20 DCMR Chapter 33, Proposed Lead Regulations

COMMENT PERIOD: August 31, 2012, TO November 1, 2012

Comments Received, and DDOE's Responses*

**Please note that most of the comments listed in this document are paraphrased*

Comments from Patricia Hall, DC Resident

Comment 1: Ms. Hall states that the DDOE proposed regulations allow the fox to watch the hen house, specifically with respect to the proposed regulations permitting clearance examinations to be conducted by someone employed by the property owner. See section 3316.11(b) of the proposed regulations.

Response 1: The underlying statute explicitly states that unless a clearance examination follows elimination of a lead-based paint hazard, "the clearance examination may be performed by a lead inspector, dust sampling technician, or risk assessor, whether or not employed by the owner." See D.C. Official Code § 8-231.11(f)(2).

Comment 2: Ms. Hall states that the "DC [proposed] rules only require lead painted properties to be inspected a maximum of three times in seven years and then never again." See section 3313.5(b) of the proposed regulations.

Response 2: This section of the proposed regulations pertains to when a property owner may decline to provide a clearance report that otherwise would be required per sections 3313.3 and 3313.4 of the proposed regulations. Proposed section 3313.5(b) states that if a property owner can instead produce three clearance reports that were issued at least twelve months apart and within the previous seven years, then and only then can those clearance reports serve as a substitute for a newly produced clearance report, provided the property in question is not and was not subject to any housing code violation that occurred during the previous five years or that is outstanding. This precisely mirrors the language in the underlying statute. See D.C. Official Code § 8-231.04(d)(2).

Comments from U.S. Environmental Protection Agency, Region 3 (EPA)

Comment 1: EPA states that section 3302.3 of the proposed regulations is missing certain elements required by federal regulations pursuant to 40 CFR § 745.85.

Response 1: DDOE agrees and has revised section 3302.3 of the proposed regulations to include all the missing elements identified in EPA's comments. See, *e.g.,* newly proposed sections 3302.3(e), 3302.3(f), 3302.3(h), 3302.3(l), 3302.3(m), 3302.3(q), and 3302.3(y).

Comment 2: EPA points out that a training provider may not be able to provide DDOE with at least two weeks of advance notice of any change in key staff.

Response 2: DDOE agrees and has revised section 3305.6 of the proposed regulations to permit "such shorter notice as may be required by the circumstances related to the change in key staff."

Comment 3: EPA observes that the proposed regulations do not require training providers to submit updates on changes other than changes in key staff and course cancellations.

Response 3: In response to this comment, DDOE has revised section 3305.3 of the proposed regulations to require training providers to notify DDOE as soon as practicable of any changes to the courses being offered, to the schedule for a course, and/or to the name of a course instructor.

Comment 4: EPA notes that the proposed regulations do not require refresher courses to include hands-on activities.

Response 4: In response, DDOE has added to the proposed regulations section 3305.12, which requires a discipline-appropriate hands-on component in each refresher course.

Comment 5: EPA recommends that dust sampling technicians have in their possession at job sites a copy of their certification instead of their course completion certificate.

Response 5: DDOE agrees and has revised section 3309.1(a) to require dust sampling technicians to be able to produce a copy of their certification at job sites.

Comment 6: EPA identifies a number of deficiencies and omissions regarding DDOE's proposed pre-renovation education requirements, as compared to the equivalent counterpart provisions contained in the federal regulations.

Response 6: DDOE has responded to this comment by revising its proposed regulations to incorporate the relevant federal regulations by reference, as reflected in section 3310.9 through section 3310.13 of the proposed regulations.

Comment 7: EPA points out that DDOE's regulations pertaining to firms and business entities must mandate that the firms and business entities adhere to the District's pre-renovation education requirements, in order for them to be consistent with federal regulations.

Response 7: DDOE has revised section 3311.2(b) of its proposed regulations to require adherence to the pre-renovation requirements specified in section 3310.

Comment 8: EPA notes that DDOE's regulations pertaining to the suspension, revocation, or denial of a permit, accreditation, or certification, fails to reference violations identified in relevant federal regulations.

Response 8: DDOE has responded to this comment by adding proposed sections 3321.1(h) and 3321(j) to address the above deficiencies.

Comment 9: EPA asserts that DDOE's proposed section 3321.3 should "include a provision addressing actions, if any, which the affected entity may take to avoid suspension, revocation… or to receive certification in the future. In addition, DC regulations at 3321.3 do not appear to address the similar procedure for suspending, revoking, etc. a training accreditation, unless this procedure is identified elsewhere."

Response 9: DDOE believes the language in its proposed section 3321.3(a)(4) provides the method EPA was asking about, by which affected entities are able "to appeal the decision by DDOE before it becomes final." DDOE added proposed section 3321.4 to specify when an affected entity would be eligible to receive certification in the future. DDOE added "or an accreditation" to proposed section 3321.3, thereby addressing the second EPA concern identified in Comment 9.

Comment 10: EPA contends that the DDOE definition of "lead-contaminated dust" fails to specify clearance examination levels for floors and windowsills, "in accordance with the federal clearance standards of 40 $\mu g/ft^2$ and 250 $\mu g/ft^2$, respectively."

Response 10: The DDOE definition of "lead-contaminated dust" is a statutory definition that is repeated *verbatim* in proposed section 3399, and it does specify in subsection (a) of the definition that the standards of 40 $\mu g/ft^2$ and 250 $\mu g/ft^2$ respectively apply to floors and window sills "for dust action levels or for the purpose of clearance examination" (emphasis added).

Comment 11: EPA points out that under certain circumstances, the DDOE definition of "regularly visits" may not encompass all situations that federal regulations anticipate, in the context of the federal definition of a "child-occupied facility."

Response 11: DDOE has revised its proposed definition of "regularly visits" to be consistent with the federal definition referenced by EPA in its comment.

Comment 12: EPA notes that the definition of "EPA" in the proposed regulations does not match the definition of "EPA" in the underlying District statute.

Response 12: DDOE acknowledges that the District statute contains an unusual definition of "EPA." DDOE prefers to use the standard definition of EPA in its regulations and intends to

initiate a technical amendment to change the statute's definition of EPA in the near future.

Comments from Mark Veckman, Comprehensive Environmental Assessments

Comment 1: "DDOE should require any new paint applied to be lead-free according to the Consumer Product Safety Commission (CPSC) definition."

Response 1: DDOE agrees and has added proposed section 3304.2 prohibiting the use of paint with a lead content higher than the CPSC standard articulated in 16 CFR § 1303.1.

Comment 2: Mr. Veckman recommends changing the term "lead-free," as connected to the notions of a "lead-free unit" and a "lead-free property," to the term "lead-based paint free."

Response 2: While DDOE agrees that the term "lead-based paint free" would be both more accurate than "lead-free" and more consistent with HUD/EPA terminology, the terms "lead-free unit" and "lead-free property" are statutorily defined terms in the underlying District statute, and DDOE is unable to change those terms.

Comment 3: Mr. Veckman notes that DDOE's proposed regulations contain different deadlines for submission of clearance reports depending on the circumstances of the respective clearance examinations, and he recommends one consistent deadline for all.

Response 3: DDOE agrees with this comment and has revised its proposed regulations, creating one uniform deadline of seven (7) business days for submission to DDOE of any clearance report.

Comment 4: Mr. Veckman requests the elimination of the proposed regulatory requirement for sampling of rough concrete surfaces in exterior common areas.

Response 4: Except where a concrete or other rough exterior horizontal surface is within an already identified work area subject to the proposed regulations, DDOE has eliminated the proposed regulatory requirement for sampling of such surfaces in all other exterior common areas, because it is too difficult to definitively associate the presence of lead-contaminated dust on such surfaces with any specific source of lead.

Comment 5: Mr. Veckman recommends imposing a significantly more stringent floor and window sill clearance standard for rough concrete surfaces that are appurtenant to units, such as on a unit balcony.

Response 5: DDOE believes it is inordinately difficult to clean concrete or other rough exterior surfaces to the standards advocated by Mr. Veckman, which are intended by EPA to

apply only to interior surfaces, and DDOE has therefore elected to retain the 800 µg/ft^2 standard established in the underlying District statute, which was also the standard recommended by the HUD Guidelines.

Comment 6: Mr. Veckman recommends limiting the job opportunities for a dust sampling technician to the performance of clearance testing in the unit turnover context, and advocates against allowing dust sampling technicians to perform clearance examinations in the context of the renovation-related and abatement-related clearance requirements, because dust sampling technicians should only be called upon to take dust samples and compare the results of their sampling to the relevant clearance standards.

Response 6: DDOE agrees that dust sampling technicians should not be responsible for more than dust sampling and ascertaining whether relevant dust standards are met. The context in which dust sampling technicians are allowed to work under DDOE's proposed regulations already meets these criteria.

Comment 7: Mr. Veckman argues that the DDOE regulations should require the use of a Project Designer under certain circumstances, to ensure work is done properly.

Response 7: DDOE concedes that a Project Designer adds a measure of quality control to the performance of lead-based paint activities. However, DDOE does not believe the value added is worth the additional cost it would impose on many jobs. District law already requires appropriately trained and certified personnel to perform lead-based paint activities, and federal law requires appropriately certified individuals to oversee renovation and demolition activities that disturb paint in pre-1978 housing. These individuals should be capable of ensuring that work is performed in a lead-safe manner.

Comment 8: Mr. Veckman recommends that DDOE require a copy of an individual's certification card to be included in any required reports produced by certified individuals.

Comment 8: DDOE agrees and has revised its proposed regulations to include a requirement for a copy of the certification card to be included in all reports required by the regulations.

Comment 9: Mr. Veckman asks DDOE to include "sawing unless HEPA vacuum" as a prohibited practice.

Response 9: Proposed regulation section 3304.1(h) already prohibits "[…] cutting or otherwise disturbing more than two square feet of paint […] without the use of appropriate containment measures."

Comment 10: Mr. Veckman suggests that when removing and replacing a door that contains lead-based paint hazards and therefore is an abatement activity, that popping the door off its hinges should not trigger a clearance requirement.

Response 10: Proposed section 3316.2 already exempts the lead abatement of a door from permitting requirements and from requiring the use of a certified abatement contractor, provided the work involves merely popping the door off its hinges. DDOE believes that this simple, quickly performed activity need not trigger such onerous requirements. However, DDOE maintains that it remains important to verify that the work, including any clean-up activity that may or may not have accompanied the door removal, did not leave a lead-based paint hazard in the work area.

Comment 11: Mr. Veckman requests that a DDOE form be made available to notify DDOE of the intent to perform a dust test.

Response 11: DDOE will be making a web-based form available for such purposes.

Comment 12: Mr. Veckman argues that only a risk assessor should be allowed to perform clearance examinations related to renovation work.

Response 12: Because only dust testing is called for when a clearance examination is required under DDOE's proposed regulations in the context of renovation activities, DDOE finds no reason to exclude lead-based paint inspectors and dust sampling technicians from performing this function.

Comment 13: Mr. Veckman points out that because clearance examinations may not immediately yield passing results, DDOE's deadline for submitting a clearance report should allow for whatever additional time may be needed prior to a successful clearance examination.

Response 13: DDOE agrees and has revised its proposed section 3310.7 to make the deadline for submittal to DDOE of a clearance report contingent on a successful clearance examination.

Comment 14: Mr. Veckman recommends adding the option of a dust clearance to the default requirement in federal renovation regulations of cleaning verification.

Response 14: In response to this comment, DDOE has revised its proposed section 3310.9 to include the option of a clearance examination to work that otherwise falls under the federal renovation regulations, as those regulations provide for that option in addition to cleaning verification.

Comment 15: Mr. Veckman recommends adding a requirement to produce a copy of a Renovator certification whenever a permit is being sought pursuant to DDOE's proposed renovation regulations.

Response 15: DDOE agrees and has revised its proposed section 3310.14 to require production of a copy of the Renovation Firm certification and a copy of the Renovator certification.

Comment 16: Mr. Veckman requests changes to DDOE's proposed regulations concerning pre-renovation education.

Response 16: In response, DDOE has revised its proposed regulations to incorporate the federal regulations pertaining to pre-renovation education, at proposed sections 3310.10 through 3310.13.

Comment 17: Mr. Veckman suggests that the certification exception applicable to individuals performing risk assessments and lead-based paint inspections for litigation or other forensic purposes be modified or eliminated.

Response 17: This particular exception is already part of the underlying District statute and therefore must remain in the DDOE regulations.

Comment 18: Mr. Veckman recommends rephrasing proposed section 3314.6(b) to make it easier to understand.

Response 18: DDOE agrees and has revised its proposed section 3314.6(b) to make it easier to understand.

Comment 19: Mr. Veckman states that "DDOE does not require a permit to raze a commercial building [and therefore} should not require testing/permit to raze a residential building. DDOE already has the NESHAPS requirements under the Clean Air Act. No visible emissions leaving the property. That should be sufficient."

Response 19: DDOE has revised its proposed regulations pertaining to the razing or the demolition of a pre-1978 property containing identified or presumed lead-based paint: DDOE has eliminated the requirement for a lead abatement permit in all circumstances except when the property is within 100 feet of a child-occupied facility, or if demolition activities are being conducted in one or more units that are on the same floor as an occupied unit. DDOE believes that these modest exceptions are important to retain, in order to preserve local monitoring authority over these jobs and thereby help ensure lead safety is maintained for the protection of nearby residents and nearby child-occupied facilities.

Comment 20: Mr. Veckman recommends that abatement permit applications not require copies of certifications for each person that will engage in the abatement activities, and that DDOE instead should require copies of the certifications of the relevant business entity and the supervisor who will oversee the abatement activities.

Response 20: DDOE agrees and has revised its proposed section 3316.7(g) to reflect these recommendations.

Comment 21: Mr. Veckman recommends eliminating the requirement for exterior sampling as part of the clearance examination after the razing or demolition of a property that is within 100 feet of a child-occupied facility.

Response 21: DDOE agrees and has revised its proposed section 3316.10 to reflect this recommendation.

Comment 22: Mr. Veckman recommends paring down the proposed requirement for soil sampling to limit it to soil that is on the property where the lead-related work is taking place.

Response 22: DDOE agrees and has revised its proposed regulations, including section 3316.11(c)(5), to reflect this recommendation.

Comment 23: Mr. Veckman recommends limiting the required dust sampling in DDOE's proposed section 3316.10(c)(2) to the work area(s) and one floor sample from outside the work area(s).

Response 23: DDOE believes that the number of dust samples required in its proposed section 3316.10(c)(2) is not excessive, and that thorough sampling in situations where demolition is occurring in an occupied multifamily property is a reasonable precaution to ensure that the remaining residents are adequately protected.

Comment 24: Mr. Veckman recommends restricting the eligible individuals who can perform a clearance examination after abatement jobs that do not involve an Order to Eliminate Lead-Based Paint Hazards, to just risk assessors, instead of also allowing lead-based paint inspectors and dust sampling technicians to perform this work. Mr. Veckman is concerned that dust sampling technicians in particular are insufficiently trained for this work.

Response 24: The EPA's course curriculum for dust sampling technicians includes visual inspections of work areas and does not solely focus on dust sampling. A post-abatement clearance examination requires a visual inspection of the work area(s), along with dust sampling. Accordingly, DDOE is leaving the option open in its proposed section 3316.11(b) for either risk assessors, lead-based paint inspectors, or dust sampling technicians to

perform clearance examinations after an abatement that is not related to compliance with an Order to Eliminate Lead-Based Paint Hazards.

Comment 25: Mr. Veckman suggests that a property owner may give a tenant fewer than 48 hours' notice, when seeking access to a rental unit to conduct a lead-based paint activity, provided the tenant agrees to the shorter time period.

Response 25: The governing statute specifically states that tenants must receive notice "at least 48 hours" prior to the work or inspection and does not allow for a shorter timeframe conditioned on the tenant's prior consent. *See* D.C. Official Code § 8-231.06(a).

Comment 26: Mr. Veckman contends that "DDOE is giving the tenant too much control" by requiring the owner to obtain the tenant's express consent to enter the tenant's home for purposes of conducting lead-related work, and he suggests that a tenant's grant of access should instead be implied, as long as the tenant does not expressly deny access.

Response 26: The governing District statute clearly states that "entry or inspection of any residential premises shall not be made without the permission of the occupant" (§ 8-231.06(a)). Accordingly, DDOE has elected to preserve the tenant's right to affirmatively consent to access, per proposed sections 3317.3 through 3317.8, along with proposed section 3317.9, which does make clear that a tenant must grant access if the owner has complied with all the relevant terms spelled out in the proposed regulations.

Comment 27: Mr. Veckman suggests that the individual conducting a clearance examination after an enforcement order has been issued should only need to submit a blank sample for analysis to the laboratory once for every 20 samples.

Response 27: The submittal of a blank sample is a quality control measure designed to ensure the laboratory analysis can be trusted to be accurate. It is important in the enforcement context for DDOE to know that in any given unit, this quality control measure has been implemented. Accordingly, proposed section 3318.7(f) would require a blank sample to be submitted for each unit or property subject to an enforcement-related clearance examination.

Comment 28: Mr. Veckman requests that DDOE eliminate the clearance standard for concrete or other rough exterior surfaces.

Response 28: DDOE has no authority to eliminate the clearance standard in question, which is based specifically on the governing statute.

Comments from the Apartment and Office Building Association of Metropolitan Washington (AOBA)

Comment 1: AOBA points out that the statute's definition of "presumed lead-based paint" does not include a reference to common areas of multi-family properties, and that therefore the law does not include common areas within the presumption.

Response 1: DDOE agrees with the comment and has revised section 3301.1 accordingly.

Comment 2: AOBA contends that the use of the word "documentation" is too vague, in the context of what must be produced to rebut the presumption of lead-based paint, and proposes the more specific "lead-based paint inspection report" in its stead.

Response 2: DDOE agrees with the comment and has revised section 3301.2 accordingly.

Comment 3: AOBA comments that the regulations should mirror the federal regulations with respect to the materials required to be used to cover work area surfaces, with respect to which windows and doors to close during work that disturbs painted surfaces, and with respect to the area that must be free of visible dust and debris after the final work area cleanup has been completed.

Response 3: DDOE agrees and has revised section 3302.3(g), (j), (n), (y) and (z) to mirror relevant federal regulations.

Comment 4: AOBA states that some of the language in section 3302.3 is redundant and should be omitted.

Response 4: EPA comment #1 urged DDOE to more comprehensively mirror the relevant federal regulations in section 3302.3, and DDOE has accordingly revised its section 3302.3(q), rather than omit it altogether.

Comment 5: AOBA notes that relevant federal regulations pertaining to certification as a lead-based paint inspector do not impose a pre-requisite of educational experience beyond the need to complete an accredited lead-based paint inspector course, receive the course completion certificate from an accredited training provider, and pass the lead-based paint inspector certification exam.

Response 5: DDOE has revised section 3307.3 to remove the reference to additional educational experience.

Comment 6: AOBA suggests repeating in section 3309 the statutory language referring to proof of appropriate dust sampling technician course completion.

Response 6: DDOE already conveys in section 3307.2(b) that dust sampling technicians need to "complete an EPA- or DDOE-accredited course in the appropriate discipline and receive a course completion certificate from the training provider," and accordingly such information does not need to be repeated in section 3309.

Comment 7: AOBA states that DDOE should not require a renovation permit under any circumstances, and suggests that if DDOE wants to track and monitor those renovation jobs that have the potential to create significant lead-based paint hazards, that DDOE "should instead work with DCRA to ensure that DDOE is incorporated into the permit review process for large projects, or otherwise work with DCRA to obtain information regarding large projects."

Response 7: DDOE is responsible for ensuring that work that disturbs paint on pre-1978 residential properties and child-occupied facilities does not generate lead-based paint hazards. DDOE does not want to impose a permit requirement on all such work, but instead wants to limit the permit requirement only to those situations where non-compliance with federal and/or District law could expose the public to significant lead hazards and potentially cause many young children to suffer irreversible brain damage. DDOE receives dozens of complaints annually from the public, in which non-compliance with federal and/or District law is occurring in the context of renovation or demolition activities. The proposed regulations in section 3310 do not impose additional work requirements on the permit applicant beyond what federal and/or current District law already require. Instead, section 3310 establishes a performance-based standard, as reflected in the clearance requirement specified in section 3310.4, whereby the public can be certain that the work is not exposing neighbors and passers-by to lead-based paint hazards. DDOE will also continue to work closely with DCRA to maximize the likelihood that the contractors they issue permits to are complying with all relevant lead laws.

Comment 8: AOBA recommends adding the federal language pertaining to renovations, in 40 CFR 745.82.

Response 8: DDOE agrees and has added the recommended language in section 3310.3.

Comment 9: AOBA asks why DDOE sees a need for requiring everyone who plans to conduct dust testing activities to provide DDOE with advance notice of those dust tests. AOBA suggests it would be more appropriate to limit this requirement to dust testing that occurs in response to enforcement orders.

Response 9: DDOE has a duty to ensure that the individuals it licenses to perform lead-based paint activities in the District of Columbia are conducting those activities in the correct

manner. EPA expects DDOE to monitor the work of DDOE-certified personnel. This includes verifying that dust tests are being performed correctly. However, DDOE recognizes that applying an advance notification requirement across the board in all situations could easily create significant administrative and enforcement burdens for the agency, and has therefore decided to eliminate this proposed requirement in all cases except those dust testing situations related to enforcement actions, as recommended by AOBA.

Comment 10: AOBA suggests adding a requirement that whenever the Disclosure form or the Tenant Rights form is provided, that both housing providers and tenants sign and date the form.

Response 10: DDOE agrees and has revised sections 3313.2 and 3313.10 to include a requirement for the owner to sign and date the form, along with an opportunity for the tenant to do so as well.

Comment 11: AOBA questions whether section 3314.5 should refer to "lead-free property" rather than "lead-free unit."

Response11: Section 3314.5 specifically refers to "single family homes," and therefore the reference to "lead-free unit" is the proper one. However, DDOE has revised section 3314.5 to dispel the notion that a property owner must also test all bare soil on the property, and that all such tests must verify that no lead-contaminated soil is present, for the home to be considered a "lead-free unit."

Comment 12: AOBA suggests adding a sub-section to section 3314.6(a), allowing for another way to justify "lead-free unit" status, namely by providing a report showing a multi-family property to be a lead-free property, provided the inspection was conducted pursuant to the 1997 amendments to the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.

Response 12: DDOE has already included similar language that achieves the same result, in section 3314.7(a).

Comment 13: AOBA proposes language to tighten up section 3314.8(b).

Response 13: DDOE has revised section 3314.8(b) to capture AOBA's suggestions.

Comment 14: AOBA questions why, in a situation where demolition activities will be conducted in one or several units within a pre-1978 multifamily property, DDOE would require a lead abatement permit if one or more of those units is on a floor that also contains an occupied unit. AOBA suggests that it might be more appropriate if a permit were only required if the work is on a floor that contains a unit occupied by a person at risk.

Response 14: DDOE cannot predict when a unit will be visited by a person at risk, whether it be a pregnant woman or a child under six visiting the occupant.

Comment 15: AOBA recommends specifying that all forms mentioned in the regulations are to be issued by DDOE.

Response 15: DDOE has revised sections 3314.1(b), 3317.3(e), 3317.4, and 3319.1(b), to reflect AOBA's recommendation.

Comment 16: AOBA notes that the statute contains a DDOE reporting requirement that is triggered whenever DDOE investigates the possibility of the presence of lead-based paint hazards in a dwelling unit, an accessible common area, or a child-occupied facility, and recommends that DDOE specify this in the regulations.

Response 16: DDOE agrees and has revised section 3318.2 to reflect AOBA's recommendation.

Comment 17: AOBA notes that the statutory language refers to DDOE being reimbursed for risk assessment costs, and recommends that DDOE use that specific language instead of the broader term, reimbursement for the costs associated with the "lead-based paint hazard evaluation."

Response 17: DDOE has revised section 3318.3(d) to reflect AOBA's recommendation.

Comment 18: AOBA observes, in reference to section 3318.7(a)(8), that federal regulations at 24 CFR 35.1340(b)(2) do not require soil sampling.

Response 18: First, the federal regulation cited by AOBA refers to clearance requirements following activities "other than abatement." Yet, section 3318.7 refers to clearance requirements that are in effect after DDOE has issued an Order to Eliminate Lead-Based Paint Hazards, and such an Order frequently includes a requirement for hazard abatement. Second, while the federal regulation in question does not require soil testing, it does not prohibit it. DDOE clearly has authority to require soil testing not just after abatement activities, but after interim controls as well, if -- as is the case in section 3318.7(a)(8) -- "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 such sampling occurs on the same property." This requirement is intended to protect the health of vulnerable populations that might otherwise be exposed to lead-contaminated soil.

Comment 19: AOBA requests that DDOE add to section 3318.9 the statutorily specified maximum incremental extension of 30 days for recipients of a Notice and Order who are seeking a deadline extension.

Response 19: DDOE has accepted this comment and revised section 3318.9 to reflect AOBA's recommendation.

Comment 20: AOBA suggests it is appropriate for DDOE to notify the property owner within 7 business days of a unilateral DDOE decision to initiate relocation of a tenant to lead-safe premises.

Response 20: DDOE agrees and has revised section 3319.6 to reflect AOBA's recommendation.

Comment 21: AOBA recommends capping lead abatement permit fees to $500, which is the cap set in both North Carolina and Virginia.

Response 21: DDOE accepts this comment and has revised section 3322.5 to reflect AOBA's recommendation.

Comment 22: AOBA recommends eliminating both the requirement to obtain a renovation permit and the fee for a renovation permit. (See AOBA Comment #7).

Response 22: DDOE explained its rationale for requiring a renovation permit under certain limited circumstances (see DDOE's Response to Comment #7). Accordingly, DDOE intends to charge a fee for issuing a renovation permit and is retaining the fee proposed in section 3322.6, with a fee cap of $500.

Comment 23: AOBA notes that DDOE omitted the statutory definition of "lead-free property" from the proposed regulations.

Response 23: DDOE agrees and has added the definition and thanks AOBA for catching the oversight.

Comment 24: AOBA is concerned about DDOE's proposed definition of "regularly visits" and suggests redefining the term to "require owner notification by the tenant(s)."

Response 24: EPA has also signaled its concern about DDOE's proposed definition of this term (see EPA Comment #11). Accordingly, DDOE has revised its proposed definition of "regularly visits" to be consistent with the federal definition of the term.

Comments from the District of Columbia Building Industry Association (DCBIA)

Comment 1: DCBIA states: "In our view, there is a certain amount of unnecessary redundancy and cost in requiring both a clearance report to insure *[sic]* the absence of LBP hazards prior to the lease or sale of a residential property and a DDOE permit for performing repairs and renovations. The permit process will simply slow down necessary repairs and renovations, which are already required to be performed in accordance with work safe practices."

Response 1: Neither the governing statute nor DDOE's proposed regulations would require a clearance report to be produced prior to the sale of a residential property. Moreover, DCBIA's comment conflates the statutory requirement for producing a clearance report prior to the lease of a residential property to a household containing a person at risk with the proposed permit requirement that would be applicable only in those situations where non-compliance with federal and/or District law could expose the public to significant lead hazards and potentially cause many young children to suffer irreversible brain damage. DDOE receives dozens of complaints annually from the public, regarding ongoing non-compliance with federal and/or District law in the context of renovation or demolition activities. The proposed regulations in section 3310 do not impose additional work requirements on the permit applicant beyond what federal and/or current District law already require. Instead, section 3310 establishes a performance-based standard, as reflected in the clearance requirement specified in section 3310.4, to ensure that the work is not exposing neighbors and passers-by to lead-based paint hazards.

Comment 2: DCBIA requests "[…] that the clearance report be triggered explicitly by 3313.4, which requires the prospective tenant (and presumably prospective purchaser) to notify the property owner in writing that a person at-risk will reside in or visit the dwelling unit."

Response 2: To clarify, Section 3313.4 does not apply to "prospective" tenants, and it does not apply to prospective purchasers. Section 3313.4 states that it applies to units "in which unit a person at risk resides or regularly visits." Moreover, section 3313.4 does already explicitly require property owners to produce a clearance report, provided the tenant "notifies the owner of the property in writing that a person at risk resides in or regularly visits the dwelling unit […]."

Comment 3: DCBIA commented that "It would be useful to clarify throughout the rulemaking that any requirements apply only to properties where persons at-risk are present (covered properties) […]."

Response 3: DDOE does not agree that all requirements in this rulemaking only apply to properties in which residents or visitors are considered to be "persons at risk". There are statutory

provisions that apply to properties in which the presence of a person at risk is not an issue -- see, *e.g., inter alia,* D.C. Official Code §§ 8-231.02(a), 8-231.02(b), 8-231.03(b), 8-231.03(f), 8-231.04(a), 8-231.04(e), 8-231.04(f), and 8-231.05.

Comment 4: DCBIA commented that "With respect to renovation permits, it should be noted that the EPA concluded under its Renovation, Repair and Painting Rule (RRP) that clearance testing would be onerous and determined that in such cases visual inspection would be sufficient."

Response 4: EPA does not consider a visual inspection sufficient in such cases. EPA has stated:

"EPA disagrees with those commenters that contended that a visual inspection following cleaning after a renovation is sufficient to ensure the lead-based paint dust generated by a renovation has been sufficiently cleaned-up. The weight-of-the-evidence clearly demonstrates that visual inspection following cleaning after a renovation is insufficient at detecting dust-lead hazards, even at levels significantly above the regulatory hazard standards. Further, EPA disagrees with the implication that easily visible paint chips and splinters are necessarily the primary materials generated during a renovation. EPA studies, including the Dust Study, show that renovation activities generate dust as well as chips and splinters." (73 FR 21692, at 21740, April 22, 2008)

Moreover, DDOE has concluded that in the limited, high-risk cases where such testing would be required pursuant to proposed section 3310.1, the additional burden is outweighed by the potentially irreversible harm caused, should lead-contaminated dust be left behind exposing neighbors and/or passers-by to lead-based paint hazards.

Comment 5: DCBIA commented that "The requirement for a separate DDOE permit for certain demolition projects also seems to create regulatory overlap, in that such projects are already subject to permitting by DCRA and, as generally vacant properties, offer no risks of LBP hazards to at-risk persons. In any case, federal workplace standards (EPA, OSHA) apply to demolitions to protect the general public and on-site workers."

Response 5: See DDOE's response to AOBA's Comment #7. In addition, it is important to point out that not all demolition projects involve completely vacant properties. DDOE receives dozens of complaints annually from the public, alleging contractor non-compliance with federal and/or District law in the context of renovation and demolition activities. On those occasions, the public has requested that DDOE stop such work and compel compliance with the law before any additional harm occurs. The permit and clearance test requirements in section 3310 are specifically designed to address these reality-based situations and to protect the public from potential exposures to lead that could cause irreversible, harmful health effects.