a child-occupied facility built before 1978 without the use of appropriate containment measures.

3305 ACCREDITATION OF TRAINING PROVIDERS

3305.1 A training provider shall be accredited separately for each training and refresher course offered by that training provider. The courses requiring accreditation are

those for the following disciplines: lead-based paint inspector, risk assessor, abatement worker, abatement supervisor, lead project designer, renovator, and dust sampling technician. To receive accreditation, a training provider shall:

- (a) Comply with the accreditation requirements set forth in 40 CFR § 745.225, except for § 745.225(c)(8)(iv);
- (b) Submit an application to DDOE for accreditation approval, or provide proof of prior accreditation by EPA, or a state EPA approved accredited training provider that contains the information required for each individual course set forth in 40 CFR § 745.225;
- (c) Submit all course materials; and
- (d) Pay the appropriate fee pursuant to § 3322.7, except as provided for in § 3305.7.

3305.2 Accreditation of a training provider by DDOE shall expire thirty-six (36) months from the date of its issuance.

3305.3 A training provider shall notify DDOE no less than one (1) week in advance of each course being offered, including name of instructor and course, and location, date, and time of the training.

3305.4 A training provider shall notify DDOE of a cancellation of a course at least one (1) business day before the date the training was scheduled.

3305.5 A training provider shall forward to DDOE, by mail, email, or fax, a copy of each certificate awarded to any student who successfully completes training, or a list of the students who receive a certificate for successfully completing a particular training course, within one (1) week after issuance of such certificate.

3305.6 A training provider shall provide DDOE with at least two (2) weeks advance notification of any change in key staff, which for purposes of this subsection shall be limited to the training manager and the principal course instructor.

3305.7 A training provider shall be exempt from payment of an accreditation application fee if the training provider is a District Government agency or is a non-profit 501(c)(3) organization whose primary place of business is in the District of Columbia.

3305.8 DDOE shall accredit a training provider that already has been accredited by EPA, on a reciprocity basis, without a complete application; provided, that the training provider:

- (a) Submits a copy of all course materials; and
- (b) Pays the appropriate fee pursuant to § 3322.7, except as provided for in

§ 3305.7.

- 3305.9 All applications completed pursuant to this section shall be reviewed and acted on within thirty (30) days of their receipt by DDOE.
- 3305.10 DDOE-accredited training providers shall issue course completion certificates that expire two (2) years from the course date for individuals certified in the District of Columbia, except for renovators and dust sampling technicians, whose certificates shall expire five (5) years from the course date.
- 3305.11 DDOE-accredited training providers that offer a refresher course for risk assessors shall allocate an appropriate amount of the course time for the essential elements of both the initial inspector and the initial risk assessor curriculum.

3306 CERTIFICATION REQUIREMENTS FOR INDIVIDUALS PERFORMING LEAD-BASED PAINT HAZARD IDENTIFICATION AND ELIMINATION ACTIVITIES OR RENOVATION ACTIVITIES: GENERAL

- 3306.1 Before an individual may perform a lead-based paint activity, clearance examination, or renovation in a dwelling unit or child-occupied facility built before 1978, an individual shall obtain the appropriate certification from DDOE and comply with this section, and with §§ 3307 or 3308, as applicable.
- 3306.2 Each applicant for certification shall submit to DDOE the following documents for use in consideration of the applicant's qualification for certification:
- (a) Official academic transcripts or diplomas, as evidence of meeting the pertinent education requirements;
 - (b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the pertinent work experience requirements; and
 - (c) Course completion certificates from lead-specific or other relevant training courses, issued by an accredited training program, as evidence of meeting the pertinent training requirements.
- 3306.3 DDOE shall certify an applicant as a lead-based paint inspector, risk assessor, lead project designer, abatement worker or supervisor, dust sampling technician, or renovator if the application is complete and the applicant satisfies the requirements of this chapter and the Acts, successfully completes the pertinent course, and pays the appropriate certification fee to DDOE, in accordance with § 3322, within five (5) business days of receipt of the complete application package. Payment of a certification fee pursuant to § 3322 shall be waived if the applicant is applying as an employee of a District agency.
- 3306.4 To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by DDOE in that discipline, provided the individual

has completed the appropriate training course, either refresher or initial as applicable, through an EPA- or DDOE- accredited training provider, or from another EPA-authorized, state-accredited training provider.

- 3306.5 An individual seeking certification renewal shall submit the application materials and shall pay the appropriate certification renewal fee to DDOE, in accordance with § 3322, at least five (5) business days before their certification expires. Payment of such fee shall be waived if the applicant is an employee of a District agency.
- 3306.6 Upon receiving DDOE certification, an individual conducting renovation or lead-based paint activities shall comply with the provisions of §§ 3302 and 3304 and all other applicable laws.
- 3306.7 If the individual seeking renewal of certification fails to complete the refresher course before the expiration date of their current certification, as required in § 3306.4, or within ninety (90) days after such expiration date, the individual shall re-take the initial course to become certified again.

3307 CERTIFICATION OF INDIVIDUALS: SPECIFIC REQUIREMENTS

- 3307.1 Except as provided in § 3312.1, the following disciplines are required to be certified by DDOE before performing a renovation, a clearance examination, or any lead-based paint activity except for interim controls, in a dwelling unit or child-occupied facility built before 1978:
- (a) Risk Assessor;
 - (b) Lead-Based Paint Inspector;
 - (c) Abatement Worker;
 - (d) Abatement Supervisor;
 - (e) Certified Renovator;
 - (f) Dust Sampling Technician; and
 - (g) Lead Project Designer.
- 3307.2 Except as provided under § 3308, an applicant for certification seeking to engage in lead-based paint activities as a lead-based paint inspector, risk assessor, dust sampling technician, lead abatement worker, supervisor, or lead project designer, shall:
- (a) Submit an application to DDOE by mail or in person, demonstrating that the individual meets all requirements of this section for the particular discipline for which certification is sought;

- (b) Complete an EPA- or DDOE-accredited course in the appropriate discipline and receive a course completion certificate from the training provider;
- (c) Pass the third-party certification exam offered by DDOE, if one is required in the appropriate discipline;
- (d) Pass the DDOE-administered exam, if one is required, that tests the applicant's knowledge of the District's relevant legal requirements pertaining to the relevant discipline; and
- (e) Pay DDOE the appropriate certification fee required under § 3322.

3307.3

An applicant for certification as a lead-based paint inspector shall:

- (a) Successfully complete an accredited initial training course for lead-based paint inspectors and provide documentation of one (1) of the following:
 - (1) A bachelor's degree and one (1) year of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction;
 - (2) An associate's degree or a high school diploma or its equivalent, and two (2) years of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction; or
 - (3) Certification as an industrial hygienist, professional engineer, or registered architect, or as another environmental or construction-related professional; and
- (b) Demonstrate that the applicant's skills are directly transferable to the job activities a lead-based paint inspector is typically engaged in, and provide the following set of information, unless provided with a DDOE waiver for this requirement, based upon a DDOE determination that other alternative prior work experience submitted instead by the applicant for consideration is sufficiently comparable:
 - (1) A list of twenty (20) different addresses where the applicant has assisted in lead-based paint inspections with a certified lead-based paint inspector, which shall include the following information:
 - (A) Address of each property, including unit number if applicable;

- (B) Type of activities conducted at each property, such as an X-Ray Fluorescence Analyzer (“XRF”) survey, paint chip sampling, dust sampling, or soil sampling;
- (C) Date that each activity took place, and name of certified lead-based paint inspector the applicant assisted with each activity;
- (D) Detailed description of how the applicant assisted; and
- (E) A signed and dated reference by each certified lead-based paint inspector that the applicant assisted, confirming that based on the assistance the applicant provided, the applicant is knowledgeable about and capable of conducting lead-based paint inspections and adhering to federal, state, and local regulations.

3307.4 An applicant for certification as a risk assessor shall:

- (a) Successfully complete an accredited initial training course for lead-based paint inspectors and a DDOE accredited initial training course for risk assessors, and provide documentation of one (1) of the following:
 - (1) A bachelor's degree and one (1) year of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction;
 - (2) An associate’s degree and two (2) years of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction;
 - (3) A high school diploma or its equivalent, and at least three (3) years of experience in a related field, such as lead, asbestos, or other environmental hazard identification or remediation work, or in construction; or
 - (4) Certification as an industrial hygienist, professional engineer, or registered architect, or as another environmental or construction-related professional; and
- (b) Demonstrate that the applicant’s skills are directly transferable to the job activities a risk assessor is typically engaged in, and provide the following set of information, unless provided with a DDOE waiver for this requirement, based upon a DDOE determination that other alternative prior work experience submitted instead by the applicant for consideration is sufficiently comparable:

- (1) A list of ten (10) different addresses where the applicant has conducted work while certified as a lead-based paint inspector, which shall include the following information:
 - (A) Address of each property, including unit number if applicable;
 - (B) Type of activity conducted at each property, such as an XRF survey, paint chip sampling, dust sampling, or soil sampling;
 - (C) Date each activity took place; and
 - (D) Signature of supervisor or other senior management who confirms that each activity being vouched for took place as described by the applicant.

3307.5 An applicant for certification as an abatement supervisor shall demonstrate that he or she has skills directly transferable to the job activities for a supervisor, based upon:

- (a) At least one (1) year of experience as a certified lead-based paint abatement worker; or
- (b) At least two (2) years of experience in a related field, such as lead, asbestos, or environmental hazard identification or remediation work, or in construction.

3307.6 An applicant for certification as a lead project designer shall provide documentation of the following:

- (a) A bachelor's degree in engineering, architecture, or a related profession, and one (1) year of experience in building construction and design or a related field; or
- (b) At least four (4) years of experience in building construction and design.

3307.7 An applicant for certification as a renovator shall successfully complete the EPA-accredited renovator course and be certified by EPA as a renovator, or successfully complete the DDOE-accredited renovator course.

3307.8 An applicant for certification as a dust sampling technician shall:

- (a) Successfully complete the DDOE-accredited dust sampling technician course;
- (b) Document completion of the course by submitting a certificate to DDOE; and

- (c) Pass a DDOE-administered exam that tests the applicant's knowledge of the District's relevant legal requirements pertaining to dust sampling technicians.

- 3307.9 An abatement worker applicant need not provide prior experience or education documentation.
- 3307.10 An individual who successfully completes a DDOE-accredited lead-based paint inspector or risk assessor course may take a DDOE-accredited refresher dust sampling technician course in lieu of the initial training required by § 3307.8(a) to become a dust sampling technician.
- 3307.11 A certification issued to an individual by DDOE as a lead-based paint inspector, risk assessor, lead project designer, abatement worker, or supervisor under this section shall expire two (2) years from the date of issuance, and a certification for renovator or dust sampling technician shall expire five (5) years from the date of initial issuance.

3308 CERTIFICATION BY RECIPROCITY

- 3308.1 Submission of a current, valid certification for any discipline requiring certification under § 3307 that is issued by EPA or another EPA approved state program is sufficient for certification in the District of Columbia if the applicant meets all other requirements of this section and submits a completed DDOE Application for Lead-Based Paint Certification form.
- 3308.2 An applicant for certification by reciprocity shall:
 - (a) Pass a DDOE examination that tests knowledge of the legal requirements specific to the District of Columbia;
 - (b) Have a valid DCRA license to do business in the District of Columbia, if one is required; and
 - (c) Pay the applicable certification fee required by this chapter, along with an additional \$50 fee to cover DDOE costs to verify and confirm valid status of certification issued by EPA or by another EPA approved state program.
- 3308.3 DDOE certification based on reciprocity shall expire on the same date as that of the certification upon which the approval is based, but no more than two (2) years from date of issue by the District government, except that DDOE certification for renovators and dust sampling technicians shall expire no more than five (5) years from date of issue by the District government.

3309 DUST SAMPLING TECHNICIAN REQUIREMENTS

- 3309.1 A dust sampling technician shall:

- (a) Have in their possession at any job site a copy of their initial course completion certificate and, if applicable, a copy of their most recent refresher course completion certificate;
- (b) Comply with the clearance examination requirements under either §§ 3310.3-.5 or §§ 3314.9-.11, as applicable; and
- (c) Produce a clearance report consistent with the requirements under §§ 3318.7 and 3318.8.

3309.2 A dust sampling technician shall not conduct any clearance examination activities as part of producing an initial clearance report for a property for which DDOE has issued an Order to Eliminate Lead-Based Paint Hazards, nor as part of producing a clearance report following an abatement.

3310 RENOVATION REQUIREMENTS

3310.1 An individual, firm, or business entity that performs renovation of a residential property or a child-occupied facility built prior to 1978 and that is compensated for those services shall obtain a renovation permit from DDOE, if:

- (a) The activities contracted for include the removal, repair, or paint stripping of surfaces or building components coated with presumed or identified lead-based paint, including weatherization projects that disturb surfaces or building components coated with presumed or identified lead-based paint, the sum total of which activities disturbs more than five hundred square feet (500 sq. ft) of painted surface, unless documentation in the individual or business entity's possession is provided to DDOE that proves that the coating is not lead-based paint; or
- (b) The contract for the renovation work contains a total charged cost of twenty thousand dollars (\$20,000) or more for the specific activities enumerated in § 3310.1(a).

3310.2 The raze or demolition of a building, which is subject to §§ 3316.3 and 3316.4, shall not trigger a requirement for a DDOE-issued renovation permit.

3310.3 A clearance examination shall be performed after the work has been done that required a renovation permit, which in the case of work in a vacant unit shall be at any point prior to reoccupancy of the unit, and after any door replacement has occurred in accordance with § 3316.2(a):

- (a) A clearance examination triggered pursuant to this section, to § 3316.2(a), or to any provision under 40 CFR § 745.85, shall consist of dust sampling in each room that contains a work area, on the following surfaces in each sampled room:

- (1) One (1) floor sample; and
- (2) For rooms that contain a window, one (1) window sill or one (1) window well sample;
- (b) For work that involves door replacement in accordance with § 3316.2(a), the floor samples shall be taken within two feet (2 ft.) of any such door, but no window sample shall be required;
- (c) Whenever a work area is located on the exterior of a property, and whenever a work area involves a window or a door that opens to the exterior of a property, a dust sample shall be taken on any concrete or other rough exterior horizontal surface within two feet (2 ft.) of such work area(s), provided such surface is on the same property, or on a neighbor's property, when the neighbor has granted permission for such sampling;
- (d) A clearance examination performed after covering of soil pursuant to § 3316.2(b) shall consist of a determination by the lead-based paint inspector or risk assessor conducting the clearance examination as to whether the lead-contaminated soil was uniformly covered by at least six inches (6 in.) of clean soil or other appropriate ground cover, and a description in the clearance report of the methodology used by said inspector or risk assessor to make this determination;
- (e) A clearance examination shall be performed no sooner than one (1) hour and no later than three (3) business days after the completion of the activities conducted pursuant to the permit or other activities listed in §§ 3316.2(a) and (b), or in the case of work in a vacant unit, at any point prior to reoccupancy of the unit; and
- (f) Notice to DDOE that a dust test will be performed shall be provided by fax, in person, or via the DDOE website, on a DDOE-specified form, submitted to DDOE at least twenty-four (24) hours prior to conducting the dust test, or as soon as practicable, whichever is sooner.

3310.4 The clearance examination shall be conducted by a lead-based paint inspector or risk assessor, or, except in clearance cases involving soil clearance, by a dust sampling technician.

3310.5 A clearance report produced under this section shall be filed with DDOE within ten (10) business days following the clearance examination by the individual, firm, or business entity to which DDOE issued the permit.

3310.6 All work that constitutes renovation work pursuant to 40 CFR § 745.80 *et seq.* and that does not trigger a permit requirement under these regulations shall be conducted in accordance with the rules promulgated by EPA under 40 CFR § 745.85(a) and shall be followed by cleaning verification in accordance with the rules promulgated by EPA under 40 CFR § 745.85(b).

- 3310.7 A renovation permit may be granted if the applicant submits all of the following to DDOE:
- (a) A completed Renovation Permit Application Form;
 - (b) A copy of the applicant's signed contract for the work, including the charges for all renovation activities under the contract;
 - (c) A copy of the applicant's Scope of Work, detailing the renovation activities applicant is under contract to perform, or if identical to the language in the signed contract produced under § 3310.7(b), a statement to that effect;
 - (d) A copy of a valid DCRA Basic Business License to do business in the District;
 - (e) A completed District of Columbia Clean Hands Self-Certification Form; and
 - (f) Any other information DDOE requires in its permit application instructions that is relevant to issuance of a renovation permit.
- 3310.8 DDOE may specify the requirements that apply to work carried out under the permit by describing them on the permit.
- 3310.9 The use of lead-safe work practices as set forth in § 3302 and the prohibited practices set forth in § 3304 apply to renovation work.
- 3310.10 Prior to any renovation activity occurring for compensation in a residential property or in a child-occupied facility where the structure was built prior to 1978, pre-renovation education and documentation thereof shall occur, consisting of:
- (a) At least five (5) business days prior to beginning any renovation activity, the contractor shall provide the EPA pamphlet entitled "*Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools*" to:
 - (1) The owner of the residential property or child-occupied facility;
 - (2) Any affected tenant of the property or facility;
 - (3) The administrator of the child-occupied facility; and
 - (4) The parent or guardian of any child under the age of six (6) years who attends the child-occupied facility on a regular basis;
 - (b) The contractor shall document that the contractor has complied with

§ 3310.10(a), and shall retain such documentation for at least six (6) years and make it available to DDOE upon request; and

- (c) If the contractor is unable to deliver the pamphlet or the tenant does not acknowledge receipt, the contractor shall:
 - (1) Obtain written acknowledgement that the occupant has received the pamphlet; or
 - (2) Certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant;
 - (3) Include on the certification: the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, reason for lack of acknowledgement (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; and
 - (4) Obtain a certificate of mailing at least seven (7) days prior to the renovation.

3311 CERTIFICATION OF BUSINESS ENTITIES PERFORMING LEAD-BASED PAINT ACTIVITIES AND OF FIRMS CONDUCTING RENOVATION ACTIVITIES

3311.1 To become certified, a business entity or a firm shall comply with all applicable requirements of this section before any employee or sub-contractor of the business entity or firm may conduct a lead-based paint activity, clearance examination, or renovation in a dwelling unit or child-occupied facility built before 1978.

3311.2 The business entity or firm shall be responsible for ensuring that each employee and subcontractor of the business entity conducting a lead-based paint activity, clearance examination, or renovation for the entity, is:

- (a) Certified pursuant to §§ 3307 or 3308;
- (b) In compliance with the provisions of §§ 3302 and 3304; and
- (c) In compliance with all applicable federal and District laws, regulations, and rules governing the disposal of all waste containing lead.

3311.3 An entity applying for certification as a business that conducts lead-based paint activities or as a firm that conducts renovation activities in the District of Columbia shall:

- (a) Document that the entity has a valid DCRA license, if required, to do business in the District;
- (b) Submit documentation to DDOE that proves that the entity has liability insurance for at least one million dollars (\$1,000,000) that is valid for the period of the DDOE business entity certification;
- (c) Execute a District of Columbia Clean Hands Self-Certification Form stating that paragraph (c) above has been met; and
- (d) Pay the applicable certification fee required under § 3322.

3311.4 The business entity or firm shall comply with the recordkeeping requirements of D.C. Official Code § 8-231.01 *et seq.*

3311.5 A business entity or firm's certification shall expire after five (5) years.

3312 EXCEPTIONS TO THE CERTIFICATION REQUIREMENT

3312.1 The requirement in § 3307.1 that an individual be certified prior to engaging in any lead-based paint activity does not apply to the following:

- (a) Individuals who perform lead-based paint activities or renovations in a residence which they own, provided that the residence is occupied solely by the owner or the owner's immediate family, and provided that there is no child under age six (6) and no pregnant woman residing therein;
- (b) Performance of maintenance, repair, or renovation work by an individual or entity that results in disturbances of lead-based paint in a total of two square feet (2 sq. ft.) or less of surface area per room, or a total of twenty square feet (20 sq. ft) or less of exterior surface;
- (c) Individuals who perform maintenance, repair, painting, and renovation work that does not disturb painted surfaces; and
- (d) Individuals who perform risk assessment and lead-based paint inspections for litigation or other forensic purposes, in compliance with all work practice rules established by DDOE pursuant to this chapter, provided such individuals possess the appropriate certification issued by EPA or by an EPA-approved state program.

3313 DISCLOSURE REQUIREMENTS AND TENANT RIGHTS FORM

3313.1 The owner of a dwelling unit constructed before 1978 shall disclose to the purchaser or tenant of the dwelling unit information reasonably known to the owner about the presence of any of the following conditions in the unit:

- (a) Lead-based paint;

- (b) Lead-based paint hazards; and
- (c) Pending actions ordered by a District government agency pursuant to the Acts or this chapter.

3313.2 The disclosures shall be provided on the lead disclosure form provided by DDOE, and shall be provided before the purchaser or tenant is obligated under any contract to purchase or lease the dwelling unit.

3313.3 The owner of a dwelling unit constructed before 1978, which unit will be occupied or regularly visited by a child under the age of six (6) years or by a pregnant woman, shall provide to the tenant an accurately and fully completed lead disclosure form and a clearance report issued within the previous twelve (12) months, or as otherwise provided in § 3313.5. The disclosures required by this subsection shall be provided before the tenant is obligated under any contract to lease the dwelling unit.

3313.4 If a tenant of a dwelling unit constructed before 1978, in which unit a person at risk resides or regularly visits, notifies the owner of the property in writing that a person at risk resides in or regularly visits the dwelling unit, the owner of the dwelling unit shall provide to the tenant within thirty (30) days a clearance report issued within the previous twelve (12) months, or as otherwise provided in § 3313.5.

3313.5 In lieu of providing the disclosure form and clearance report required by §§ 3313.3 and 3313.4, an owner may provide to, or make the following available for review by, the tenant:

- (a) A report from a risk assessor or lead-based paint inspector certifying that the dwelling unit is a lead-free unit; provided, that for the purposes of this subsection, the term “lead-free unit” shall mean the definition of lead-free unit in effect at the time of unit certification, including such cases as a prior multifamily property lead-based paint inspection, conducted pursuant to the 1997 amendments to the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, where the lead-based paint inspector made a determination that the property itself is a lead-free property, including all units contained within such property; or
- (b) Three (3) clearance reports issued at least twelve (12) months apart and within the previous seven (7) years; provided, that the property was not, and is not, subject to any housing code violation that occurred during the past five (5) years or any that is outstanding.

3313.6 The owner of a dwelling unit shall provide notice to its tenants of their rights under the Acts on a Tenant Rights form provided by DDOE, whenever a tenant executes or renews a lease for the unit and whenever the owner provides notice of a rent increase.

3313.7 A tenant has the right to provide information to DDOE concerning deteriorated paint or other lead-based paint hazards within a property. This right of the tenant is protected by tenant provisions set forth in D.C. Official Code § 42-3505.02.

3313.8 The owner of a dwelling unit who learns of the presence of lead-based paint in that dwelling unit shall:

- (a) Notify the tenant of the presence of lead-based paint within ten (10) days after discovering its presence; and
- (b) Provide the tenant with:
 - (1) The Lead Warning Statement described in 40 CFR § 745.113; and
 - (2) The lead hazard information pamphlet described in the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (2006), provided, that the Lead Warning Statement and lead hazard information pamphlet need not be submitted if they have been given to the tenant within the prior twelve (12) months.

3313.9 An owner shall maintain copies of all lead-related reports for a property or any part thereof and make the reports available to tenants, tenants' agents, and government officials for review and photocopying at reasonable hours and at a location reasonably close to the property.

3313.10 An owner shall document on what date the Tenant Rights form referenced in § 3313.6 was provided to the tenant and shall make such information available to government officials for review and photocopying at reasonable hours and at a location reasonably close to the property.

3314 CLEARANCE REQUIREMENTS AT CHANGE IN OCCUPANCY OF RENTAL UNITS

3314.1 Before a change in the occupancy of a residential rental unit and before the execution of a lease, where a prospective occupant household informs the property owner that the household includes a pregnant individual or a child under six (6) years of age, the owner of the unit shall:

- (a) Provide the prospective tenant with a clearance report issued not more than twelve (12) months before the change in occupancy;
- (b) Give the prospective tenant an acknowledgment form to sign and date as confirmation of receipt of the passing clearance report; and
- (c) Retain a copy of the acknowledgement form for at least six (6) years, which shall be readily accessible to DDOE during that period.

3314.2 Upon written request by a tenant in a residential rental unit who is pregnant or has a child under six (6) years of age living at or regularly visiting the residence, the owner of said unit shall:

- (a) Provide the occupant with a clearance report issued not more than twelve (12) months before the date of the request or more than thirty (30) calendar days after receipt of the written request;
- (b) Ask the tenant to sign and date an acknowledgement of receipt of the clearance report; and
- (c) Retain a copy of the acknowledgement form for at least six (6) years, which shall be accessible to DDOE during that period.

3314.3 The clearance report required by this section may be issued by a dust sampling technician, lead-based paint inspector, or risk assessor.

3314.4 An owner may satisfy the clearance report requirements of this section by submitting to the tenant:

- (a) A report from a risk assessor or lead-based paint inspector certifying that the unit is a lead-free unit, in accordance with §§ 3314.5 or 3314.6, as applicable; or
- (b) Three (3) passing clearance reports issued at least twelve (12) months apart from each other by a dust sampling technician, lead-based paint inspector, or risk assessor, provided that the three (3) passing clearance reports were all issued within the previous seven (7) years and the property owner or property manager is not currently, or was not during the previous five (5) years, subject to any housing code or any DDOE violation enforcement orders.

3314.5 A single-family home shall qualify as a “lead-free unit” provided:

- (a) The owner documents that all representative interior and exterior painted surfaces have been tested by a lead-based paint inspector or risk assessor and do not contain lead-based paint; and
- (b) The owner documents that any bare soil on the property has been tested and contains no lead-contaminated soil.

3314.6 To qualify as a “lead-free unit” in a multifamily property:

- (a) The owner shall document that all representative interior unit painted surfaces and all representative exterior painted surfaces that can reasonably be considered as the unit’s exterior surfaces have been tested by a lead-based paint inspector or risk assessor and do not contain lead-based paint. For purposes of this paragraph, painted surfaces that can

reasonably be considered as the unit's exterior surfaces include balcony and terrace components, exterior window and door components, and any accessible exterior wall surfaces that are part of the structure of the unit;

- (b) The owner shall document that any interior floor surface located outside the unit within twenty feet (20 ft.) of the front or rear door has been tested by a dust sampling technician, lead-based paint inspector, or risk assessor, which testing protocol shall include at least one (1) dust sample immediately outside the door and another dust sample for every ten feet (10 ft.) of floor surface from the door, and such sampling does not reveal any lead-contaminated dust; and
- (c) The multifamily property shall have an Operations and Maintenance Plan that includes specific reference to a specialized cleaning process that ensures approaches to lead-free units remain lead safe over time.

3314.7 In the alternative, a unit may qualify as a "lead-free unit" in a multifamily property if an owner provides documentation that:

- (a) A lead-based paint inspection of the property, performed in accordance with the 1997 amendments to the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, or any more recent version thereof, has resulted in a determination by a certified risk assessor that the property is a lead-free property; or
- (b) Lead-based paint that is present inside the unit has been enclosed so that a lead-based paint inspection of a unit, performed by a certified lead-based paint inspector or risk assessor, does not detect any lead-based paint.

3314.8 An owner whose unit is deemed to be a "lead-free unit" pursuant to § 3314.7(b) shall be exempt from the clearance requirements under § 3314, but shall remain subject to the disclosure requirements of the Acts and this chapter, and shall:

- (a) Disclose the presence of the enclosed lead-based paint whenever appropriate under the Acts and this chapter; and
- (b) As part of each such required disclosure, provide a current copy of the property's Operations and Maintenance Plan, which shall contain a section that describes the process by which the owner intends to ensure that the lead-based paint remains enclosed over time.

3314.9 For purposes of this section, a clearance report shall include:

- (a) The date that the clearance examination was conducted;
- (b) A statement by the individual who conducted the clearance examination that the individual:

- (1) Was granted unobstructed access to all painted areas in the unit;
 - (2) Did not see paint deterioration on any component or fixture on the interior of the unit;
 - (3) Did not see paint deterioration on any component or fixture on the exterior portion of a property that can reasonably be considered the unit's exterior surfaces in the case of multifamily property, in conformance with § 3314.6(a); and
 - (4) Did not see paint deterioration on any component or fixture on the exterior of any single-family property to which this section applies;
- (c) Dust sampling results that pass the clearance requirements of this chapter in accordance with the following dust sampling protocol:
- (1) One (1) floor sample in each room, taken close to a door or another potential likely source of lead dust; and
 - (2) One (1) window sill or well sample in each room containing a window;
- (d) The analytical result for each environmental sample submitted for lab analysis, including any blank or spike sample submitted;
- (e) A floor plan of the unit that displays where each environmental sample was taken;
- (f) A chain of custody sheet with all fields completed, that lists each environmental sample submitted to a lab for analysis, along with the time of day that the samples were collected; and
- (g) The date of the clearance examination, along with the signature of the individual who conducted the clearance examination and that individual's D.C. certification identification number issued by DDOE upon granting certification.

3314.10 Each environmental sample taken pursuant to this section shall be submitted for analysis to an appropriately accredited lab.

3314.11 Notice to DDOE that a dust test will be performed shall be provided by fax, in person, or via the DDOE website, on a DDOE-specified form, submitted to DDOE at least twenty-four (24) hours prior to conducting the dust test, or as soon as practicable, whichever is sooner.

3315 RISK REDUCTION USING INTERIM CONTROLS

- 3315.1 Before any individual performs interim controls to eliminate lead-based paint hazards in the District of Columbia such person shall be trained in the lead-safe work practices set forth in § 3302.
- 3315.2 A certificate of completion from an EPA- or DDOE-accredited training provider or from another EPA-authorized, state-accredited training provider shall serve as proof of receipt of the lead-safe work practices training required by these regulations. An individual shall provide proof of training in lead-safe work practices upon request by DDOE at the job site. A business entity shall ensure that its workers comply with these standards.
- 3315.3 Documentation proving Certified Renovator status, or Abatement Worker or Abatement Supervisor certification status, shall satisfy the requirements of §§ 3315.1 and 3315.2, provided such documentation is from an EPA- or DDOE-accredited training provider or from another EPA-authorized, state-accredited training provider.
- 3315.4 Whenever non-abatement activities are conducted to address lead-based paint hazards pursuant to an Order to Eliminate Lead-Based Paint Hazards, a clearance examination shall be required:
- (a) No sooner than one (1) hour after completion of such interim controls, but no more than three (3) business days after such completion, and again between thirty (30) and thirty-six (36) months, as specified by DDOE in the Order, after completion of the interim controls activities; or
 - (b) No sooner than one (1) hour after completion of such interim controls, but no more than three (3) business days after such completion, and again within such timeframe that is specified by DDOE in the Order, which may include a requirement for multiple Clearance Reports over time.
- 3315.5 An initial clearance report pertaining to the elimination of lead-based paint hazards identified in an Order issued by DDOE shall be issued only by a risk assessor. Any subsequent clearance report may be issued by either a risk assessor, a lead-based paint inspector, or a dust sampling technician.
- 3315.6 Notice to DDOE that a dust test will be performed shall be provided by fax, in person, or via the DDOE website, on a DDOE-specified form, submitted to DDOE at least twenty-four (24) hours prior to conducting the dust test, or as soon as practicable, whichever is sooner.
- 3315.7 A copy of each clearance report shall be submitted to DDOE by the property owner, within five (5) business days of its issuance, either in PDF format by email, or by mail, a courier service, or in person.

3316 LEAD-BASED PAINT HAZARD ABATEMENT REQUIREMENTS

- 3316.1 An individual or business entity shall not commence or perform any abatement activity on any residential property or child-occupied facility without first applying for and receiving an abatement permit from DDOE, except for those activities listed in § 3316.
- 3316.2 The following activities shall at minimum require the use of individuals trained in lead-safe work practices as described in § 3302, as documented by proof available at the work site of either Certified Renovator status or Abatement Worker or Abatement Supervisor certification status, and, except for § 3316.2(c), shall be followed by a clearance examination pursuant to §§ 3310.3, 3310.4, and 3310.5:
- (a) Door replacement, provided it does not include replacing ancillary door components, such as the casing, door stop, jamb, or threshold;
 - (b) Covering of any lead-contaminated soil that contains less than one thousand parts per million (1,000 ppm) of lead; and
 - (c) An abatement activity involving less than two square feet (2 sq. ft. per room of deteriorated paint on an interior surface, or less than twenty square feet (20 sq. ft) of deteriorated paint on an exterior surface.
- 3316.3 The raze or the demolition of a pre-1978 building involving painted surfaces within or on the property shall be subject to the following requirements:
- (a) All painted components either shall be presumed to be painted with lead-based paint, or shall be tested by a lead-based paint inspector or risk assessor to determine whether or not lead-based paint is present;
 - (b) Provided the building is structurally sound, lead-safe work practices shall be used in conformance with § 3302, and all components containing presumed or identified lead-based paint shall be disposed of in a manner consistent with the disposal of lead-contaminated waste;
 - (c) The removal of any building component containing presumed or identified lead-based paint and involving any stripping, grinding, sanding or mechanical abrading of painted surfaces during said removal process, shall only be conducted after a lead abatement permit is issued for such activity by DDOE; and
 - (d) The prohibited practices enumerated in § 3304 shall not be used.
- 3316.4 The raze or the demolition of a pre-1978 building, involving presumed or identified lead-based paint within or on the property, shall only be undertaken after a lead abatement permit is issued for such activity by DDOE, if the property in question is within one hundred feet (100 ft.) of a child-occupied facility, or, in the case of a demolition that is limited to one or several units within a multifamily

property, if one or more of those units is on a floor that also contains an occupied unit.

- 3316.5 Performance of encapsulation is an abatement activity that shall be limited to those encapsulant products that have been subjected to nationally recognized third-party testing that documents that the product in question, when applied in accordance with its instructions, shall form an effective barrier for no fewer than twenty (20) years.
- 3316.6 Encapsulation shall not be used as a technique to eliminate lead-based paint hazards on friction or impact surfaces when such hazards have been identified as part of a Notice of Violation and Order to Eliminate Lead-Based Paint Hazards.
- 3316.7 An abatement permit may be granted if the applicant submits all of the following to DDOE:
- (a) A completed Lead-Based Paint Hazard Abatement Permit Application;
 - (b) A copy of the applicant's signed contract for the work, including the charges for all lead abatement activities under the contract and the signature of each party to the contract;
 - (c) A copy of the applicant's Scope of Work, describing the lead abatement activities that the applicant is under contract to perform;
 - (d) A copy of a risk assessment or lead inspection report, or other data source that identifies the exact location of the lead-based paint and lead-based paint hazards to be abated;
 - (e) A copy of a Certificate of Liability Insurance, proving the applicant's current policy coverage for at least one million dollars (\$1,000,000) for individual environmental or lead claims;
 - (f) The requirement for the one million dollars (\$1,000,000) of liability insurance coverage may be waived for an applicant who is seeking an abatement permit for work limited to the applicant's own home; provided that the home is not part of a multi-family property, that there are no tenants living in the applicant's home, and that the work does not involve the demolition or raze of a pre-1978 building;
 - (g) A copy of current D.C. lead certifications for each person who will engage in any of the abatement activities, including a copy of the work site supervisor's certification, as well as a copy of the business entity certification;
 - (h) A copy of a valid District of Columbia Department of Consumer and Regulatory Affairs (DCRA) license to do business in the District;

- (i) A completed District of Columbia Clean Hands Self-Certification Form; and
- (j) Any other information DDOE requires in its permit application instructions as relevant to issuance of an abatement permit.

3316.8 DDOE may specify the requirements that apply to work carried out under the permit by describing them on the permit.

3316.9 Except as pursuant to § 3316.2, abatement shall only be performed by an individual or entity that is currently certified by the District of Columbia as a lead abatement worker or supervisor.

3316.10 The issuance of an abatement permit pursuant to § 3316.4 triggers a requirement that the individual or business entity to whom the permit was issued submit to DDOE a clearance report no later than seven (7) business days after completion of the permit-related activities, to close out the permit, as follows:

- (a) A clearance examination shall be performed no sooner than one (1) hour and no later than three (3) business days after the completion of the abatement activities, and shall be repeated until the clearance examination is passed and a clearance report is issued;
- (b) The clearance examination may be performed by a risk assessor or by a lead-based paint inspector, unless DDOE has required that the clearance examination be performed by a risk assessor;
- (c) In the case of work that occurs within one hundred feet (100 ft.) of a child-occupied facility, the clearance examination shall consist of:
 - (1) Dust sampling on any concrete or other rough exterior horizontal surface within twenty feet (20 ft.) of the work area, provided such sampling occurs on the same property, or on a neighbor's property with the permission of such neighbor; and
 - (2) Soil sampling of any bare soil within twenty feet (20 ft.) of the work area, provided such sampling occurs on the same property, or on a neighbor's property with the permission of such neighbor;
- (d) In the case of work that occurs on a floor in a multifamily property that also contains an occupied unit, the clearance examination shall consist of:
 - (1) A visual inspection of the common area on each such floor to confirm that no visible paint debris is present between the front door of each unit where such work is undertaken and the entry door of any occupied unit on such floor; and

- (2) Dust sampling in the common area on each such floor, within two feet (2 ft.) from the entry door of each unit where such work is undertaken, and within two feet (2 ft.) from the entry door of either all occupied units on such floor, or at least three (3) of the occupied units, whichever is fewer, provided that the risk assessor selects those units most likely to have been affected by dust migration resulting from the work;
- (e) Notice to DDOE that a dust test will be performed shall be provided by fax, in person, or via the DDOE website, on a DDOE-specified form, submitted to DDOE at least twenty-four (24) hours prior to conducting the dust test, or as soon as practicable, whichever is sooner;
- (f) Each environmental sample taken during a clearance examination shall be analyzed by an appropriately accredited lab, and the total samples submitted to the lab shall include as a quality assurance measure one (1) blank sample for lab analysis for each permit issued pursuant to § 3316.4; and
- (g) No other raze or demolition activity shall be undertaken at the property in question until a clearance report has been issued and submitted to DDOE, except that demolition activities on floors where no occupied units are located may continue in the interim.

3316.11

The issuance of an abatement permit in all cases other than a permit issued pursuant to § 3316.4 triggers a requirement that the individual or business entity to whom the permit was issued submit to DDOE a clearance report upon completion of the abatement activities, to close out the permit, as follows:

- (a) A clearance examination shall be performed no sooner than one (1) hour and no later than three (3) business days after the completion of the abatement activities, and shall be repeated until the clearance examination is passed and a clearance report is issued;
- (b) If there is no Order to Eliminate Lead-Based Paint Hazards, the clearance examination may be performed by a dust sampling technician, a lead-based paint inspector, or by a risk assessor, whether or not employed by the owner;
- (c) If there is no Order to Eliminate Lead-Based Paint Hazards, the clearance examination shall consist of:
 - (1) A visual inspection of each work area, to ensure paint is in intact condition;
 - (2) A visual inspection of each work area, to ensure there is no visible dust or debris;

- (3) Dust sampling in each room that contains a work area, on the following surfaces in each sampled room:
 - (A) One (1) floor sample; and
 - (B) For rooms that contain a window, one (1) window sill or one (1) window well sample;
- (4) Whenever a work area is located on the exterior of a property, and whenever a work area involves a window or a door that opens to the exterior of a property, a dust sample on any concrete or other rough exterior horizontal surface within two feet (2 ft.) of such work area(s), provided such sampling occurs on the same property, or on a neighbor's property with the permission of such neighbor; and
- (5) Soil sampling if any abatement activity included lead-contaminated bare soil remediation, or if exterior work to eliminate a lead-based paint hazard was performed within ten feet (10 ft.) of a bare soil area, provided such sampling occurs on the same property, or on a neighbor's property with the permission of such neighbor;
- (d) Notice to DDOE that a dust test will be performed shall be provided by fax, in person, or via the DDOE website, on a DDOE-specified form, submitted to DDOE at least twenty-four (24) hours prior to conducting the dust test, or as soon as practicable, whichever is sooner;
- (e) Each environmental sample taken during a clearance examination shall be analyzed by an appropriately accredited lab and shall include as a quality assurance measure one (1) blank sample for lab analysis for each unit or property subject to the clearance examination, or in the case of a clearance examination that spans more than one (1) day, one (1) blank sample for lab analysis per day for each property subject to the clearance examination; and
- (f) A clearance report that is issued in the absence of an Order to Eliminate Lead-Based Paint Hazards shall be submitted to DDOE within ten (10) business days of its issuance, except as provided by § 3316.10, by the individual or business entity to whom the DDOE abatement permit was issued.

3317 ACCESS TO PROPERTIES

3317.1 DDOE may enter a residence or child-occupied facility between the hours of 7:30 a.m. and 7:30 p.m. if DDOE reasonably believes that activities are being or have been conducted in violation of the Acts or any of these regulations, or upon

reasonable belief that there is an imminent threat to the health and safety of the occupants.

- 3317.2 The tenant's consent to enter a residence is required before entry by DDOE, unless DDOE has obtained an administrative search warrant. Search warrants authorizing entry for inspections are issued by the Superior Court pursuant to D.C. Official Code § 11-941.
- 3317.3 For purposes of this section, a property owner or an owner's employee or representative shall seek access to an occupied residential rental dwelling unit only after providing the tenant with a written request for permission to enter the unit at a reasonable hour, at least forty-eight (48) hours before the proposed time of entry. Such notification shall include:
- (a) The proposed date and time of entry;
 - (b) The reason access is needed, including what inspection or work will be conducted, and the particular area(s) of the premises to be accessed;
 - (c) The training or certification requirements applicable to the workers who will be performing the inspection or work;
 - (d) A statement to the effect that the tenant may request proof of training or certification before allowing an inspector or worker to access the unit or proceed with their work; and
 - (e) A request that the tenant return a consent form provided to the tenant by the property owner or the owner's agent pursuant to § 3317.4, prior to the proposed time of entry.
- 3317.4 Along with the written request for permission to enter the unit pursuant to § 3317.3, the property owner or the owner's agent shall provide the tenant with a consent form that the tenant may use to grant or deny consent to the requested entry, or to set forth reasonable conditions for such consent, including an alternative date or dates for such entry.
- 3317.5 A property owner or owner's agent shall meet the tenant's reasonable conditions for access under § 3317.4.
- 3317.6 Except as provided in § 3317.8, if the tenant fails to return a consent form to the owner that grants access to the dwelling unit or sets reasonable conditions for same, and continues to deny the owner access to the dwelling unit for seven (7) days or more after the original written request for access was made, the owner shall be exempt from meeting the requirements of the Acts that are relevant to the requested access, until the tenant either provides written notice of the tenant's willingness to grant access or otherwise freely grants access, or until the tenant no longer occupies the unit, whichever happens first.

- 3317.7 Except as provided in § 3317.8, a property owner who complies with the conditions proposed by the tenant in accordance with § 3317.4 and whose tenant still refuses to grant access to the dwelling unit shall be exempt from meeting the requirements of the Acts that are relevant to the requested access, until the tenant either provides written notice of the tenant’s willingness to grant access or otherwise freely grants access, or until the tenant no longer occupies the unit, whichever happens first.
- 3317.8 A property owner shall verify that workers engaging in lead-based paint activities on the owner’s behalf are trained or certified pursuant to these regulations and that such requirements are correctly and clearly articulated in accordance with § 3317.3, and a tenant may deny access to an inspector or worker engaging in lead-based paint activities who is unable to provide proof of such training or certification.
- 3317.9 A tenant shall allow access to his or her dwelling unit to the unit owner or the owner’s employee or representative to facilitate any work or inspection required under this chapter, provided all other conditions required by §§ 3317.3, 3317.4, 3317.5, and 3317.8 are met.

3318 NOTICE OF VIOLATION OR NOTICE OF INFRACTION, AND ORDER TO ELIMINATE LEAD-BASED PAINT HAZARDS

- 3318.1 DDOE may take steps to determine the existence of a lead-based paint hazard whenever DDOE has reason to believe that there is a risk that a lead-based paint hazard is present in a dwelling unit, an accessible common area of a multifamily property, or a child-occupied facility such as a day care center or kindergarten program that is regularly attended by children under the age of six (6) years constructed prior to 1978.
- 3318.2 To determine whether a lead-based paint hazard is present, DDOE’s investigation of a dwelling unit, common and exterior areas, or a child-occupied facility pursuant to § 33181 may include a:
- (a) Visual inspection; and
 - (b) Any other form of lead hazard evaluation.
- 3318.3 If a lead-based paint hazard is identified, DDOE may issue a written Notice of Violation or Notice of Infraction, and an Order to Eliminate Lead-Based Paint Hazards (collectively “Notice and Order”), to the property owner or to any other person. A Notice and Order shall:
- (a) Identify the violation;
 - (b) Specify the measures needed to correct the violation, including the time for compliance;

- (c) Order any other action necessary to protect the health and safety of the occupants, including relocation pursuant to § 3319, if necessary;
- (d) Include an invoice charging the recipient of the Notice and Order for the costs associated with the lead-based paint hazard evaluation that resulted in the identification of lead-based paint hazards; and
- (e) In the case of a Notice of Infraction, include an assessment of a fine for each violation being cited.

3318.4 An owner, individual, firm, or business entity may object to a notice or order by requesting a hearing within fifteen (15) calendar days of service. If service is by first class mail, a request for a hearing may be filed within twenty (20) days of service. If specific instructions are not on the notice or order, the owner, individual, firm, or entity shall file a written request for a hearing, including the grounds for the objection, in accordance with Rules of Practice and Procedure of the Office of Administrative Hearings set forth in Title 1 DCMR Chapter 28.

3318.5 If DDOE orders the owner to eliminate a hazard by lead-based paint hazard abatement, the owner shall:

- (a) Comply with the DDOE Order within thirty (30) calendar days of its receipt, in conformance with D.C. Official Code § 8-231.15(a) unless extended for good cause pursuant to § 3318.9;
- (b) Obtain a permit pursuant to § 3316 before beginning abatement work;
- (c) Ensure that each person performing an abatement activity:
 - (1) Is certified as required by this chapter; and
 - (2) Adheres to the lead-safe work practice requirements under § 3302 while performing the work; and
- (d) Submit a copy of the clearance report to DDOE and, in the case of rental housing, a copy to the tenant, that:
 - (1) Has been prepared by a risk assessor, subject to the conditions in D.C. Official Code § 8-231.11(f)(1);
 - (2) Is submitted to DDOE and to the tenant within five (5) business days of its issuance by said risk assessor; and
 - (3) Complies with the clearance report requirements established under § 3318.7.

3318.6 If DDOE allows the owner to apply interim controls because abatement is not deemed essential to eliminate a hazard given the particular circumstances, the owner shall:

- (a) Comply with the DDOE Order within thirty (30) calendar days of its receipt, in conformance with D.C. Official Code § 8-231.15(a), unless extended for good cause pursuant to § 3318.9;
- (b) Ensure that each person working to eliminate the lead-based paint hazard:
 - (1) Is certified as required by this chapter; or
 - (2) Has been trained in the lead-safe work practices established under § 3302; and
 - (3) Adheres to those lead-safe work practices while performing the work;
- (c) Comply with the rules for application of interim controls under § 3315; and
- (d) Submit a clearance report to DDOE, and in the case of rental housing, to the tenant, that:
 - (1) Has been prepared by a risk assessor, subject to the conditions in D.C. Official Code § 8-231.11(f)(1), except as otherwise provided in § 3315.5;
 - (2) Is submitted to DDOE and to any affected tenant within five (5) business days of its issuance by the individual who signed the report; and
 - (3) Complies with the clearance report requirements under § 3318.7 and, if applicable, under § 3315.4.

3318.7 If DDOE has issued an Order to Eliminate Lead-Based Paint Hazards, the clearance examination shall be performed no sooner than one (1) hour after the completion of lead-based paint hazard control activities, and no later than three (3) business days after completion, and shall be performed as follows:

- (a) The clearance examination shall include the following:
 - (1) A visual inspection of each work area to ensure paint is in an intact condition and to ensure any underlying condition contributing to paint failure that was identified in the Notice of Violation or of Infraction has been repaired;

- (2) Photos to document that each work area where non-intact paint conditions had been identified in the Notice and Order has been made intact;
- (3) A visual inspection of each work area to ensure there is no visible dust or debris;
- (4) Dust sampling in each room that contains a work area, and if fewer than four (4) rooms contain a work area, in additional rooms until at least four (4) rooms are sampled, that shall include either a child's bedroom, a children's play room, a living room, the bathroom used by the child, or the kitchen, on the following surfaces in each sampled room:
 - (A) A floor sample; and
 - (B) A window sill or a window well sample from rooms that contain a window;
- (5) A floor dust sample within two feet (2 ft.) of the unit's front door and a floor dust sample within two feet (2 ft.) of the unit's rear door;
- (6) Whenever a work area is located on the exterior of a property, and whenever a work area involves a window or a door that opens to the exterior of a property, a dust sample on any concrete or other rough exterior horizontal surface within two feet (2 ft.) of such work area(s), provided:
 - (A) Such sampling occurs on the same property; or
 - (B) Such sampling occurs on a neighbor's property with the permission of such neighbor;
- (7) If in a multifamily property:
 - (A) Additional floor dust samples in the common area outside the unit within two feet (2 ft.) of the front door and within two feet (2 ft.) of the rear door of each unit where lead-based paint hazard elimination work occurred, provided the rear door does not open up to the property exterior; and
 - (B) Additional floor dust samples inside the building, within two feet (2 ft.) of each of the property's doors used to transport materials and debris to and from the work area; and

- (8) Soil sampling if lead-contaminated bare soil was identified, or if exterior work to eliminate a lead-based paint hazard was performed within ten feet (10 ft.) of a bare soil area, provided:
 - (A) Such sampling occurs on the same property; or
 - (B) Such sampling occurs on a neighbor's property with the permission of such neighbor;
- (b) Before proceeding with the clearance examination, the risk assessor performing the clearance examination shall review the following documents to establish the extent and scope of the lead hazard elimination work, and any other pertinent requirements:
 - (1) Abatement Permit;
 - (2) Lead-based Paint Inspection Survey or Risk Assessment Report;
 - (3) Project Scope of Work; and
 - (4) Notice of Violation or of Infraction, and Order to Eliminate Lead-Based Paint Hazards;
- (c) Notice to DDOE that a dust test will be performed shall be provided by fax, in person, or via the DDOE website, on a DDOE-specified form, submitted to DDOE at least twenty-four hours (24) prior to conducting the dust test, or as soon as practicable, whichever is sooner;
- (d) The results of each clearance examination shall be transmitted to the property owner by the individual reporting these results as soon as practicable, and no later than seven (7) business days after completion of the clearance examination;
- (e) If the property does not pass the clearance examination, the owner shall address the condition causing the failure until the property successfully passes clearance;
- (f) All environmental samples taken during a clearance examination shall be analyzed by an appropriately accredited lab and shall include as a quality assurance measure one (1) blank sample for lab analysis for each unit or property subject to a clearance examination; and
- (g) Each clearance report shall include:
 - (1) A list of the documents reviewed pursuant to § 3318.7(b);

- (2) A room by room narrative that provides details about what specific steps were taken during the clearance examination, and the result of each such step;
- (3) Photos taken pursuant to § 3318.7(a)(2), with a caption for each photo, describing the location depicted;
- (4) Analytical result for each environmental sample submitted for lab analysis, including any blank or spike sample submitted, including the lead concentration in the prepared spike;
- (5) A chain of custody sheet that lists each environmental sample submitted to a lab for analysis, along with the date and time of day the samples were taken;
- (6) A floor plan of the unit or property that displays where each environmental sample was taken, including the specific location of any soil sampling;
- (7) The reason or reasons why the unit or property did not pass a previous clearance examination, if applicable;
- (8) The date of the clearance examination and the time it was performed;
- (9) The signature of the individual who performed the clearance examination, along with his or her DDOE certification identification number; and
- (10) The date the clearance report was sent or provided to the property owner.

3318.8

A clearance examination following elimination of a lead-based paint hazard ordered by the District, or after such work is performed in response to a child with an elevated blood lead level, shall not be conducted by:

- (a) A risk assessor or lead-based paint inspector who is related to the owner or any tenant by blood or marriage;
- (b) A risk assessor or lead-based paint inspector who is an employee or owner of the abatement firm performing the work;
- (c) A risk assessor or lead-based paint inspector who is an employee or owner of an entity in which the abatement firm has a financial interest; or
- (d) A dust sampling technician, except as provided for under § 3315.5.

- 3318.9 The deadline specified in §§ 3318.5 and 3318.6 may be extended by DDOE, provided the owner:
- (a) Requests in writing an extension from DDOE and submits such written request no fewer than five (5) calendar days prior to the existing deadline for compliance;
 - (b) Explains in the written deadline extension request the reason why more time is needed; and
 - (c) Provides in the written deadline extension request a summary of steps taken to date, sufficient to demonstrate to the satisfaction of DDOE that:
 - (1) The owner intends in good faith to comply with the Order; and
 - (2) Providing more time to the owner to comply with the Order is not likely to endanger the health and safety of any occupants of the property subject to said Order.

3319 REQUIREMENTS FOR TEMPORARY RELOCATION OF TENANTS

- 3319.1 A property owner shall take all steps necessary to provide temporary comparable alternative living arrangements for an affected tenant whenever DDOE requires relocation of the tenant due to the presence of lead-based paint hazards at a residential rental property, and shall:
- (a) Provide the tenant with at least fourteen (14) days of written notice about the specifics of the proposed relocation, including contact information and the address of the temporary unit, unless a shorter time period is ordered by DDOE, or is mutually agreed to in writing by the owner and the tenant;
 - (b) Provide the tenant with a written, signed statement that the tenant has the right to return to the unit once the unit has passed a clearance examination, under the same terms of agreement that exist under the current tenancy;
 - (c) Make all reasonable efforts to minimize the duration of any temporary relocation;
 - (d) Determine whether there are any appropriate temporary relocation units that do not contain any lead-based paint hazards and that are located within the same property in which the tenant currently resides, and offer same to the tenant;
 - (e) Make all reasonable efforts to determine whether there are any appropriate temporary relocation units available within the same school district or ward and that are close to public transportation, as appropriate, and offer same to the tenant if a unit as described in paragraph (d) above is not available; or

- (f) Offer the tenant other reasonably located, appropriate, and available temporary relocation units if no such unit described in paragraphs (d) or (e) is available.

3319.2 A property owner who is ordered to relocate a tenant shall pay all reasonable temporary relocation expenses that may be required until the tenant's dwelling unit has passed a clearance examination, and a reasonable amount of time has passed to allow the tenant to return to the dwelling unit, which shall include:

- (a) Moving and hauling expenses;
- (b) Payment of a security deposit;
- (c) The cost of replacement housing, including alternative arrangements identified by the tenant and agreed to by said property owner, if the owner has no available temporary relocation unit that satisfies § 3319.1(d-f), provided that the tenant continues to pay the rent on the dwelling unit from which the tenant has been relocated; and
- (d) Installation and connection of utilities and appliances.

3319.3 The property owner shall exercise due diligence in making all reasonable efforts to minimize the duration of temporary relocations.

3319.4 The property owner shall comply with all relocation requirements within fourteen (14) calendar days of the receipt of a written order from DDOE requiring temporary relocation of a tenant, unless the order specifies a different deadline for such measures.

3319.5 A tenant may elect to make alternative arrangements for temporary relocation without any interference from a property owner.

3319.6 Whenever DDOE determines that an imminent threat to a tenant's health and safety exists due to the presence of lead-based paint hazards, DDOE may initiate tenant relocation to a hotel or make other temporary arrangements for lead safety for the tenant, in advance of the owner receiving a DDOE Order to Relocate, or prior to the deadline to which the owner is subject pursuant to § 3319.1.

3319.7 If DDOE incurs expenses when it takes action pursuant to § 3319.6, the property owner shall reimburse DDOE for all such expenses based upon a DDOE invoice.

3320 ENFORCEMENT ACTIONS AND COST REIMBURSEMENT

3320.1 If an owner, individual, firm, or business entity fails to comply with any document issued in accordance with the procedures set forth in § 3318 or violates any other provision of the Acts or this chapter, and such failure is likely to result in harm to either human health or the environment, DDOE may take any reasonable steps needed to prevent such harm from occurring and shall require

reimbursement by said owner, individual, firm, or business entity for all reasonable costs as set forth on a DDOE invoice.

3320.2 DDOE may enforce a violation of the Acts or this chapter, by issuing one or more of the following:

- (a) Notice of Violation;
- (b) Notice of Infraction;
- (c) Cease and Desist Order;
- (d) Order to Eliminate Lead-Based Paint;
- (e) Notice of suspension, revocation, or denial in accordance with § 3321; or
- (f) Another order necessary to protect human health or the environment, or to implement this chapter.

3320.3 Each notice and order shall:

- (a) Identify the violation;
- (b) Specify the measures needed to correct the violation, including the time for compliance;
- (c) Order any other action necessary to protect the health and safety of the occupants;
- (d) Include an invoice charging the recipient of the notice or order for the costs associated with the lead-based paint hazard evaluation that resulted in the identification of lead-based paint hazards; and
- (e) In the case of a Notice of Infraction, include an assessment of a fine for each violation being cited.

3320.4 An owner, individual, firm, or business entity may object to a notice or order by requesting a hearing within fifteen (15) calendar days of service. If service is by first class mail, a request for a hearing may be filed within twenty (20) days of service. If specific instructions are not on the notice or order, the owner, individual, firm, or entity shall file a written request for a hearing, including the grounds for the objection, in accordance with Rules of Practice and Procedure of the Office of Administrative Hearings set forth in Title 1 DCMR Chapter 28.

3320.5 DDOE may issue a Cease and Desist Order to take effect immediately, requiring an owner, individual, firm, or business entity to correct a condition which is an imminent and substantial danger to the public health or restraining an owner, individual, firm, or business entity from engaging in any unauthorized activity

that immediately and substantially endangers the public health. A Cease and Desist Order shall:

- (a) Describe the nature of the violation;
- (b) Take effect at the time and on the date signed; and
- (c) Identify the corrective actions to be taken or actions that must be immediately suspended.

3320.6 A hearing request does not stay the effective date of a Cease and Desist Order. If a hearing is not requested within the fifteen (15) day time period, the Order becomes final and remains in effect until DDOE determines that the corrective actions have alleviated the dangerous conditions.

3320.7 In addition to imposing injunctive relief through a Cease and Desist Order under § 3320.5, DDOE may impose administrative sanctions for any infractions under this chapter or the Acts through the use of civil fines, penalties, and fees pursuant to D.C. Official Code, Title 2, Chapter 18.

3320.8 The District may also initiate a civil action in the Superior Court of the District of Columbia to:

- (a) Seek recovery of any corrective action costs incurred by the District government caused by any violation of the Acts or this chapter;
- (b) Impose civil penalties up to \$25,000 for each day of each violation; or
- (c) Secure a temporary restraining order, preliminary injunction, or other relief necessary for enforcement of this chapter or the Acts.

3320.9 Any owner, individual, firm or business entity that knowingly or willingly violates the provisions of the Acts or this chapter may also be subject to a criminal penalty of not more than \$25,000 for each day of each violation, or imprisonment for not more than one (1) year, or both.

3320.10 Any notice or order shall be served by personal service on an owner, individual, firm or business entity or his or her authorized agent in the same manner as a summons in a civil action, which includes first class mail, or by registered or certified mail to his or her last known address or place of residence.

3321 NOTICE OF SUSPENSION OR REVOCATION, OR DENIAL OF A LICENSE, ACCREDITATION, OR CERTIFICATION

3321.1 After providing notice and opportunity for a hearing, DDOE may suspend, revoke, modify, or refuse to issue, renew, or restore a certification or accreditation issued to an individual, firm, or business entity under this chapter, if DDOE finds that the applicant or holder:

- (a) Has failed to comply with a provision of the Acts or a rule in this chapter;
- (b) Has misrepresented facts relating to a lead-based paint activity to a client, customer, or DDOE;
- (c) Has made a false statement or misrepresentation material to the issuance, modification, or renewal of a certification, permit, or accreditation;
- (d) Has submitted a false or fraudulent record, invoice, or report;
- (e) As a training provider, or as an instructor, has provided inaccurate information or inadequate training;
- (f) Has a history of repeated violations of District or federal law or regulation;
- (g) Has had a certificate, permit, or accreditation denied, revoked, or suspended in another state or jurisdiction;
- (h) Does not possess proof of required accreditation, as prescribed by DDOE; or
- (i) Has failed to comply with federal or District lead-based paint statutes or regulations.

3321.2 In addition to the bases listed in § 3321.1, DDOE may revoke or suspend a business entity or firm certification if it has had its authorization to do business in the District of Columbia revoked or suspended.

3321.3 An action to suspend, revoke, or refuse to issue, renew, or restore a license or certification shall be conducted in accordance with the following procedure:

- (a) The notice of proposed suspension, revocation, or denial shall be in writing and shall include the following:
 - (1) The name and address of the applicant for, or holder of, the license or certification;
 - (2) A statement of the proposed action and the proposed effective date and duration of a proposed refusal to issue, renew, or restore a certification or accreditation, whether for an individual, firm, or a business entity;
 - (3) A statement of the reasons for the proposed action in compliance with the requirements of D.C. Official Code § 8-231.14;
 - (4) The method for requesting a hearing to appeal the decision by DDOE before it becomes final; and

(5) Any additional information that DDOE may decide is appropriate; and

(b) If the individual, firm, or business entity requests a hearing pursuant to this section, DDOE shall provide the owner, individual, firm, or business entity an opportunity to submit a written statement in response to DDOE's statement of the legal and factual basis, and to provide any other explanations, comments, and arguments it deems relevant to the proposed action.

3322 FEES FOR CERTIFICATION, PERMITTING, AND ACCREDITATION

3322.1 Initial and renewal certification fees for the disciplines of lead-based paint inspector, risk assessor, abatement supervisor, and lead project designer shall be set at three hundred fifty dollars (\$350), for both initial certification and each subsequent renewal, unless the course completion certificate provided to DDOE as part of the certification application process is not from a DDOE-accredited training provider, in which case the fee shall be four hundred fifty dollars (\$450).

3322.2 The certification fee for a lead abatement worker, renovator, and dust sampling technician shall be set at one hundred dollars (\$100), for both initial certification and each subsequent renewal, unless the course completion certificate provided to DDOE as part of the certification process is not from a DDOE-accredited training provider, in which case the fee shall be one hundred fifty dollars (\$150).

3322.3 The certification fee for either a renovation firm or business entity shall be set at three hundred dollars (\$300), for both initial certification and each subsequent renewal, though no such certification is needed if the renovation firm or business entity provides documentation of current certification status issued by the EPA.

3322.4 The certification fee for a renovation firm or business entity seeking simultaneous certification as both a renovation firm and as a business entity certified to perform lead-based paint activities shall be set at five hundred fifty dollars (\$550), for both initial certification and each subsequent renewal, though no such certification is needed if the renovation firm or business entity provides documentation of current dual certification status issued by EPA.

3322.5 The fee for a lead abatement permit is fifty dollars (\$50), plus three percent (3%) of the total agreed-upon contract price for the lead abatement portion of the work.

3322.6 The fee for a renovation permit is fifty dollars (\$50), plus two percent (2%) of the total agreed-upon contract price for the portion of the work that encompasses the specific activities listed in § 3310.1(a).

3322.7 Initial, refresher course, and renewal accreditation fees are as follows, and are valid for three (3) years of accreditation:

(a) Initial training course accreditation fee schedule:

Lead-Based Paint Inspector:	\$850
Risk Assessor:	\$850
Abatement Worker:	\$850
Abatement Supervisor:	\$850
Lead Project Designer:	\$500
Renovator:	\$850
Dust Sampling Technician:	\$500

(b) Refresher training course accreditation fee schedule:

Lead-Based Paint Inspector:	\$650
Risk Assessor:	\$650
Abatement Worker:	\$650
Abatement Supervisor:	\$650
Project Designer:	\$300
Renovator:	\$650
Dust Sampling Technician:	\$300

(c) Renewal of initial training course accreditation fee schedule:

Lead-Based Paint Inspector:	\$600
Risk Assessor:	\$600
Abatement Worker:	\$600
Abatement Supervisor:	\$600
Project Designer:	\$400
Renovator:	\$600
Dust Sampling Technician:	\$400

(d) Renewal of refresher course accreditation fee schedule:

Lead-Based Paint Inspector:	\$500
Risk Assessor:	\$500
Abatement Worker:	\$500
Abatement Supervisor:	\$500
Project Designer:	\$250
Renovator:	\$500
Dust Sampling Technician:	\$250

3322.8 All certification, permitting, and accreditation fees shall be subject to periodic revision, as deemed advisable by DDOE.

3322.9 DDOE shall assess a twenty-five dollar (\$25) fee to provide a replacement certification card or accreditation letter.

3399 DEFINITIONS

3399.1 When used in this chapter, the following terms shall have the meanings ascribed (some of the definitions were codified in the Acts, thus indicated as [Statutory], and are reprinted below for regulatory efficiency):

Abatement – a set of measures, except interim controls, that eliminates lead-based paint hazards by either the removal of paint and dust, the enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or covering of soil, and all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures. [Statutory]

Accredited training provider – a training provider that has been approved by the Mayor to provide training for individuals who conduct lead-based paint activities. [Statutory]

Business entity – a partnership, firm, company, association, corporation, sole proprietorship, government, quasi-government entity, nonprofit organization, or other business concern. [Statutory]

Child-occupied facility – a building, or portion of a building, constructed prior to 1978, which as part of its function receives children under the age of six (6) on a regular basis, and is required to obtain a certificate of occupancy as a precondition to performing that function. The term "child-occupied facility" may include a preschool, kindergarten classroom, and child development facility licensed under subchapter II of chapter 20 of title 7 of the D.C. Official Code. The location of a child-occupied facility as part of a larger structure does not make the entire structure a child-occupied facility. Only the portion of the facility occupied or regularly visited by children under age six (6) shall be considered the child-occupied facility. [Statutory]

Clearance examination – an evaluation of a property to determine whether the property is free of any deteriorated lead-based paint and underlying condition, or any lead-based paint hazard, underlying condition, lead-contaminated dust, and lead-contaminated soil hazards, that is conducted by a risk assessor, a lead-based paint inspector, or in accordance with limitations specified by statute or by rule, a dust sampling technician. [Statutory]

Clearance report – a report issued by a risk assessor, a lead-based paint inspector, or a dust sampling technician that finds that the area tested has passed a clearance examination, and that specifies the steps taken to ensure the absence of lead-based paint hazards, including confirmation that any encapsulation performed as part of a lead hazard abatement strategy was performed in accordance with the manufacturer's specifications. [Statutory]

Containment – a system, process, or barrier used to contain lead-based paint hazards inside a work area. [Statutory]

Day – a calendar day. [Statutory]

Demolition – the removal or destruction of a part of a building, such as the walls within one or several units in a multifamily property, or the gutting of an entire building that leaves the exterior shell of the structure in place.

Deteriorated paint – paint that is cracking, flaking, chipping, peeling, chalking, not intact, or otherwise separating from the substrate of a building component, except that pinholes and hairline fractures attributable to the settling of a building shall not be considered deteriorated paint. [Statutory]

Director – the Director of the District Department of the Environment.

Dust action level – the concentration of lead that constitutes a lead-based paint hazard for dust and requires lead-based paint hazard elimination. [Statutory]

Dust sampling technician – an individual who:

- (a) Has successfully completed an accredited training program;
- (b) Has been certified by the District to perform a visual inspection of a property to confirm that no deteriorated paint is visible at the property, and to sample for the presence of lead in dust for the purposes of certain clearance testing and lead dust hazard identification; and
- (c) Provides a report explaining the results of the visual inspection and dust sampling.
[Statutory]

Dwelling unit – a room or group of rooms that form a single independent habitable unit for permanent occupation by one (1) or more individuals that has living facilities with permanent provisions for living, sleeping, eating, and sanitation. The term "dwelling unit" does not include:

- (a) A unit within a hotel, motel, or seasonal or transient facility, unless such unit is or will be occupied by a person at risk for a period exceeding thirty (30) days;
- (b) An area within the dwelling unit that is secured and accessible only to authorized personnel;
- (c) Housing for the elderly, or a dwelling unit designated exclusively for persons with disabilities, unless a person at risk resides or is expected to reside in the dwelling unit or visit the dwelling unit on a regular basis; or
- (d) An unoccupied dwelling unit that is to be demolished; provided, that the dwelling unit will remain unoccupied until demolition. [Statutory]

Elevated blood lead level – the concentration of lead in a sample of whole blood equal to or greater than ten micrograms of lead per deciliter (10 µg/dL) of blood, or such more stringent standard as may be established by the U.S. Centers for Disease Control and Prevention as the appropriate level of concern, or adopted by the Mayor by rule. [Statutory]

Encapsulation – the application of a covering or coating that acts as a barrier between the lead-based paint and the environment, and that relies for its durability on adhesion between the encapsulant and the painted surface and on the integrity of the existing bonds between paint layers and between the paint and the substrate. [Statutory]

Enclosure – the use of rigid, durable construction materials that are mechanically fastened to the substrate to act as a barrier between lead-based paint and the environment. [Statutory]

EPA – the United States Environmental Protection Agency.

Exterior surfaces – means:

- (a) All surfaces that are attached to the outside of a property;
- (b) All structures that are appurtenances to a property;
- (c) Fences that are a part of the property; and
- (d) For a property within a multi-unit dwelling, all painted surfaces in stairways, hallways, entrance areas, recreation areas, laundry areas, and garages that are common to individual dwelling units or located on the property. [Statutory]

Interim controls – a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Lead-based paint – any paint or other surface coating containing lead or lead in its compounds in any quantity exceeding one half percent (0.5%) of the total weight of the material or more than one milligram per square centimeter (1.0 mg/cm²), or such more stringent standards as may be

specified in federal law or regulations promulgated by EPA or HUD, which shall be adopted by the Mayor by rule. [Statutory]

Lead-based paint activities – the identification, risk assessment, inspection, abatement, use of interim controls, or elimination of lead-based paint, lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil, and all planning, project designing, and supervision associated with any of the these activities. [Statutory]

Lead-based paint hazard – any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, deteriorated lead-based paint or presumed lead-based paint, or lead-based paint or presumed lead-based paint that is disturbed without containment. [Statutory]

Lead-based paint inspector or inspector – an individual who has been trained by an accredited training provider and certified by the District to conduct lead inspections. For the purpose of clearance testing, a lead-based paint inspector also samples for the presence of lead in dust and in bare soil. [Statutory]

Lead-contaminated dust – surface dust based on a wipe sample that contains a mass per area concentration of lead equal to or exceeding:

- (a) For dust action levels or for the purpose of clearance examination:
 - (1) Forty micrograms per square foot (40 µg/sq. ft. on floors; or
 - (2) Two hundred fifty micrograms per square foot (250 µg/sq. ft.) on interior windowsills;
- (b) For the purpose of clearance examination:
 - (1) Four hundred micrograms per square foot (400 µg/sq. ft. on window troughs; or
 - (2) Eight hundred micrograms per square foot (800 µg/sq. ft on concrete or other rough exterior surfaces; or
- (c) Such more stringent standards as may be:
 - (1) Specified in federal law;
 - (2) Specified in regulations promulgated by the EPA or HUD; or
 - (3) Adopted by DDOE by rule. [Statutory]

Lead-contaminated soil – bare soil on real property that contains lead in excess of four hundred parts per million (400 ppm), or such other more stringent level specified in federal law or regulations promulgated by EPA or HUD, and adopted by the Mayor by rule. [Statutory]

Lead-disclosure form – the form developed by DDOE for a property owner to disclose an owner's knowledge of any lead-based paint or of any lead-based paint hazards, and information

about any pending actions ordered by the Mayor pursuant to this law, to tenants, purchasers, or prospective tenants or purchasers. [Statutory]

Lead-free unit – a unit for which the interior and exterior surfaces appurtenant to the unit do not contain any lead-based paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm²), and for which the approaches thereto remain lead-safe. The Mayor, by rule, may establish a method to ensure that approaches to lead-free units remain lead-safe. [Statutory]

Lead project designer – an individual who has been trained by an accredited training provider and certified by the District to review lead-based paint inspection reports and risk assessment reports and to develop detailed plans to abate lead-based paint and eliminate lead-based paint hazards.

Lead-safe work practices – a prescribed set of activities that, taken together, ensure that any work that disturbs a painted surface on a structure constructed prior to 1978, generates a minimum of dust and debris, that any dust or debris generated is contained within the immediate work area, that access to the work area by non-workers is effectively limited, that the work area is thoroughly cleaned so as to remove all lead-contaminated dust and debris, and that all such dust and debris is disposed of in an appropriate manner, all in accordance with the methods and standards established by DDOE by rule consistent with applicable federal requirements, as they may be amended. [Statutory]

Owner – a person, firm, partnership, corporation, guardian, conservator, receiver, trustee, executor, legal representative, registered agent, or the federal government, who alone or jointly and severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold interest to any property, with or without actual possession. [Statutory]

Person at risk – a child under age six (6) years or a pregnant woman. [Statutory]

Presumed lead-based paint – paint or other surface coating affixed to a component in or on a dwelling unit or child-occupied facility, constructed prior to 1978. [Statutory]

Raze – the complete destruction of an entire building.

Regularly visits – a child under the age of six (6) years or a pregnant woman who spends or is expected to spend any amount of time at a residential dwelling unit, a single-family property, or a child-occupied facility, at least two (2) times per month, for at least nine (9) months in a given calendar year, provided the property owner or the administrator of the child-occupied facility is notified or otherwise aware of such presence.

Relocation expenses – reasonable expenses directly related to relocation to temporary replacement housing that complies with the requirements of this chapter, including:

- (a) Moving and hauling expenses;
- (b) Payment of a security deposit;

- (c) The cost of replacement housing; provided, that the tenant continues to pay the rent on the dwelling unit from which the tenant has been relocated; and
- (d) Installation and connection of utilities and appliances. [Statutory]

Renovation – the modification of any existing structure or portion thereof that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement. The term "renovation" includes the removal, modification, or repair of painted surfaces or painted components, the removal of building components, weatherization projects, and interim controls that disturb painted surfaces. [Statutory]

Renovator – an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or by the District. [Statutory]

Risk assessment – an on-site investigation to determine and report the existence, nature, severity, and location of conditions conducive to lead poisoning, including:

- (a) The gathering of information regarding the age and history of the housing and occupancy by persons at risk;
- (b) A visual inspection of the property;
- (c) Dust wipe sampling, soil sampling, and paint testing, as appropriate;
- (d) Other activity as may be appropriate;
- (e) Provision of a report explaining the results of the investigation; and
- (f) Any additional requirements as determined by the Mayor. [Statutory]

Risk assessor – an individual who has been trained by an accredited training program and certified by the District to conduct risk assessments. [Statutory]

Underlying condition – the source of water intrusion or other problem that is causing paint to deteriorate which may be damaging to the substrate of a painted surface. [Statutory]

TITLE 22 DCMR (HEALTH), subtitle B (PUBLIC HEALTH AND MEDICINE), is amended as follows:

CHAPTER 73 (CHILDHOOD LEAD POISONING PREVENTION) is amended as follows:

Subsection 7301.1 is amended to read as follows:

- 7301.1 Each health care provider or health care facility that has obtained parental consent shall, as part of a well-child care visit, perform a blood lead level (BLL) screening test on every child who resides in the District of Columbia and who is served by the provider or facility, unless an identical test was performed not more than twelve (12) months before the well-child visit. Blood lead level screening tests shall be performed according to the following schedule:
- (a) Once between the ages of six (6) months and fourteen (14) months;
 - (b) Once between the ages of twenty-two (22) and twenty-six (26) months; and
 - (c) At least twice if a child over the age of twenty-six (26) months has not previously been tested for BLL. The tests for children over the age of twenty-six (26) months shall be conducted before the child attains the age of six (6) years and shall be conducted at least twelve (12) months apart, or according to a schedule determined appropriate by the health care provider or health care facility.

Subsection 7303.2 is amended to read as follows:

- 7303.2 Each laboratory that analyzes a blood sample taken from a child residing in the District of Columbia shall, within a week after completion of the analysis, submit a report that meets the requirements in § 7303.3, as follows:
- (a) The laboratory shall submit a written report to the health care provider or the health care facility where the sample was taken;
 - (b) The laboratory shall submit a report to the Childhood Lead Poisoning Prevention Program, through the Program's electronic reporting system; and
 - (c) The laboratory shall immediately notify the health care provider or the health care facility and the Program of the results by telephone or fax if the child's BLL equals or exceeds ten micrograms of lead per deciliter (10 µg/dL).