

Summary of Express Terms

The following summarizes the adopted regulations pertaining to the creation of Subpart 67-5 and the substantive proposed amendments to Subpart 67-2 (Environmental Assessment and Abatement) of Title 10 Part 67 of the New York Codes Rules and Regulations. Existing code language with gender specific pronouns would be replaced with gender neutral pronouns throughout the regulation and are not specifically referenced in this summary.

In repealing and replacing section 67-2.2, the definitions of “abatement,” “encapsulation,” “enclosure,” and “lead-based paint” are modified to clarify their meaning and to make them consistent with definitions in the new Subpart 67-5.

Abatement is clarified to mean a permanent form of lead remediation. Encapsulation is removed from the abatement category because, although it *remediates* lead hazards for ten years or more, it does not permanently render lead-based paint inaccessible. The definition of “enclosure” is modified to clarify that rigid materials must be affixed to lead-containing surfaces to render them inaccessible. Additionally, the definition of “enclosure” is modified to remove the term abatement, as enclosure is no longer considered a form of abatement in the revised definition. The definition of “lead-based paint” is revised to include an additional unit of measure that constitutes paint as lead-based.

The definition of “child care facility” was updated in section 67-2.2 to replace the reference to the former state department of social services with the New York State Office of Children and Family Services.

Definitions were also added for “interim controls,” “lead-paint analyzer,” “paint film stabilization,” “remediation,” and “workplan.” The definition of “interim controls” was added to clarify the difference between efforts that have the potential to temporarily reduce exposure to lead hazards and permanent efforts to eliminate exposure defined as abatement. The term “risk reduction efforts” is removed accordingly. The definition of “lead-paint analyzer” was added to replace the definition of X-ray fluorescence analyzer or XRF due to advancing technologies in lead identification. The term X-ray fluorescence analyzer is no longer used in Subpart 67-5 so the definition is removed. The definition of “paint film stabilization” was added to further eliminate the incorrect use of the term abatement to describe the remediation method used to temporarily stabilize lead-based paint. The definition of “remediation” was added to further eliminate the incorrect use of the term abatement as a term to describe all actions used to discontinue condition(s) conducive to lead poisoning. Remediation is the correct term to describe actions necessary to discontinue conditions conducive to lead poisoning and could include paint film stabilization, encapsulation, enclosure, or abatement activities such as replacement or removal. The definition of “workplan” is added because it is referenced in section 67-2.6(b).

Section 67-2.3 is amended to add inspection of buildings, structures, or portions thereof that are accessible to a child, and specifies the conditions for which an additional dwelling requires investigation.

The instructions for substrate correction readings when using an X-ray fluorescence analyzer are removed from section 67-2.4 addressing sampling for lead, and are replaced with references to U.S. Environmental Protection Agency (EPA) protocols and manufacturer's guidelines to address improvements in sampling method technology.

The requirement for issuance of a notice and demand was changed from *may* to *shall* for consistency with PHL § 1373(1) and long-standing guidance issued by the Department. Section 67-2.6 replaced the incorrect reference of PHL § 1373(2) with the corrected reference to PHL § 1373(1). The requirement for the owner of a qualifying dwelling to comply with a notice and demand was added to this section to stipulate enforcement for failure to comply with any aspect of the notice and demand, such as adhering to a response timeline or workplan submission requirements. Previously, the owner's compliance with the notice and demand was only referenced as a requirement to remediate conditions conducive to lead poisoning upon receipt of the notice and demand.

Section 67-2.7(c) was revised to clarify that the owner is the responsible party for relocation of occupants until remediation is complete.

References to "abatement" were replaced with "remediation" throughout the Subpart where abatement had been incorrectly used in instances where other types of less permanent remediation may be acceptable. The term "risk reduction efforts" was replaced with "interim controls" to describe acceptable actions an owner could take prior to receipt of a notice and demand.

Reference to the Commissioner or their designated representative complying with applicable laws or regulations was removed because the regulation clearly states it is the owner of the dwelling who is responsible for complying with all Federal, State, and local laws, and for providing documentation of such compliance to the Commissioner or their designated representative on request.

The prohibition on reoccupying a vacant dwelling which has not met the requirements of the notice and demand was strengthened in section 67-2.6.

Requirements for encapsulation as a remediation method were restructured to be clearer and a statement that encapsulation is not considered an abatement method was added. Likewise, requirements for enclosure as a remediation method were restructured to be clearer.

Subpart 67-5 is added to Part 67, promulgating regulations to administer a targeted State rental property registry and enforce proactive lead hazard inspection requirements pursuant to Public Health Law (PHL) § 1377(6).

Section 67-5.1 outlines the purpose of Subpart 67-5, establishing the administrative requirements for a targeted State rental registry and lead safety certification requirements in multi-family dwellings built before 1980 in communities of concern as identified pursuant to PHL § 1370-a(3).

Section 67-5.2 provides definitions for terms used in the regulation.

Section 67-5.3 outlines the applicability of the regulation and provides specific examples of residential uses to which the Subpart does not apply, including dwellings located in cities of a population of one million residents or more. Other residential environments to which 67-5 does not apply, because they do not meet the requirements of the enabling statute, include temporary residences such as hotels and motels, campgrounds, children's camps, correctional facilities, hospitals, nursing homes, college dormitories owned by an academic institution, or any other dwellings which the Department determines, based on the nature of the property's occupancy, do not meet the requirements of the statute.

Section 67-5.4 outlines the administrative requirements of the rental registry and the responsibilities of the owners of applicable dwellings to register qualifying properties.

Section 67-5.5 outlines the technical and frequency requirements of lead hazard inspections, inspector qualifications, and dust wipe sampling requirements. It outlines exemptions from the inspection requirements for owner-occupied units and units verified by the Department or its designated representative to be free of lead-based paint. These units are still subject to registration in the rental registry.

Section 67-5.6 outlines the requirements for obtaining a lead safety certificate, including receipt of a satisfactory lead safety inspection and satisfactory dust wipe sampling results. A lead safety certificate must be signed by a qualified lead safety inspector and must indicate that, at the time of the attestation, the unit was free from visible conditions conducive to lead poisoning including the presence of lead dust.

Section 67-5.7 addresses the issuance of a notice and demand (or equivalent) when lead-based paint hazards and/or visual lead soil hazards are identified, and requires the owner to comply with the notice and demand (or equivalent). The property owner is required to attest in writing that they will follow lead safe work practices and comply with all applicable Federal, State and local laws.

Section 67-5.8 outlines protections for tenants occupying dwellings subject to the rental registry, including notification of lead-based paint hazards and/or visual lead soil hazards, exclusion of pregnant people and children from work areas when warranted or, in extremely hazardous cases, temporary relocation of tenants. The section also prohibits retaliatory action against tenants for reporting suspected lead hazards. Section 67-8(f) clarifies that the owner is the responsible party for relocation of occupants until remediation is complete.

Section 67-5.9 outlines the basis for formal enforcement when an owner fails to comply with provisions of the Subpart, and allows for administrative action as authorized by Public Health Law for submission of fraudulent information into the rental registry.

Pursuant to the authority vested in the Commissioner of Health by sections 1370-a, 1373, 1374, 1375, and 1377 of the Public Health Law, Part 67 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows, to be effective upon publication of a Notice of Adoption in the New York State Register.

The heading of Subpart 67-2 is amended to read as follows:

Subpart 67-2 – Environmental Assessment and [Abatement] Remediation

Section 67-2.1 is amended to read as follows:

Purpose. The purpose of this regulation is to define requirements for the assessment and [abatement] remediation of conditions conducive to lead poisoning.

67-2.2 is repealed, and a new 67-2.2 is added to read as follows:

67-2.2 Definitions. As used in this Subpart, the following words and terms shall have the stated meaning:

(a) Abatement means all actions necessary to permanently discontinue a condition conducive to lead poisoning such as replacement or removal of lead-based paint components.

(b) Accessible mouthable surfaces are those surfaces located within five feet of the floor or ground that form a protruding corner or similar edge, or protrude one-half inch or more from a flat wall surface, or are located so that a child may place their mouth on such protruding surface.

(c) Area of high risk means an area designated as such by the commissioner or their designated representative and may consist of one or more dwellings in which a condition conducive to lead poisoning of children exists.

(d) Approved laboratory means the New York State Department of Health's Wadsworth Center or a laboratory certified by the New York State Department of Health pursuant to the department's Environmental Laboratory Approval Program.

(e) Child care facility means any facility licensed by the New York State Office of Children and Family Services to offer or provide day care services or child care and any public or private schools attended by children six years of age or younger.

(f) Commissioner means the State Commissioner of Health.

(g) Condition conducive to lead poisoning means:

(1) the presence of lead-based paint or other similar surface coating on any accessible mouthable surface or any other surface in a condition accessible for ingestion or inhalation, where peeling, cracking, blistering, flaking, chipping or powdering of such paint or similar surface coating material occurs or is likely to occur; or

(2) the presence of other environmental conditions which may result in lead exposure.

(h) Designated representative means the health commissioner or public health officer of a city of 50,000 population or more, or the health commissioner or public health officer of a county or part-county health district, a State regional health director, a State regional environmental health director, a district director having jurisdiction, any county health director having all the powers and duties prescribed in section 352 of the Public Health

Law, or any individual so designated by the commissioner pursuant to section 206(8) of the Public Health Law.

(i) Dwelling means all buildings or structures or portions thereof that are on or appurtenant to a deeded property, which are occupied in whole or in part as the home, residence, sleeping place or site of supervised care of one or more human beings, including childcare facilities for children under six years of age, kindergartens and nursery schools.

(j) Encapsulation means an alternative to paint film stabilization in which lead-based paint is covered by a specialized material explicitly made to prevent the spread of lead chips or particles in an affected space. Encapsulants must be applied by appropriately certified individuals. Encapsulation is intended to address lead hazards for at least 10 years, and shall not be regarded as a permanent abatement method.

(k) Enclosure means covering surfaces with durable rigid materials permanently affixed to the surface and sealed or caulked to prevent lead-based paint or any other material containing lead on such surfaces from becoming accessible to children.

(l) High efficiency particulate air (HEPA) filter means a filter capable of filtering at least 99.97% by weight of particles 0.3 microns or greater in diameter from air passed through the filter.

(m) Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead hazards. Interim controls include, but are not limited to, temporary containment, specialized cleaning, ongoing lead-based paint maintenance

activities, and the establishment and operation of management and resident education programs.

(n) Lead-based paint means paint, plaster or other surface coating material containing more than one half of one percent of metallic lead based on the total weight of the contained solids or dried film of the paint or plaster or other similar surface coating material or which exceeds 1.0 milligram per square centimeter of lead.

(o) Lead paint analyzer means any instrument approved by the United States Department of Housing and Urban Development to measure lead concentrations in milligrams per square centimeter either by emission of x-ray photons or other means of measurement.

(p) Paint film stabilization means repairing deteriorated paint by safely removing loose fragments and applying a smooth surface coating to reduce lead-based paint chips and lead dust.

(q) Remediation means taking actions necessary to discontinue any condition(s) conducive to lead poisoning and may include paint film stabilization, encapsulation, enclosure, or abatement activities such as replacement or removal.

(r) Removal means a method of abatement that results in the dislocation, stripping or scraping of paint or plaster or other coating material from a surface.

(s) Replacement means a method of abatement that involves removing components such as doors, windows and trim that contain lead-based paint and installing new or de-lead components.

(t) Workplan means a plan which outlines all conditions conducive to lead poisoning requiring remediation on or within a subject property, as well as proposed actions to eliminate the condition(s), and a timeline in which the remediation will occur.

(u) ug/dL means micrograms per deciliter.

Section 67-2.3 is amended to read as follows:

67-2.3 Environmental Investigation. Whenever an area of high risk is designated, or when a child has been referred for environmental management in accordance with Subpart [67-1.2(a)(9)] 67-1.2(a)(10), the [C]commissioner or [his] their designated representative shall coordinate follow-up activities as defined in section 67-1.1(e) and (f) of this Part and required by section 67-1.6 of this Part. An assessment of conditions conducive to lead poisoning shall be performed and should include an environmental investigation of: (1) any dwelling or buildings, structures or portions thereof that are adjacent to the dwelling and are potentially accessible by a child; (2) any child care facility; and (3) any other dwellings where the child visits more than eight hours per week [area where the child spends a significant amount of time].

Paragraph (2) of subdivision (a) of section 67-2.4 is amended to read as follows:

(2) A portable lead paint[X-ray fluorescence] analyzer may be used to determine the presence of [lead] lead-based paint. [In conducting sampling by X-ray fluorescence the following determinations shall apply:

(i) Where substrate correction readings are obtained, a mean reading of 1.6 milligrams of lead per square centimeter or greater shall be considered as satisfactory evidence of lead

paint. A mean, substrate corrected reading of less than 1.6 milligrams of lead per square centimeter but more than 0.4 milligrams of lead per square centimeter shall be considered as inconclusive and in such case a sample, as described in section 67-2.4(a)(1) of this Subpart may be obtained. A mean substrate corrected reading of less than 0.4 milligrams of lead per square centimeter shall be considered as negative for lead paint.

(ii) If substrate correction readings cannot be obtained, a mean, uncorrected reading of greater than 2.0 milligrams of lead per square centimeter shall be considered as satisfactory evidence of lead paint. A mean reading of 2.0 milligrams of lead per square centimeter or less shall be considered as inconclusive and in such case a sample, as described in section 67-2.4(a)(1) of this Subpart, may be obtained.]

Section 67-2.6 is amended to read as follows:

67-2.6. Notice and demand. Whenever the [C]commissioner or [his] their designated representative determines that a condition conducive to lead poisoning exists in a dwelling, a written notice and demand for discontinuance of such condition shall [may] be issued in accordance with of section [1373(2)] 1373(1) of the Public Health Law and the owner of the dwelling shall comply with all requirements outlined in the notice and demand.

(a) No person shall commence [lead] lead-based paint remediation or abatement in response to an elevated blood lead level investigation or primary prevention inspection, also known as the Childhood Lead Poisoning Primary Prevention Program (CLPPP+) inspection, in any designated area of high risk prior to issuance of a written notice and demand. [Risk reduction efforts] Implementation of interim controls may proceed prior to receipt of a notice and demand.

(b) Upon receipt of a notice and demand for discontinuance of conditions conducive to lead poisoning, the owner of a dwelling is required to [abate] remediate such conditions. [The extent of abatement] Remediation must occur in accordance with the terms of the notice and demand and the approved workplan. [and method(s) used shall be determined by the Commissioner or his designated representative, in accordance with applicable laws or rules and regulations].

* * *

(d) Any vacancy or change in occupancy of the dwelling before [abatement] remediation has been completed shall not relieve the owner of that dwelling from [compliance] the obligation to fully comply with the notice and demand. Any vacant dwelling with an outstanding notice and demand, where remediation has not been completed, shall not be reoccupied until remediation is complete and the commissioner or their designated representative has finalized clearance procedures based on verified documentation that the dwelling is free from conditions conducive to lead poisoning.

The introductory language of section 67-2.7 and subdivisions (a), (b), (c), (d), (e), and (f) are amended, and a new subdivision (k) is added to read as follows:

67-2.7 Environmental intervention and [abatement] remediation. The [C] commissioner or [his] their designated representative shall require in the notice and demand, where necessary, pre-[abatement] remediation and clean up actions as specified in 67-2.7(a) and (b) and any one or more of the actions listed in 67-2.7(c) through (j) of this section, and dust wipe sample requirements outlined in subdivision (k) of this section, as part of [an abatement] remediation of a dwelling:

(a) [Pre-abatement] Pre-remediation actions: (1) furniture, rugs, carpets, bedding, drapes, dishware and food shall either be removed or covered with plastic sheets a minimum thickness of six mils and sealed; (2) room openings must be sealed with plastic sheets that have a minimum thickness of six mils and (3) floors or in place carpet must be covered with two sheets of plastic a minimum thickness of six mils thick, secured to the wall or baseboard with duct tape.

(b) Clean-up shall be performed daily and consist of misting debris with water and carefully sweeping and placing it in double four mils or six mils plastic bags, followed by wet dusting or wet mopping of all surfaces in the work area. Final clean-up shall be performed a minimum of 2 hours after completion of active [abatement] remediation and shall include, but not be limited to, [an] a HEPA filtered vacuuming of all interior surfaces, including windowsills, followed by a wet mopping of all surfaces with a heavy duty household cleaning solution, followed by a second HEPA filtered vacuuming. In some instances, the [C]commissioner or [his] their designated representative may determine that an alternative wet vacuum system may be used in place of the HEPA filter.

(c) When necessary, relocation of occupants to temporary housing until the [abatement] specified remediation work [specified] has been completed. If occupants must be relocated, it shall be the responsibility of the owner of the subject property to provide temporary housing until remediation work has been successfully completed.

(d) Placarding of the dwelling with the statement that human habitation is prohibited until the [C]commissioner or [his] their designated representative determines that the dwelling has been [abated] remediated.

(e) Prohibition of the presence of children and pregnant women in part or all of a dwelling during [abatement] remediation activities.

(f) Encapsulation of [lead painted surfaces with materials approved as an encapsulant of lead paint by the United States Environmental Protection Agency or the United States Department of Housing and Urban Development, or the American Society for Testing and Materials or the Commissioner.

(1) after repair of water leaks caused by structural or plumbing deficiencies;

(2) in accordance with manufacturer's instructions; and

(3) after the removal of any chipping, peeling or flaking paint in accordance with subdivision (i) of this section.] surfaces coated with lead-based paint shall occur only after repair of structural and plumbing deficiencies including any water leaks and defective substrates and the removal of deteriorated paint in accordance with the following protocols:

(i) Lead-containing surfaces shall be coated with materials approved as an encapsulant of lead-based paint by the United States Environmental Protection Agency, the United States Department of Housing and Urban Development or the commissioner.

(ii) Encapsulation is applied in accordance with manufacturer's instructions.

(iii) Due to its recognized propensity to degrade, encapsulation shall not be regarded as a form of permanent abatement.

(g) Enclosure of lead-containing surfaces with durable materials [applied as follows:

(1) After repair of water leaks caused by structural or plumbing deficiencies.

(2) With materials that are fire resistant which may include gypsum board, aluminum, vinyl, plywood paneling a minimum of 5/32 inch thick good (1) grade, Formica, acrylic sheets, fiberglass, durable carpet, tile, Plexiglas.

(3) After the removal of any chipping, peeling or flaking paint in accordance with section 2.7 (i) of this subpart.] shall occur only after repair of structural and plumbing deficiencies, including any water leaks and defective substrates, and the removal of deteriorated paint. Lead-containing surfaces must be rendered inaccessible with installation of durable barrier materials.

(h) Replacement of [building] all components containing lead with lead-free materials.

* * *

(j) [Abatement] Remediation of exterior surfaces by any of the methods described in subdivisions (a-i) of this [Subpart]section or by confined abrasive blasting using a wet-misting technique or simultaneous vacuuming system. In addition, plastic sheets, a minimum thickness of six mils, must be placed on the ground as close to the dwelling foundation as obstructions will allow, a minimum of six feet for each story in height before blasting begins, and left in place until cleanup is complete. All seams must be sealed with tape and outer edges raised to trap liquid waste.

(k) Dust wipe samples shall be collected after lead hazards are remediated and the dwelling is thoroughly cleaned in accordance with the requirements of subdivision (b) of this section. Dust wipe samples shall be collected from floors (excluding open porches), and where practicable, interior windowsills and/or window troughs using a procedure acceptable to the department. Dust wipe sample results must not indicate the presence of

lead in a concentration which exceeds standards established by the federal Environmental Protection Agency in 40 CFR 745.65, as published in 89 FR 89416, Nov. 12, 2024.

A new Section 67-2.9 is added to read as follows:

67-2.9 - Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in Subpart 67-2 have been filed with the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled: Code of Federal Regulations, Title 40, Part 745, revised as of November 12, 2024, published by the Office of the Federal Register, National Archives and Records Administration. References to federally approved methods of lead paint analysis and encapsulation issued by the U.S. Department of Housing and Urban Development have been filed with the Office of the Secretary of State, the publication so filed being entitled: Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Second Edition, July 2012, published by the Office of Healthy Homes and Lead Hazard Control. The regulations and guidance incorporated by reference may be examined at the Records Access Office, New York State Department of Health, ESP Corning Tower, Albany, New York, 12237 or can be directly obtained from the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402.

A new Subpart 67-5 titled “Targeted Rental Registry and Proactive Lead Hazard Inspections” is added to read as follows:

67-5.1 Purpose. The purpose of this regulation is to establish administrative requirements for the implementation of the State rental registry for residential dwellings built prior to 1980 with two or more units, located in communities identified by the department as having a disproportionately high prevalence of children with elevated blood lead levels, pursuant to the requirements of Public Health Law sections 1370-a, 1373 and 1377.

67-5.2 Definitions. As used in this Subpart, the following words and terms shall have the following meanings:

- (a) “Abatement” means actions necessary to permanently discontinue a lead-based paint hazard such as removal or replacement of lead-based paint components.
- (b) “Approved laboratory” means the New York State Department of Health's Wadsworth Center, or a laboratory certified by the New York State Department of Health pursuant to its Environmental Laboratory Approval Program (ELAP).
- (c) “Commissioner” means the State Commissioner of Health.
- (d) “Community of Concern” means an area within the State which the New York State Department of Health has designated as having a disproportionately high prevalence of children with elevated blood lead levels, pursuant to the requirements of section 1370-a(3) of the Public Health Law.
- (e) “Department” means the New York State Department of Health.
- (f) “Designated representative” means the health commissioner or health officer of a city with a population of 50,000 or more, or the health commissioner or health officer of a county health district as described in section 351 of the Public

Health Law, the State regional health director, State regional environmental health director or district director having jurisdiction, or any individual so designated by the commissioner pursuant to section 206(8) of the Public Health Law.

(g) “Dust-wipe sampling” is a method of collecting settled dust from surfaces like floors and windowsills to test for the presence of lead in a manner acceptable to the department.

(h) “Dwelling” means all buildings, structures, or portions thereof that are certified for occupancy and are or may be so occupied in whole or in part as the home, residence, abode, or domicile, for one or more human beings.

(i) “Encapsulation” is an alternative to paint film stabilization in which lead-based paint is covered by a specialized material expressly made to prevent the spread of lead-based paint chips or particles in an affected space. Encapsulants must be applied by appropriately certified individuals. Encapsulation is intended to address lead hazards for at least 10 years, and shall not be regarded as a permanent abatement method.

(j) “Enclosure” means covering surfaces with durable rigid materials permanently affixed to the surface and sealed or caulked to prevent lead-based paint or any other material containing lead on such surfaces from becoming accessible to people.

(k) “Inspector” means a person who is qualified to identify and assess lead-based paint and visual lead soil hazards and risks and is certified or trained in a manner acceptable to the department.

(l) “Interim controls” means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards. Interim controls

include, but are not limited to, temporary containment, specialized cleaning, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

(m) “Lead-based paint” is paint, plaster, or other surface coating material containing more than one-half of one percent of metallic lead based on the total weight of the contained solids or dried film of the paint or plaster or other similar surface coating material, or which exceeds 1.0 milligram per square centimeter of lead.

(n) “Lead-based paint hazard” is the presence of lead-based paint or other similar surface coating where peeling, cracking, blistering, flaking, chipping, or powdering of such paint or similar surface coating material occurs or is likely to occur, and/or the presence of lead dust hazards. The presence of lead-based paint is presumed based on the age and location of housing, therefore visual observation of damaged, decayed or otherwise defective paint will constitute prima facie evidence of a lead-based paint hazard.

(o) “Lead dust hazard” is the presence of dust which, when sampled in a manner acceptable to the department and analyzed by an approved laboratory, indicates the presence of lead in concentrations exceeding action levels established by the United States Environmental Protection Agency in 40 CFR 745.65, as published in 89 FR 89416, Nov. 12, 2024.

(p) “Lead hazard inspection” means an environmental investigation to identify lead-based paint hazards and visual lead soil hazards conducted by a qualified inspector.

(q) “Lead hazard inspection report” means a record of environmental lead-based paint hazards and visual lead soil hazards identified during a lead hazard inspection. To be accepted into the rental registry, a lead hazard inspection report must be submitted in a format or template approved by the department.

(r) “Lead paint analyzer” means any instrument approved by the United States Department of Housing and Urban Development to measure lead concentrations in milligrams per square centimeter either by emission of x-ray photons or other means of measurement.

(s) “Lead-safe work practices” are ways to perform lead-based paint-disturbing work so that occupants, workers, workers’ families and the environment are protected from exposure to, or contamination from, lead in dust, debris, and residue generated by such work.

(t) “Lead safety certification” is an attestation by a qualified inspector that a rental unit and all common interior and exterior areas of a dwelling have received a satisfactory lead hazard inspection result, and they do not pose a lead-based paint hazard or visual lead soil hazard to the occupants in the dwelling’s current condition. The lead safety certification must be received in a format approved by and in a manner acceptable to the department.

(u) “Owner” includes the owner or owners of the freehold of the premises or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, agent, or any other person, firm, organization or corporation directly or indirectly in control of a dwelling.

- (v) “Paint film stabilization” means repairing deteriorated paint by safely removing loose fragments and applying a smooth surface coating to reduce the volume of new lead-based paint chips and lead dust.
- (w) “Property class designation” means the property class code used to provide a statewide uniform classification system for assessment as designated by the Department of Taxation and Finance.
- (x) “Remediation” includes actions necessary to discontinue lead-based paint hazards and visual lead soil hazards and may include paint film stabilization, encapsulation, enclosure, or abatement activities such as replacement or removal.
- (y) “Removal” means a method of abatement that results in the dislocation, stripping, or scraping of paint or plaster or other coating material from a surface.
- (z) “Rental registry” is the central statewide data system managed by the department and used to identify residential dwellings built prior to 1980 with two or more units in communities of concern; generate notices to said owners; track lead hazard inspections, violations, and remediation of lead-based paint hazards and visual lead soil hazards; and facilitate the issuance of a lead safety certificate.
- (aa) “Rental unit” is a residential dwelling or portion thereof, built prior to 1980, which by virtue of its property class designation is potentially eligible for rent, lease, let, or hiring out as an abode or domicile. For the purposes of inspection, remediation, and certification, the rental unit includes the tenant’s individual unit as well as all common interior and exterior areas of the dwelling that tenants can access.

(ab) “Replacement” means a method of abatement that involves removing components such as doors, windows, and trim that contain lead-based paint and installing new or de-leaded components.

(ac) “Third-party inspector” means a person or firm other than the department or its designated representative who is certified as an EPA Lead Risk Assessor. For the purposes of this Subpart, the owner may be the third-party inspector if certified as an EPA Lead Risk Assessor.

(ad) “Visual lead soil hazard” is any area of bare soil near the dwelling where a person is likely to spend time and may be subject to lead exposure.

(ae) “Workplan” means a plan intended to outline all lead-based paint hazards requiring remediation, as well as proposed actions to address the hazards, and a timeline in which the remediation will occur.

67-5.3 Applicability. The requirements of this Subpart shall apply to dwellings built prior to 1980 with two or more units located in communities of concern, except:

(a) dwellings located in cities with a population of one million residents or more;

(b) dwellings which are operated under permit as temporary residences, campgrounds, mass gatherings, children’s camps, or other temporary types of residences which are not intended for occupancy as a person’s primary dwelling;

(c) dwellings which are operated as correctional facilities, hospitals, medical facilities, nursing or convalescent homes, or which otherwise offer residential or custodial care to individuals who are physically or mentally unable to completely care for themselves;

(d) a multi-family dwelling used as a school or college dormitory that is owned by an academic institution approved under the New York State Education Law;

(e) any other type of dwelling which the department or its designated representative, based upon consideration of the nature, duration, and continuity of its occupancy, the degree of occupant control over the use and nature of the property's facilities, the purpose of the property's occupancy, and the extent to which the property may be subject to regulation by other agencies, reasonably determines not to be implicated by the relevant provisions of the Public Health Law as referenced in section 67-5.1 of this Subpart.

67-5.4 Rental Registry Registration Requirements. Within communities of concern:

(a) No later than May 1, 2026, existing owners of all properties classified as residential dwellings built before 1980 with two or more units, as reflected in a property deed duly filed with the appropriate municipal authority, property tax records issued by the appropriate municipal authority or in a valid certificate of occupancy shall register their units in the rental registry, or confirm the accuracy of such information as it may already exist in the registry, as directed by the department or its designated representative in a format specified by the department. All units in eligible dwellings must be included in the registry regardless of occupancy status.

(b) Registrations are not considered valid until approved by the department or its designated representative.

(c) Owner information, including but not limited to mailing address, corporate title, e-mail address, phone number, and any designated contact person, must be

reported to the rental registry at the time of initial registration and subsequently within 30 days of any change to said information.

(d) After the initial registration period by existing owners as described in this section, all new owners, upon purchase or transfer of ownership of a residential dwelling built before 1980 with two or more units in a community of concern must register the change of ownership in the rental registry within 30 days.

(e) Rental registrations are not transferable to new owners.

67-5.5 Lead Hazard Inspections & Dust Wipe Sampling. For rental units subject to the Rental Registry:

(a) Lead hazard inspections must be conducted in a manner acceptable to the department, and the results of said inspections recorded on a lead hazard inspection report.

(b) Satisfactory lead hazard inspection reports and satisfactory dust wipe sample results are due by the date specified by the department or its designated representative, but inspection and dust wipe sampling at a minimum must occur at a frequency of once every three years unless exempted in accordance with the provisions of this Subpart.

(c) A lead hazard inspection shall include, at minimum, a visual assessment of paint condition in each rental unit, all common interior and exterior areas of the dwelling, and exterior soil conditions on the property as defined by boundaries recorded in a registered deed or survey. Both the interior and exterior painted surfaces shall be examined for the presence of deteriorated paint and visible chips, debris, or residue. In cases of a visual assessment, the presence of lead shall be

assumed for painted surfaces for structures built prior to 1980 and any deteriorated paint surfaces shall be cited as hazards. The department or its designated representative may also require an environmental investigation using a lead paint analyzer to identify lead-based paint hazards.

(d) Visual assessment will determine the presence of lead soil hazards. Areas of bare soil on the property as defined by boundaries recorded in a registered deed or survey, and determined by the inspector to be accessible to tenants and a potential hazard, will be classified as a visual lead soil hazard. Remediation will include covering the area(s) of bare soil with a durable and appropriate material acceptable to the department or its designated representative. Owners who contest that exposed soil is not a lead hazard are responsible for obtaining soil samples taken by an EPA-certified Lead Risk Assessor. Results within the standards established by the EPA in 40 CFR 745.65 for residential soil-lead hazard limits and analyzed at an approved laboratory must be submitted to the department or its designated representative to relieve the owner of the requirement to remediate the area(s) of bare soil. All lead safety certificates will be contingent on visual assessment of soil. In times of snow cover, lead soil hazards are not accessible and cannot be assessed. Therefore, visual soil hazards will not be cited when the ground is covered by snow, but this condition will be explained on the lead safety certificate.

(e) The department, its designated representative, or a third-party inspector may perform a lead hazard inspection and associated sampling. A qualifying third-party inspector, including but not limited to property managers, landlords or property owners, must be certified by the EPA as a Lead Risk Assessor.

(f) Satisfactory dust wipe sample results are required to be submitted as part of the lead safety certificate. If lead-based paint hazards are identified during the lead hazard inspection, dust wipe samples shall be collected after the lead-based paint hazards are remediated and the unit is thoroughly cleaned in accordance with the requirements of section 67-5.7(d)(1)(iv) of this Subpart. Visible dust or debris in outdoor living areas must be thoroughly cleaned and visible lead-based paint chips on the ground must be completely removed before final inspection.

(g) Dust wipe samples shall be collected from floors (excluding open porches), and, where practicable, interior windowsills and/or window troughs using a procedure acceptable to the department.

(h) When a lead dust wipe sample exceeds EPA dust lead action levels, the rental unit must be properly cleaned before dust wipe sampling is repeated. In cases with more than one failed round of clearance dust wipe sampling, all painted friction surfaces, including windows, shall be assessed for rubbing or binding and shall be cited as a lead-based paint hazard if they do not open or close easily. The lead-based paint hazard(s) shall be remediated or abated in a manner acceptable to the department or its designated representative prior to further dust wipe sampling.

(i) All samples of painted surfaces, paint, dust, soil, or other potential lead sources collected during a lead hazard inspection must be analyzed by an approved laboratory.

(j) To avoid conflicts of interest regarding lead hazard inspections and dust wipe sampling, all lead risk assessment activities described herein must be performed by a person or entity independent of those performing lead hazard remediation activities.

(k) Lead-based paint and visual lead soil hazard reduction, remediation, abatement, or interim controls must be conducted in accordance with all applicable laws, rules, and regulations.

(l) Lead hazard inspections that identify lead-based paint hazards and visual lead soil hazards will be considered unsatisfactory and a lead safety certification will not be issued for such properties. Third-party lead hazard inspection reports with unsatisfactory findings must be submitted by the owner to the department or its designated representative within 15 days of the inspection taking place.

Unsatisfactory dust wipe sample results must be submitted to the department or designated representative within seven days of receipt by the third-party inspector or the owner of the rental unit or the owner's representative.

(m) Third-party inspections and associated lead safety certifications are subject to audit by the department or its designated representative, including confirmatory inspection(s) pursuant to subdivision 5 of section 1377 of the Public Health Law, as well as document review. The owner or representative of the owner of a registered property subject to audit shall facilitate timely access to all areas of the property by the department or its designated representative, and shall produce all such records that the department or its designated representative may request in the conduct of said audit.

(n) Rental unit(s) subject to the requirements of this Subpart may be exempted from lead hazard inspections and dust wipe sampling. However, rental units exempted from inspection by the provisions of this section shall not be exempted from the registration requirements of this Subpart and are subject to resumption of

inspection requirements at the discretion of the department or its designated representative. Rental units may be exempted from inspections as follows:

(1) Where the rental unit is determined to be free of lead-based paint, as evidenced by a surface-by-surface lead paint analyzer inspection and dust wipe samples, which are confirmed by the department or its designated representative via an onsite audit.

(2) Where the department or its designated representative confirms that lead-based paint has been abated by removal or replacement, as evidenced by a surface-by-surface lead paint analyzer inspection and dust wipe samples conducted by the department or its designated representative via an onsite audit.

(3) Where the rental unit is not rented and is instead occupied by the owner or the immediate family of the owner, and the owner provides a written attestation, signed and submitted under penalty of perjury, that they occupy the rental unit as their primary domicile. Attestations must be submitted to the department or its designated representative at least once every three years. Failure to submit the required attestation shall render a lead hazard inspection and dust wipe sampling exemption invalid.

67-5.6 Lead Safety Certification Requirements.

(a) Any property subject to registration under this Subpart which does not qualify for an exemption must pass an interior and exterior inspection for lead hazards conducted by a qualified inspector, which shall be subject to review and confirmation for authenticity and completeness by the department or designated representative. Interior inspections may be conducted either with consent of the

property owner, property manager, or tenant(s), or pursuant to an inspection warrant issued by a court of competent jurisdiction.

(b) Once a rental unit has a satisfactory lead hazard inspection and satisfactory dust wipe samples, a lead safety certification must be submitted by the owner to the department or its designated representative in a format and manner acceptable to the department. Such lead safety certifications shall be submitted to the rental registry by the date specified by the department or its designated representative, but at a minimum at least once every three years unless exempted in accordance with provisions of this Subpart.

(c) The lead safety certification must indicate that, at the time of attestation, the rental unit was free of lead-based paint hazards and visual lead soil hazards. The lead safety certification is to be signed by a qualified inspector and, if conducted by a third-party, must be submitted by the owner following a satisfactory lead hazard inspection and subsequent satisfactory dust wipe sampling of the unit and common interior areas of the dwelling.

67-5.7 Notice and demand and remediation of hazards. In communities of concern:

(a) Whenever the department or its designated representative determines or is notified by a third-party inspector that any lead-based paint hazards or visual lead soil hazards exist at a registered dwelling, a written notice and demand (or equivalent notification) for discontinuance of the lead-based paint hazards and

visual lead soil hazards will be issued in accordance with section 1373(2) of the Public Health Law.

(b) Following issuance of a notice and demand (or equivalent notification) by the department or its designated representative for discontinuance of lead-based paint hazards and visual lead soil hazards, the owner of the dwelling is required to remediate such conditions. The proposed remediation method(s) shall be reviewed and approved by the department or its designated representative in advance.

(c) The property owner shall follow lead-safe work practices including, at a minimum, the following:

(1) Lead hazard remediation is to be conducted in accordance with the notice and demand (or equivalent notification) and any associated workplans and must follow lead-safe work practices. This shall include pre-remediation actions as follows:

(i) furniture, rugs, carpets, bedding, drapes, dishware, and food shall either be removed or covered with plastic sheets with a minimum thickness of six mils and sealed; and,

(ii) room openings must be sealed with plastic sheets with a minimum thickness of six mils; and,

(iii) floors or in-place carpet must be covered with two sheets of plastic with a minimum thickness of six mils, secured to the wall or baseboard with duct tape; and,

(iv) clean-up shall be performed daily and consist of misting debris with water and carefully sweeping and placing it in double four-mils or six-mils plastic bags, followed by wet dusting or wet mopping of all surfaces in the work area. Final

clean-up shall be performed a minimum of two hours after completion of active abatement and shall include, but not be limited to, high efficiency particulate air (HEPA) filtered vacuuming of all interior surfaces, including windowsills, followed by wet mopping of all surfaces with a heavy-duty household cleaning solution, followed by a second HEPA filtered vacuuming. In some instances, the department or its designated representative may determine that an alternative wet vacuum system may be used in place of the HEPA filter.

(2) It shall be the responsibility of the owner of the dwelling to comply with all Federal, State, and local laws governing building construction, housing, worker health and safety and disposal of lead-containing wastes, and ensure that any person or firm performing work on the dwelling possess certifications and/or training necessary to meet all Federal, State, and local laws, rules, and regulations. The owner of the dwelling must provide upon request to the department or its designated representative, such documentation as shall show that the owner has fully complied with these laws.

(3) For recurring lead-based paint hazard(s), a certified Lead Risk Assessor shall be consulted in development of a workplan, and abatement of friction surfaces shall be prioritized. Any vacancy of the rental unit before remediation has been completed shall not relieve the owner of that dwelling from the obligation to comply with the notice and demand (or equivalent notification).

(d) Remediation activities may include, as deemed appropriate by the department or its designated representative, one or more of the following activities:

(1) Abatement. Abatement of lead-based paint hazards may include:

(i) Replacement of lead-containing components with lead-free materials.

(ii) Removal of lead-containing surface coating materials by one of more of the following methods after which a lead-free surface coating material shall be applied to the surface:

(a) wet wire brushing or hand scraping with or without the aid of a non-flammable solvent or wet abrasive compound;

(b) machine sanding, using a sander equipped with a HEPA filter device, to feather edges and prepare surfaces for repainting or sealing;

(c) when used with appropriate respiratory protection, a heat gun, which produces a temperature not exceeding 1,100 degrees Fahrenheit, with hand scraping;

(d) off-site paint removal;

(e) for exterior surfaces, confined abrasive blasting using a wet-misting technique or simultaneous vacuuming system. In addition, plastic sheets, with a minimum thickness of six mils, must be placed on the ground as close to the dwelling foundation as obstructions will allow, extend a minimum of six feet from the building for each story in height before blasting begins, and be left in place until cleanup is complete. All seams must be sealed with tape and outer edges raised to trap liquid waste.

(f) other procedures acceptable to the department or its designated representative.

(2) Encapsulation. (i) Encapsulation of lead-based painted surfaces shall occur only after repair of water leaks caused by structural or plumbing deficiencies and the removal of chipping and peeling paint.

(ii) Surfaces must be coated with materials approved as an encapsulant of lead-based paint by the EPA, the United States Department of Housing and Urban

Development, the American Society for Testing and Materials, or at the discretion of the commissioner.

(iii) Encapsulation requires application of materials in accordance with manufacturer's instructions.

(iv) Due to its recognized propensity to degrade, the department does not regard encapsulation as a form of permanent abatement warranting exemption of a unit from the inspection requirements of the registry.

(3) Paint film stabilization. Paint film stabilization must be conducted using safe removal of loose paint fragments and chips followed by application of a smooth surface coating to deter further paint deterioration.

(4) Enclosure. (i) Enclosure of lead-containing surfaces with durable materials shall occur only after repair of water leaks caused by structural or plumbing deficiencies and the removal of chipping and peeling paint. Lead containing surfaces are rendered inaccessible with installation of durable barrier materials.

(ii) Due to the possibility of enclosure materials being easily removed or disturbed, the department does not regard enclosure as a form of permanent abatement warranting exemption of a rental unit from the inspection requirements of the registry.

(5) Other remediation methods acceptable to the department or its designated representative.

67-5.8 Protections for Tenants. In communities of concern:

(a) The owner must provide written notification to tenants of all eligible dwellings that their rental unit is recorded in the rental registry and information on the status of said rental unit and education regarding lead safety for tenants.

(b) When lead-based paint hazard(s) and/or visual lead soil hazard(s) are identified in a rental unit during a lead hazard inspection, the owner must provide a copy of the lead hazard inspection results to tenants renting affected units within 24 hours of receiving the inspection results.

(c) The owner shall take all necessary steps to protect tenants from exposure to lead-based paint hazards and visual lead soil hazards while remediation of such hazards is in progress, in a manner acceptable to the department. If only a portion of the units were inspected during initial inspections, it shall be presumed that the other units in the dwelling contain similar hazards to those identified and tenants in those additional units shall be similarly notified.

(d) Once lead-based paint hazards are identified in a unit, and that unit becomes vacant, the unit shall not be reoccupied until a lead safety certification is issued.

(e) The department or its designated representative may prohibit the presence of children and pregnant people in part or all of a registered dwelling or rental unit during remediation activities.

(f) The department or its designated representative may require relocation of occupants to temporary housing until remediation work has been successfully completed. If occupants must be relocated, it shall be the responsibility of the owner to provide suitable temporary housing until occupancy is permitted by the department or its designated representative.

(g) The department or its designated representative may placard the registered dwelling or rental unit with the statement that human habitation is prohibited until the department or its designated representative determines that active health hazards have been sufficiently remediated.

(h) It is unlawful for an owner, or any person or entity acting on behalf of an owner, to take any retaliatory action against a tenant who reports a suspected lead-based paint hazard to the owner, the department or its designated representative, or any municipal agency. Retaliatory actions include but are not limited to any actions that materially alter the terms of the tenancy (including but not limited to rent increases, fines, and non-renewals during remediation) or interfere with the occupants' lawful use of the property as defined in a lease, sublease, contract, or other document establishing said terms of use.

67-5.9 Enforcement.

(a) When an owner of a registered dwelling fails to comply with any requirement of this Subpart, including timely compliance with a written notice and demand (or equivalent notice) for discontinuance of a lead-based paint hazard and/or visual lead soil hazard, the procedures for enforcement, including the conduct of formal hearings, shall be conducted in accordance with the Public Health Law and this Title.

(b) In the event that the department discovers evidence that erroneous or fraudulent information has been entered into the registry by any persons or entity,

the commissioner shall have the discretion to take administrative action as authorized by Public Health Law and its related regulations.

(c) If the department or its designated representative determines through the annual inspection audit process, or by any other evidence or investigation, that a third-party lead hazard inspection or third-party lead safe certification failed to accurately identify and/or document lead-based paint hazards or visual lead soil hazard, the department in its sole discretion may refuse to allow submission of any lead hazard inspections or any lead safety certifications by that third party into the rental registry in the future.

(d) Procedures for enforcement, including administrative hearings, shall be followed in accordance with sections 1375 and 1377 of the Public Health Law and may involve cooperation and assistance from public officers, departments and agencies of the State and its political subdivisions.

67-5.10 - Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in Subpart 67-5 have been filed with the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled: Code of Federal Regulations, Title 40, Part 745, revised as of November 12, 2024, published by the Office of the Federal Register, National Archives and Records Administration. References to federally approved methods of lead paint analysis and encapsulation issued by the U.S. Department of Housing and Urban Development have been filed with the Office of the Secretary of State, the publication so filed being entitled: Guidelines for the Evaluation

and Control of Lead-Based Paint Hazards in Housing, Second Edition, July 2012, published by the Office of Healthy Homes and Lead Hazard Control. The regulations and guidance incorporated by reference may be examined at the Records Access Office, New York State Department of Health, ESP Corning Tower, Albany, New York, 12237 or can be directly obtained from the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) § 1370 authorizes the Department of Health (Department) to establish a program responsible for establishing and coordinating activities to prevent lead poisoning and minimize risk of exposure to lead. PHL § 1373 requires the Department to designate “communities of concern” as areas presenting high risk for lead poisoning and to issue a written notice and demand for the discontinuance of a paint condition conducive to lead poisoning in any designated dwelling in an area of high risk. PHL § 1374 outlines receivership provisions for failure to comply with a notice and demand, and PHL § 1375 establishes enforcement agencies having jurisdiction for the Title. Most recently, PHL § 1377 directs the Department to develop a registry and lead safety certification program for all residential dwellings with two or more units built prior to 1980 which are potentially eligible for rental, lease or hiring out, and which are located in communities of concern as identified by the Department pursuant to PHL § 1370-a(3).

Legislative Objective:

The legislative objective in PHL § 1377 is to protect the health and safety of children by reducing childhood lead poisoning in rental properties located in communities of concern through the creation of a registry of rental properties and establishing requirements for lead hazard inspections of rental properties with two or more units built prior to 1980. Communities of concern are areas with the highest prevalence of children with elevated blood lead levels. The objective is to protect children from the hazardous effects of lead poisoning. The proposed amendments to Part

67 (addition of Subpart 67-5 and amendments to Subpart 67-2) meet the legislative objective by requiring that eligible units be registered in a rental registry established by the Department, lead hazard inspections be completed, and lead-based paint hazards and/or visual lead soil hazards be safely remediated, and a lead safety certification issued for each eligible unit on a 3-year recurring cycle. Additionally, the amendments provide for protection of tenants and clarify administrative provisions for program oversight and implementation.

Needs and Benefits:

The effects of lead poisoning on a child are devastating and irreversible. Investment in lead hazard control results in an enormous financial return as it prevents the deleterious, lifelong impacts of lead poisoning.

Proactive remediation of lead hazards can help decrease the number of children who suffer elevated blood lead levels. According to NYS LeadWeb database, in 2021 alone there were roughly 7,000 children in New York State diagnosed with elevated blood lead levels. Lead poisoning can lead to societal impacts including but not limited to healthcare costs, special education costs, lost tax revenue and increased crime, which could cost New York State up to \$3.5 billion dollars per year. Every dollar invested in lead-based paint hazard control results in a return of \$25 to \$327. Statistics on societal impacts of lead poisoning were taken from this study and adjusted for inflation: Gould, E. (2009). Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control. *Environmental Health Perspectives*, 117(7), 1162-1167.

New York State has some of the oldest housing stock in the country and lead-based paint in homes remains the most significant contributing factor to lead poisoning in

children. Many of the communities of concern are located along the Hudson River and the historic Erie Canal region, where the oldest housing stock can be found. Although the use of lead in household paint has been prohibited since 1978, leaded building components remain in many of these dwellings forty-six years later. Friction and impact surfaces such as windows and doors are particularly problematic due to the difficulty of keeping these surfaces intact such that they do not shed lead dust.

The State rental registry and proactive lead hazard inspection regulations are needed to protect tenants from lead hazards in their homes. They require owners of such dwellings to register units and, through lead hazard inspections, dust wipe sampling, safe remediation of lead hazards and subsequent reinspection, eliminate lead-based paint hazards and/or visual lead soil hazards to ensure tenant safety. Without a preventative program such as this, children with high blood lead levels are identified through routine testing at age one and two or when symptoms of lead poisoning are identified, and at that point, irreversible injury to the child has already occurred.

COSTS:

Costs for the Implementation of and Continuing Compliance with the Regulation to the Regulated Entity:

The proposed amendments to Part 67, authorized by PHL § 1377(6) and (7), will increase costs to regulated entities. The amendments to Subpart 67-2 are not expected to increase existing costs to regulated entities (residential property owners); however, the addition of Subpart 67-5, is expected to increase costs to regulated entities (owners of multi-family dwellings located in communities of concern). Subpart 67-5 will introduce requirements for lead hazard inspections and dust wipe sampling at a minimum frequency

of once every three years to obtain a lead safety certificate, the need for additional lead hazard inspections if lead-based paint hazards and/or visual lead soil hazards are identified during the inspection, the need for repeat dust wipe sampling in the event initial dust wipe sampling exceeded the United States Environmental Protection Agency (EPA) threshold for lead in dust, and the requirement to remediate lead hazards.

There are an estimated 282,000 affected units located in communities of concern statewide. Owners (regulated parties) might own just one dwelling with two units or may own multiple dwellings with dozens of units in various states of compliance; therefore, the costs to each regulated party will vary greatly.

The amendments require that a lead hazard inspection, if conducted by a third party, be conducted by an EPA certified risk assessor and the inspection costs will range from an estimated \$250.00 to \$450.00 for each rental unit. If lead-based paint and/or visual lead soil hazards are identified during inspections, there will be remediation costs which could vary from several hundred dollars for paint film stabilization to up to \$40,000 for lead abatement of windows, doors and floors in significantly deteriorated units. There will also be additional costs for re-inspections to evaluate remediation efforts and issue a lead safety certificate. The anticipated maximum cost to an owner per unit could be approximately \$500 for an initial inspection, \$40,000 for remediation/abatement, and an additional \$500 for a clearance inspection for a total of \$41,000 per unit.

PHL § 1377(7) and the amendments to Part 67 allow for an owner to conduct their own lead safety inspections if they are appropriately qualified, and the statute specifically allows the Department to establish the necessary qualifications for parties conducting and submitting lead hazard inspections to the Department or its designee. If

an owner has obtained a valid EPA risk assessor certification, they would qualify to conduct inspections of their own units. The cost to obtain EPA risk assessor certification ranges from \$1200.00 to \$1400.00. This would eliminate the lead hazard inspection cost, but the cost for dust wipe sampling and the remediation costs would still be incurred by the owner.

Flexibility in inspection methods, allowing Local Health Department (LHD) staff or other qualified municipal agencies such as local codes enforcement staff to conduct inspections will allow for decreased costs to the landlord with the cost burden subsequently falling on the above-mentioned agencies. Programmatic costs have been considered and a total of approximately \$18.5 million has been appropriated to the Department, with \$15.86 million appropriated as Aid to Localities to support LHDs with program implementation and will cover costs associated with staff salary, travel, overhead, and supplies.

For landlords, the cost of remediation will depend on the level of lead-based paint hazards an/or visual lead soil hazards identified. In Rochester, where local codes enforcement has supported inspections for lead hazards for the last 15 years, roughly 5% of rental properties were found to have interior lead hazards and roughly 10% were found to have exterior lead hazards. If the number of interior and exterior hazards remains similar to those seen in Rochester, approximately 4,700 interior hazards and approximately 9,400 exterior hazards may be identified per year across all communities of concern. If we assume 20% of properties are found to have interior lead hazards, then the number of interior hazards may be closer to 18,800 per year. To support landlords, there is approximately \$20 million in funds available via the Homes and Community Renewal (HCR) program to support remediation and abatement. The cost of

implementation is expected to escalate at the rate of inflation for subsequent implementation periods, while the total annual cost of remediation is expected to decrease as eligible properties are remediated or abated.

Costs to State and Local Governments:

Approximately \$18.5 million was allocated to the Department to support implementation of this program. A majority of these funds, approximately \$15.86 million, will be allocated to LHDs to support local implementation and enforcement of this program. Funds for each LHD will vary from approximately \$500,000 in the county with the least number of units in a community of concern, to \$1.3 million in the county with multiple communities of concern and the largest number of rent-eligible units in those communities. The remaining funds will be used by the Department to support database management of the rental registry and outreach and communication with partners across sectors. The funds allocated to LHDs are expected to be sufficient to stand up and support core functions related to program management, database management, inspection management, and enforcement, as well as stakeholder engagement. The total cost of the program, across the Department and HCR, is estimated to be approximately \$120 million for the first three-year compliance period.

Costs to the Department of Health:

The Department will create and maintain a data management system to collect, track, and report data on all aspects of the rental registry program, in part to fulfill the statutory reporting obligations found at PHL § 1377(11). The cost of this software procurement is expected to be approximately \$1-2 million per year and will come out of

the State portion of the appropriation. Additionally, several staff positions will be created at the Department to support effective implementation and evaluation of this program.

Local Government Mandates:

This regulation affects LHDs and their partners such as Local Codes Enforcement. LHDs will be contracted by the Department to oversee the lead hazard inspection and lead safety certificate programs for communities of concern in their jurisdictions. Flexibility in inspection methods will allow LHD staff, other municipal agencies such as local code enforcement staff, or certified third-parties to conduct inspections. LHDs will be required to conduct audit inspections of a minimum of 10% of third party inspections. This regulation requires that LHDs implement and enforce all components of the Lead Rental Registry, which will require outreach and education, notification to the regulated community and tracking of inspections.

Paperwork:

This regulation requires that LHDs implement and enforce all components of the Lead Rental Registry, which will require outreach and education, notification to the regulated community, and tracking of inspections. However, the Department is working to procure a database management system will support automation of many, if not all, of these activities so additional paperwork burden is expected to be minimal.

Duplication:

These amendments do not duplicate any State or federal requirements; however, they do build on existing federal regulations promulgated by the EPA and Housing and

Urban Development (HUD) related to the Residential Lead-Based Paint Hazard Reduction Act.

Alternatives:

Since promulgation of these regulations are required by Public Health Law § 1377(6) and (7), no other alternatives were considered.

Federal Standards:

There are no federal standards for administering a lead rental registry or conducting proactive lead hazard inspections. However, the EPA oversees a Risk Assessor Certification Program to license professionals conducting Lead Risk Assessments as well as Lead Renovation, Repair, and Painting and Lead Abatement contractor certifications to support use of lead safe work practices.

Compliance Schedule:

This proposed rule will become effective immediately upon adoption. Beginning on November 3, 2025, the effective date of PHL § 1377, regulated entities can register, inspect, and submit a Lead Safety Certification throughout the three-year monitoring period. If lead hazards are identified, regulated entities must take actions immediately to address the lead hazards as appropriate to receive a Lead Safety Certification.

Contact Person:

Katherine Ceroalo
New York State Department of Health
Bureau of Program Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed Subpart 67-5 is needed to comply with Public Health Law (PHL) § 1377(6) and (7). PHL § 1377 requires that the Department of Health (Department) shall develop a State rental registry and promulgate regulations to administer, coordinate, and enforce lead safety inspections and remediation of lead-based paint hazards and/or visual lead soil hazards in multi-family residential dwellings built prior to nineteen hundred eighty (1980) with two or more units located in communities of concern. The rule affects 25 documented communities of concern (municipalities) in 20 counties within the State and will affect owners of approximately 282,000 rental units, some of which may be owned by small businesses, although the number of such small businesses is unknown.

Compliance Requirements:

County-wide Local Health Departments (LHDs) as defined in PHL Article 3 will be contracted to implement and enforce the rental registry, including components outlined in PHL § 1377 and Subpart 67-5, although the LHDs may wish to subcontract pieces of the rental registry to local code enforcement offices and operate a rental registry much like the Rochester inspection model. Rochester has successfully implemented a program in collaboration with codes enforcement where rental properties are inspected for defective paint surfaces. The regulated community, including landlords, agents, and owners will be required to meet the requirements of the rental registry. Regulated entities will be required to register eligible rental properties in the rental registry and have a lead hazard inspection and dust wipe sampling completed. For those units that pass inspection,

they will be required to submit a Lead Safety Certificate. For those units that fail inspection, they will be required to perform lead remediation and/or abatement following lead safe work practices and United States Environmental Protection Agency (EPA) requirements, conduct a clearance inspection and dust wipe sampling, and then submit a Lead Safety Certificate.

Professional Services:

Some laboratories that provide analytical services such as lead dust wipe sample testing are considered small businesses. These laboratories may see an increase in requests for services due to the increase in sampling frequency. There is anticipated to be sufficient laboratory capacity.

Many rental companies and LLCs are considered small businesses and will need to comply with these regulations. Additionally, third-party inspectors and contractors will need to comply with certification requirements to conduct business using best practices related to lead risk assessment and lead safe work practices. Some corrective actions to address lead-based paint hazards identified during the inspection process such as lead remediation and lead abatement may require the services of certified professionals. There is anticipated to be a range of compliance among rental companies, third-party inspectors, and contractors.

Compliance Costs:

The proposed amendments to Part 67, authorized by PHL § 1377(6) and (7), will increase costs to regulated entities. The amendments to Subpart 67-2, Environmental Assessment and Abatement, are not expected to increase existing costs to regulated

entities (residential property owners); however, the addition of Subpart 67-5, Targeted State Rental Registry and Proactive Lead Hazard Inspections, is expected to increase costs to regulated entities (owners of multi-family dwellings located in communities of concern). Subpart 67-5 will introduce requirements for lead hazard inspections and dust wipe sampling at a minimum frequency of once every three years to obtain a lead safety certificate, the need for additional lead hazard inspections if lead-based paint hazards and/or visual lead soil hazards are identified during the inspection, the need for repeat dust wipe sampling in the event initial dust wipe sampling exceeds the EPA threshold for lead in dust, and the requirement to engage in approved remediation of lead hazards.

There are an estimated 282,000 affected units located in communities of concern statewide. Owners of such properties might be a small business owning just one dwelling with two units, or might own multiple dwellings with dozens of units in various states of compliance; therefore, the costs to each regulated party will vary greatly.

The amendments require that a lead hazard inspection, if conducted by a third-party, be conducted by an EPA-certified risk assessor and the inspection costs will range from an estimated \$250.00 to \$450.00 for each rental unit. If lead hazards are identified during inspections, there will be remediation costs which could vary from several hundred dollars for paint film stabilization to up to \$40,000 for lead abatement of windows, doors and floors in significantly deteriorated units. There will also be additional costs for re-inspections to evaluate remediation efforts and issue a lead safety certificate. The anticipated maximum cost to an owner per unit could be approximately \$500 for an initial inspection, \$40,000 for remediation/abatement, and an additional \$500 for a clearance inspection for a total of \$41,000 per unit.

PHL § 1377 and the amendments to Part 67 allow for an owner to conduct their own lead safety inspections if they are appropriately qualified, and the aforementioned statute allows the Department to outline the necessary qualifications for parties conducting and submitting lead hazard inspections to the Department or its designee. If an owner has obtained a valid EPA risk assessor certification, they would be qualified to conduct inspections of their own units. The cost to obtain EPA risk assessor certification ranges from \$1200 to \$1400. This would eliminate the lead hazard inspection cost, but the cost for dust wipe sampling and any subsequent remediation costs would still be incurred by the owner.

Flexibility in inspection methods, allowing LHD staff or other municipal agencies such as local code enforcement staff to conduct inspections, will allow for decreased costs to the landlord with the cost burden subsequently falling upon the above-mentioned agencies. For landlords, the cost of remediation will depend on the level of lead hazards identified. In Rochester, where local codes enforcement has supported inspections for lead hazards for the last 15 years, roughly 5% of rental properties were found to have interior lead hazards while roughly 10% were found to have exterior lead hazards. If the number of interior and exterior hazards remains similar to those seen in Rochester, that will mean approximately 4,700 interior hazards and approximately 9,400 exterior hazards may be identified per year in the communities of concern. If we assume 20% of properties are found to have interior lead hazards, then the number of interior hazards may be closer to 18,800 per year. To support landlords in addressing lead hazards, there is approximately \$20 million in funds available annually via the Homes and Community Renewal (HCR) program to support remediation and abatement. The cost of implementation is expected to escalate at the rate of inflation for subsequent

implementation periods, while the total annual cost of remediation is expected to decrease as eligible properties are remediated or abated.

Approximately \$18.5 million was allocated to the Department to support implementation of this program. A majority of these funds, approximately \$15.86 million, will be allocated to LHDs to support local implementation and enforcement of this program and will cover costs associated with staff salary, travel, overhead, and supplies.

Funds for each LHD will vary from approximately \$500,000 in the county with the least number of units in a community of concern, to \$1.3 million in the county with multiple communities of concern and the largest number of rent-eligible units in those communities. The remaining funds will be used by the Department to support database management of the rental registry and outreach and communication with partners across sectors. The funds allocated to LHDs are expected to be sufficient to stand-up and support core functions related to program management, database management, inspection management, and enforcement, as well as stakeholder engagement. The total cost of the program, across the Department and HCR, is estimated to be approximately \$120 million for the first three-year compliance period.

Economic and Technological Feasibility:

With respect to economic feasibility, this is absolutely a cost-effective program. Every dollar invested in childhood lead prevention brings a cost savings of approximately \$25-\$327 in long-term health care costs, special education costs, criminal justice system costs, and lifetime earning potential impacts associated with childhood lead poisoning.

With respect to technological feasibility, the processes, protocols, certifications, and laboratory methods are all in place to make this program feasible. The Department and LHDs will need to develop initiatives to support building workforce capacity so that there is a sufficiently trained workforce to comply with these regulations. It is also important to note that in some instances, lead may still be present in homes that are issued a Lead Safety Certificate – as long as that lead does not pose a hazard to the inhabitants of that rental unit as certified by a satisfactory lead hazard inspection and satisfactory lead dust wipe sampling results. Unless the property owner can verify that the home is completely free of lead-based paint and lead hazards, the potential for reoccurrence of lead hazards will exist, and that is why the Lead Safety Certificate is only valid for three years. Reinspection of all eligible rental units will be required on a triennial basis.

Minimizing Adverse Impact:

These amendments are required by Public Health Law § 1377(6) and (7). Funding is available to LHDs to staff and implement this program through funds administered by the Department. Additionally, \$20 million dollars annually will be administered by HCR to provide landlord assistance for lead remediation and abatement to help resolve the unsafe housing conditions identified by the rental registry and proactive inspection program.

Small Business and Local Government Participation:

These amendments are required by Public Health Law § 1377(6) and (7), and will impact LHDs and several stakeholder groups in the housing sector including landlords,

inspectors, and contractors. LHDs are engaged via multiple mechanisms such as listening sessions, grantee meetings and workgroups to gather and respond to feedback on program implementation. The 20 counties representing the 25 communities of concern were consulted during the rule making process via a listening session facilitated by the National Center for Healthy Housing, the Childhood Lead Poisoning Prevention Program Annual Meeting, and monthly meetings with the Conference of Environmental Health Directors – Lead Rental Registry Workgroup. The Department participated in meetings of the Conference of Environmental Health Directors in both Spring and Fall 2023 where additional feedback on the rental registry and proposed amendments was solicited. Small businesses will similarly be engaged as program implementation moves forward via outreach and education, trainings and certifications, and presentations to professional associations.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This rule applies to 25 communities of concern as identified by the Department of Health (Department) pursuant to Public Health Law § 1370-a(3) based on the number of childhood elevated blood lead level cases and the number of eligible rental properties with two or more units built before nineteen hundred eighty (1980). Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. There are 44 counties with a population of less than 200,000 based upon the United States Census estimated county populations for 2020 (<https://www.census.gov/quickfacts/>). Of these 44 counties, 10 include at least one municipality identified as a community of concern. These counties are listed below. The communities of concern impacted by this regulation were selected based partially on number of pre-1980 rental housing units, which are in the more densely populated areas of these rural counties.

Broome

Cayuga

Chautauqua

Chemung

Fulton

Jefferson

Montgomery

Rensselaer

Schenectady

Ulster

The following 8 counties have a population of 200,000 or greater with towns with population densities of 150 persons or fewer per square mile and include a municipality listed as a community of concern. Data is based upon the United States Census estimated county populations for 2020. The communities of concern for these counties, however, have population densities greater than 150 persons per square mile.

Albany

Dutchess

Erie

Monroe

Niagara

Oneida

Onondaga

Orange

Reporting, Recordkeeping and Other Compliance Requirement:

The reporting, recordkeeping and compliance requirements impact rural areas equally to other areas of the State. Owners of residential dwellings with two or more units built before 1980 which are potentially eligible to be rented and are located within communities of concern will be required to submit a lead safety certificate for each unit to the Local Health Department (LHD) once every three years. A satisfactory lead hazard inspection and satisfactory dust wipe sample results are required to obtain a lead safety certificate. Alternatively, a valid and active residential occupancy permit for which minimum conditions for a lead safety certificate were evaluated and the certificate issued

by Local Code Enforcement, must be obtained. Landlords must submit lead safety certificates for recording into the rental registry. LHDs must audit, at minimum, 10% of the lead hazard inspections conducted for lead safety certification. Inspections must be submitted to the rental registry on a standardized form. Results of the audit process, the number of inspections due, and the number of inspections conducted must be reported to the Department by the LHD so the commissioner can meet the annual reporting requirements established in Public Health Law § 1377(11). Since funding will be allocated proportionally based on the number of eligible units to be included in the rental registry, these proposed regulations are not expected to disproportionately impact rural areas.

Costs:

The proposed amendments to Part 67, Subpart 67-5, authorized by PHL §1377(6) and (7), will increase costs to regulated entities (residential property owners) and local governments located in rural communities of concern.

The amendments to Subpart 67-2 Environmental Assessment and Abatement are not expected to increase existing costs to regulated entities or local governments in rural areas.

Costs to Regulated Entities:

The addition of Subpart 67-5 Targeted State Rental Registry and Proactive Lead Hazard Inspections is expected to increase costs to regulated entities in rural communities of concern. Subpart 67-5 will introduce requirements for lead hazard inspections and dust wipe sampling at a minimum frequency of once every three years to obtain a lead safety

certificate, the need for additional lead hazard inspections if lead-based paint hazards and/or visual lead soil hazards are identified during the inspection, the need for repeat dust wipe sampling in the event initial dust wipe sampling exceeded the EPA threshold for lead in dust, and the requirement to remediate lead hazards.

There are an estimated 282,000 affected units located in communities of concern statewide. Approximately 246,000 of these affected units are located in rural counties. Owners (regulated parties) might own just one dwelling with two units or may own multiple dwellings with dozens of units in various states of compliance; therefore, the costs to each regulated party will vary greatly.

The amendments require that a lead hazard inspection, if conducted by a third-party, be conducted by an EPA certified risk assessor and the inspection costs will range from an estimated \$250.00 to \$450.00 for each rental unit. If lead hazards are identified during inspections, there will be remediation costs which could vary from several hundred dollars for paint film stabilization to up to \$40,000 for lead abatement of windows, doors and floors in significantly deteriorated units. There will also be additional costs for re-inspections to evaluate remediation efforts and issue a lead safety certificate. The anticipated maximum cost to an owner per unit could be approximately \$500 for an initial inspection, \$40,000 for remediation/abatement, and an additional \$500 for a clearance inspection for a total of \$41,000 per unit.

PHL § 1377(7) and the amendments to Part 67 allow for an owner to conduct their own lead safety inspections if they are appropriately qualified, and the aforementioned statute allows the Department to outline the necessary qualifications for parties conducting and submitting lead hazard inspections to the Department or its designee. If an owner has obtained a valid EPA risk assessor certification, they would be

qualified to conduct inspections of their own units. The cost to obtain EPA risk assessor certification ranges from \$1200 to \$1400. This would eliminate the lead hazard inspection cost, but the cost for dust wipe sampling and the remediation costs would still be incurred by the owner.

Flexibility in inspection methods, allowing LHD staff or other municipal agencies such as local code enforcement staff to conduct inspections will allow for decreased costs to the landlord with the cost burden subsequently falling upon the above-mentioned agencies. Programmatic costs have been considered and a total of approximately \$18.5 million has been appropriated to the Department, with a majority of those funds (\$15.86 million) appropriated as Aid to Localities to support the LHDs with program implementation and to cover costs associated with staff salary, travel, overhead, and supplies. Approximately \$14.5 million of the Aid to Localities will fund communities of concern in rural counties.

For landlords, the cost of remediation will depend on the level of lead hazards identified. In Rochester, where local code enforcement has supported inspections for lead hazards for the last 15 years, roughly 5% of rental properties were found to have interior lead hazards while roughly 10% were found to have exterior lead hazards. If the number of interior and exterior hazards remains similar to those seen in Rochester, that will mean approximately 4,100 interior hazards and approximately 8,200 exterior hazards may be identified per year in rural areas communities of concern. If we assume 20% of properties are found to have interior lead hazards, then the number of interior hazards may be closer to 16,400 per year. To support landlords in addressing lead hazards, there is approximately \$20 million in funds available annually via the Homes and Community Renewal (HCR) program to support remediation and abatement for all communities of

concern. The cost of implementation is expected to escalate at the rate of inflation for subsequent implementation periods, while the total annual cost of remediation is expected to decrease as eligible properties are remediated or abated.

Costs to Local Governments:

Approximately \$18.5 million was allocated to the Department to support implementation of this program. A majority of these funds, approximately \$15.86 million, will be allocated to LHDs to support local implementation and enforcement of this program, of which approximately \$14.5 million will be allocated to LHDs in rural counties. The funds allocated to LHDs are expected to be sufficient to stand-up and support core functions related to program management, database management, inspection management, and enforcement, as well as stakeholder engagement.

Minimizing Adverse Impacts:

The Department is building a program to support this initiative and will manage a statewide data system, with plans to support outreach, education, and training. Mechanisms through the Childhood Lead Poisoning Prevention Program already exist to provide technical assistance and support LHDs in successfully implementing this prevention work, thus minimizing adverse impacts to rural areas as well as the other communities of concern across the State.

Rural Area Participation:

These amendments are required by Public Health Law § 1377(6) and (7). The 20 counties representing the 25 communities of concern were consulted during the rule

making process via a listening session facilitated by the National Center for Healthy Housing, the Childhood Lead Poisoning Prevention Program Annual Meeting, and monthly meetings with the Conference of Environmental Health Directors – Lead Rental Registry Workgroup.

JOB IMPACT STATEMENT

Nature of Impact:

The New York State Department of Health (Department) expects there to be a positive impact on jobs and employment opportunities. It is expected that a subset of firms, risk assessors, and contractors will pursue the necessary certifications to assist with regulatory compliance. Landlords and owners impacted by this amendment will require the professional services of county or municipal staff and/or Lead Risk Assessors as well as certified Lead Abatement Contractors certified by the Environmental Protection Agency (EPA). In addition, there will be a need for increased capacity at Environmental Laboratory Approval Program (ELAP) certified laboratories to support lead dust wipe sampling that is required as part of the inspection process.

Public Health Law (PHL) §1377 requires that the Department shall, as directed by law, develop a State rental registry and promulgate regulations to administer, coordinate, and enforce lead safety inspections and remediation of conditions conducive to lead poisoning in residential dwellings built prior to nineteen eighty (1980) with two or more units located in communities of concern.

All rental properties will have to acquire a lead safety certificate, and the inspection report must be reported to the Local Health Department (LHD). Inspections will include, at minimum, visual inspections for deteriorated paint, dust wipe sampling if no visible hazards are identified, and visual assessment of bare soil. Hazards identified through visual inspection will require remediation and re-inspection. Dust wipe failures will require proper cleaning, re-inspection, and resampling. Inspections and

remediation must be conducted by individuals with appropriate training and certifications.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations. In fact, this Program and associated regulations will likely increase demand for home inspectors and contractors, specifically Lead Risk Assessors and Lead Abatement Contractors certified by the EPA as well as ELAP certified laboratories.

Regions of Adverse Impact:

PHL § 1377 and this amendment will be implemented across the State in 25 communities of concern across 20 counties. However, the Department anticipates no negative impact on jobs or employment opportunities in any particular region of the State.

Minimizing Adverse Impact:

The Department will support education and outreach to affected sectors and will also support capacity building in the necessary areas to support enhancing the certified work force that will be necessary to achieve compliance with a focus on Lead Risk Assessors, Lead Abatement Contractors, and Laboratory Specialists.

Self-Employment Opportunities:

The Department anticipates that many of the sectors impacted by this amendment have an opportunity to support self-employment as a certified Lead Risk Assessor or Lead Abatement Contractor.

SUMMARY OF ASSESSMENT OF PUBLIC COMMENT

The New York State Department of Health (Department) received twelve public comments by email on the revised rulemaking published in the State Register on December 3, 2025. Commenters included public health, environmental, and medical professionals, an advocacy group, Local Health Departments (LHDs) and municipal governments, and various associations. Additionally, representatives from several organizations, including subject matter experts and physicians, collaborated to provide one set of comments.

Commenters shared concerns over specific definitions in Subpart 67-5. Concerns regarding the definition of lead-based paint hazards included a request that it match the US Environmental Protection Agency (EPA) definition and mention friction and impact surfaces, and an objection to using the current EPA definition of lead-based paint (1.0 mg/cm²) on grounds that it is not sufficiently health-protective. Commenters also requested the Department add a definition for ‘recurring lead hazards’ to section 67-5.2. The Department believes the definitions are science-based and sufficient for consistent and statewide implementation of the regulations. Additional details will be provided in guidance for LHD implementation. No revisions were made based on these comments.

Commenters suggested the definition of ‘Owner’ in section 67-5.2 is too broad and implicates tenants as a potential owner. The Department reviewed the definition of ‘Owner’ and removed the word ‘lessee’ to ensure that property owner responsibilities cannot fall to tenants.

Commenters expressed concern over the impact of Subpart 67-5 on property owners. Concerns included impacts to rental or leasing processes and rental licensing, increased lawsuit risk, and inadequate resources to perform remediation. Commenters requested the Department add detail on tenant access procedures and documentation requirements. Several components of these comments were outside the scope of Subpart 67-5. The Department provided details on available funding to assist with remediations, clarified that property owners have both the authority and responsibility to grant access for statutory inspection purposes, and reiterated the importance of protecting children from the harmful impacts of lead poisoning. Any negative consequences of this rulemaking will be monitored, and additional guidance will be provided to LHDs as needed. No changes were made in response to these comments.

Commenters expressed several concerns regarding lead hazard provisions for soil in Subpart 67-5. Specifically, they stated the regulations lack clarity and the definition of ‘visual lead soil hazard’ should apply to the entire yard. Commenters conveyed that the EPA definition of ‘soil hazards’ is not protective and that exceptions to the soil requirement should not be allowed in times of inclement weather. The intent of PHL and Subpart 67-5 is to reduce the potential for lead exposure. Focusing efforts to address bare soil in areas where people are likely to spend time is appropriate. During times of snow cover, soil does not present a direct exposure concern. Property owners and tenants are encouraged through the Department’s website to identify any hazards that may arise following snow melt or other changes. Tenants are encouraged to notify property owners promptly of any hazards and request repair or notify their LHD for follow-up. No changes were made in response to these comments.

Several commenters expressed the opinion that Subpart 67-5 is unclear and lacks detail for successful implementation. Examples include objection to the term ‘manner acceptable to the Department’ and reliance on guidance, templates and forms to outline aspects of the program. The Department asserts that Subpart 67-5 provides adequate detail for property owner compliance and tenant education. Guidance, templates and forms are routinely provided to LHDs and stakeholders. No revisions were made in response to these comments.

One commenter raised concern that the Department was exceeding its authority by allowing exemptions in Subpart 67-5 and for allowing remediation instead of abatement. The Department is authorized to interpret the statute and make reasonable determinations as to whether a specific property falls outside of the statutory requirements of PHL § 1377. The Department also notes that the statute does not reference abatement. No revisions were made in response to this comment.

One commenter posed questions on how Subpart 67-5 would impact Local Code Enforcement processes and protocols. The commenter raised concerns with Code Enforcement Officer authority and increased workload for officers. Several questions were outside the scope of Subpart 67-5 and were forwarded to NYS Department of State for consideration. The Department clarified that officers working in municipal Certificate of Occupancy programs with LHDs fall under the definition of ‘designated representative’ and therefore possess inspection and certificate issuance authority. The Department understands the workload concerns, and procedural solutions will be addressed through collaboration with the NYS Department of State and in guidance.

Commenters raised questions over inspector credentials and EPA Risk Assessor certification requirements in Subpart 67-5. The Department establishes training standards to ensure that LHD staff are qualified to identify and assess hazards pertinent to our childhood lead poisoning prevention programs including the Rental Registry. LHD staff working on these programs are trained by EPA-certified Lead Risk Assessors. No changes were made in response to these comments.

Commenters expressed the need for transparency and public access to the Rental Registry. The Department intends to make some information collected through the Rental Registry data system publicly available and accessible and will also meet the reporting requirements outlined in PHL § 1377(11). No changes were made in response to these comments.

Commenters requested that Subpart 67-5 incentivize permanent abatement and raised concerns with the allowance of paint film stabilization and interim controls. The Department clarified that permanent abatement is incentivized by the availability of an exemption from future inspection requirements upon full abatement, as well as by the availability of remediation funds that prioritize full abatement. Paint film stabilization is a less costly remediation method that can control exposure to lead with regular maintenance. Interim controls are intended to be used prior to remediation to offer immediate, albeit temporary protections for tenants. No changes were made in response to these comments.

Several commenters stated section 67-5.8 does not offer adequate tenant protections. Specific requests included provisions to strengthen tenant protections during remediation; to address landlord retaliation; to clarify how written notices must be

provided; to increase funds for tenant relocation; and to specify mechanisms by which tenants can report hazards. Tenant protections in section 67-5.8 are within the enforcement authority and capacity of the Department and LHDs. Standard forms, templates, and outreach materials will be provided and will convey safety information, recourse options, and guidance for tenants to report new hazards or unsafe remediation work. Funding is available for tenant relocation through the NYS Homes and Community Renewal Leading in Lead Pilot Program. No changes were made in response to these comments.

Commenters raised concerns about dust wipe sampling protocols, requesting that Subpart 67-5 reference EPA and/or HUD sampling protocols, specify that the Department has the authority to update dust wipe thresholds and require dust wipe sampling of open porches. The Department has not incorporated HUD sampling protocols by reference, though Section 67-5.10 adopted EPA dust wipe and soil sampling standards memorialized at 40 CFR 745.65 through incorporation by reference. If the EPA modifies its standards, the Department will reevaluate and update the regulations as it deems necessary. Due to a lack of EPA standards for dust wipe sampling of exterior surfaces, the Department believes it is not technically feasible to require dust wipe sampling of exterior porch floors. No changes were made in response to these comments.

Commenters requested more specificity in Subpart 67-5 for enforcement, notice requirements and appeal rights, and procedures for false certifications. Enforcement requirements and appeal rights are included in PHL § 1375 and § 1377 and cannot be substantively changed in regulation. Procedures for addressing false certifications are

outlined in Section 67-5.9(b). Further instruction on enforcement procedures will be provided in guidance to LHDs. No changes were made in response to these comments.

One commenter requested clarification on the exemption process and asked whether LHDs must confirm a dwelling is free of lead-based paint with XRF analysis and dust wipe sampling, or if they can accept third-party documentation. LHDs may rely on third party documentation of a surface-by-surface lead paint analyzer inspection for the purposes of exemption; however, the Department, an LHD or its designated representative must confirm the findings via an onsite audit. The collection of dust wipe samples during such audit are not required. Additional information will be provided in guidance to the LHDs. No changes were made in response to this comment.

A commenter suggested that Naturally Occurring Retirement Communities where homeowners age in place should be exempt from Subpart 67-5. Section 67-5.5(n)(3) outlines an exemption option to inspection and dust wipe sampling requirements for owner-occupied units or units occupied by the owner's immediate family. The Department recognizes that there may be unique housing scenarios that do not fall within the intent of PHL § 1377. LHDs, in consultation with the Department, can examine the applicability of PHL § 1377 and Subpart 67-5 in relation to these scenarios as they occur. No changes were made in response to this comment.

One commenter requested the term 'certified inspector' appearing in section 67-5.6(a) be replaced with 'qualified inspector' and that a definition for 'qualified inspector' be added. Certified inspector was a typographical error and the Department has corrected the term to 'qualified inspector,' as used elsewhere throughout the regulation.

One comment requested a definition and specific criteria for identifying the “communities of concern.” The phrase “communities of concern” has been clearly defined at PHL § 1370-a(3), and has been used to map such communities since 2014. While the Department provided zip code level criteria for its current determinations about the boundaries of Communities of Concern, flexibility was given to LHDs to further refine the areas based on locally available information. Changes to the boundaries must be reviewed and approved by the Department. No changes were made in response to this comment.

Some commenters suggested a phased roll-out of the Rental Registry program or a postponed start to allow owners more time to prepare. Implementation and compliance dates are mandated by PHL § 1377 and the Department does not have the authority to change the deadlines in regulation.

ASSESSMENT OF PUBLIC COMMENT

In response to the December 3, 2025 Notice of Revised Rulemaking published in the State Register, the New York State Department of Health (Department) received twelve written comments during the public comment period. Commenters included public health and medical professionals, an advocacy group, a Local Health Department (LHD), a municipal government, a property management group, an environmental training firm, a real estate broker, and associations including the New York State Association of County Health Officials (NYSACHO), the New York State Association of Realtors and the New York Insurance Association.

Several organizations and individuals collaborated to submit one set of comments. The contributors included: Alliance for a Green Economy; Arbor Hill Development Corporation; AVillage, Inc.; Capital Area Urban League; Central NY Community Foundation, Inc.; Citizen Action of New York; Citizen Science Community Resources; Inc.; Clean+Healthy; CNY Lead Testing LLC; Community for a Cause; Cornhill Neighborhood Association; Earthjustice; Families for Lead Freedom Now; Flatley Read Inc.; Heart of the City Neighborhoods, Inc.; Lead Free Kids NY; Lead716; Leadsafe CNY Coalition; Legal Services of Central New York, Inc.; Moms for a Nontoxic New York; NAACP Oneida County Branch 2167-B Environmental and Climate Justice Committee; New York State American Academy of Pediatrics; PUSH Buffalo; Unleaded Kids; WE ACT for Environmental Justice; Albert Algarin; David Babcock; Emily A. Benfer (Professor of Law, George Washington University Law School and Milken Institute for Public Health); Shannon Burkett, RN IBCLC; Matthew J. Chachere, Esq. (Member of the NYS Lead Advisory Council, Emeritus Attorney at

Northern Manhattan Improvement Corp. Legal Services); Luanne DeFelice; Michelle DeGarmo; Cathy Garvey; Marisa Manheim, PhD; Morri Markowitz, MD; Andrew McLellan; Lisa Schmidtfredrick-Miller, MS Ed; Mary E Schmutz, PT; and Lily Zent.

As a result of comments received, the Department has made only minor revisions to the revised rulemaking. In section 67-5.2, the definition for “Owner” was revised to remove “lessee” from the list of potential parties that may constitute an owner. This revision was made to clarify that tenants are not responsible for implementation of section 67-5. In addition, in section 67-5.6(a) which describes the inspection requirements for lead safety certification, the term “certified inspector” was replaced with “qualified inspector,” as this is the term used throughout the regulation.

The Department organized its responses into several categories due to the similarity of many of the comments that were received. The comments and responses are below.

Comments on Subpart 67-2:

Comment: One commenter expressed that section 67-2.4(2) should not include substrate corrections, suggesting they are unnecessary.

DOH Response: The substrate corrections have been removed. Note that, as part of the proposed and revised rulemaking, sections 67-2.4(2)(i) and (ii) appear in brackets, meaning that content will be removed from the regulation.

Comments on Subpart 67-5:

Comment: Commenters raised concerns with the definitions. Some commenters requested additional details for the definition of lead-based paint hazards. Commenters suggested the definition of “lead based paint hazard” should match the US Environmental Protection Agency (EPA) definition and should mention friction and impact surfaces. Commenters suggested it is not health protective to rely on the current EPA definition of lead-based paint (1.0 mg/cm²). Additionally, commenters requested that “recurring lead hazards” be defined.

DOH Response: The Department reviewed the language in the revised regulations to ensure it is clear, science-based, and health protective while remaining feasible for implementation. The Department believes the definitions are clear and provide sufficient detail for consistent statewide implementation of the regulations.

The definition of “lead based paint hazards” does not include specific reference to friction or impact surfaces; however, section 67-5.5(h) specifies that intact friction surfaces are to be addressed in instances of repeated failing dust wipe samples. Additional details about recurring lead hazards, along with parameters for local interpretation will be provided in guidance documents for Local Health Department implementation.

The Department routinely references Federal standards such as the definition of lead-based paint as 1.0 mg/cm². In the event that EPA modifies its standards, the Department will reevaluate and update the regulations as it deems necessary. No changes were made in response to this comment.

Comment: Commenters expressed concerns over the regulation’s impact on property owners, rental or leasing processes, and rental licensing. Commenters requested the regulation include more details on the requirements tying Lead Safety Certificates to the leasing process, tenant access procedures, and details for property owners to retain documentation. Additionally, commenters raised concern over alleged landlord lawsuit risks, protection for compliant landlords, resources to perform required remediations, prioritization of child-occupied units, and inability to obtain lead paint insurance coverage in New York State.

DOH Response: The issues raised in comments regarding rental licenses, leasing requirements, and insurance parameters are outside the scope of Subpart 67-5. The Department plans to provide additional details on tenant cooperation and provision of access to rental units in guidance documents for LHD implementation. The property owner has the authority to grant access and it is their responsibility to ensure access to units for inspection and to enable issuing certificates. Funds are available through the New York State Homes and Community Renewal’s Leading in Lead Prevention Pilot Program ([Leading in Lead Prevention Pilot Program | Homes and Community Renewal](#)) to assist property owners who require financial assistance with remediation costs. Property owners are always primarily responsible for ensuring that any dwelling they are offering for rent is safe for occupancy, in accordance with Article 7 of the Real Property Law.

The regulation will require action, participation, and potential investment by property owners. The intent of PHL § 1377 and its regulations is to protect children from the debilitating effects of lead poisoning. Studies show that no amount of lead exposure is

safe for children. New York State has some of the oldest housing stock in the country, and lead-based paint in homes remains the most significant contributing factor to lead poisoning in children. Due to high rates of occupant turnover in rental dwellings, all applicable rental units must comply regardless of current child occupancy status and no prioritization for child-occupied units is contemplated in the statute. This does not prohibit LHDs or property owners from prioritizing remediation activities in rental units based on their occupancy status or other parameters.

Any negative consequences of this rulemaking will be monitored by the Department and LHDs. The Department and LHDs will maintain open communication with property owners and tenants to understand hardships that may arise from inspection, lead hazard remediation or related efforts. No changes were made in response to these comments.

Comment: Commentors stated the regulations lack detail on what constitutes bare soil, acceptable soil remediation protocols, and sampling procedures and objected to the definition of “visual lead soil hazard” applying only to places where people are “likely to spend time.” Commentors also raised the concern that the EPA definition of a soil hazard is outdated and not protective, and that PHL § 1377 does not allow for exceptions to the soil requirement in times of inclement weather.

DOH Response: Section 67-5.5(d) of the revised regulations provided expanded lead soil hazard assessment provisions including visual assessment details, when testing is required, allowable limits for comparing test results as defined by EPA in 40 CFR 745.65,

acceptable remediation methods, and the issuance of lead safety certificates when soil is covered with snow. Acceptable soil remediation is also outlined within this section.

PHL § 1377(8) describes “visual inspections for deteriorated paint and outdoor soil conditions, as well as the collection of dust wipe samples....” The regulations rely on visual inspections and do not require collection of soil samples unless a property owner disputes that exposed soil on their property presents a lead hazard. The intent of the PHL and Subpart 67-5 is to eliminate the potential for tenant lead exposure, and focusing remediation efforts to address bare soil in areas of a yard where people are likely to spend time is appropriate. During times of snow cover, covered soil does not present a direct exposure concern. Snow cover conditions shall be documented on the lead safety certificate as the Department recognizes this condition is temporary. The Department's website recommends that property owners and tenants identify hazards including bare soil when they arise. Tenants are encouraged to notify property owners promptly of any hazards and request repair or notify their LHD for follow-up.

The Department will continue to apply the EPA 40 CFR 745.65 standards for soil for Subparts 67-2 and 67-5. In the event that EPA modifies its standards, the Department will reevaluate and update the regulations as it deems necessary. The Federal standards are considered appropriate for these programs and no changes were made in response to these comments.

Any additional information concerning soil remediation options will be addressed through guidance and will refer to acceptable EPA remediation methods.

Comment: Several commenters alleged that the regulations are unclear or lack necessary details for successful implementation. Commenters requested that the regulations provide clear directions for implementing ‘every aspect of the registry and inspection program,’ raised objection to the term ‘manner acceptable to the Department,’ and shared concerns with relying on guidance documents to outline significant aspects of the program, particularly the minimum standards for a form on which the owner may self-certify a satisfactory inspection.

DOH Response: The Department believes that there is adequate detail in Subpart 67-5 for property owners to achieve compliance, for tenants to understand the process and their rights, and for LHDs to implement the program.

The Department routinely provides forms and detailed procedures through guidance documents to LHDs. Overly detailed regulations can lead to implementation challenges and limit options to improve program practices and performance without further regulatory amendments. Guidance will be developed to ensure consistent and appropriate implementation.

The Department (or LHD) will provide standardized lead safety certificate and inspection forms for property owners to use. These forms will not be included in the regulation. Key components of the certification process are described in section 67-5.6(b). The submission process will be described through guidance to LHDs and owners. No changes were made in response to these comments.

Comment: One commenter claimed that the Department was exceeding its authority by allowing exemptions from the registry and inspection program as well as allowing remediation instead of abatement.

DOH Response: The regulation specifically states that any exemption must be based on the Department's determination that a given property is not implicated by the relevant provisions of Public Health Law. The intent of PHL § 1377(8) requires, at minimum, a visual inspection for deteriorated paint. PHL § 1377(9) describes remediation of lead-based paint hazards. The statute does not reference abatement, and for that reason it is not appropriate to introduce the term in regulation. Requiring lead *abatement* for all properties with visual evidence of deteriorated paint is beyond the intended scope of the law. No changes were made in response to this comment.

Comment: One commenter requested several changes pertaining to collaboration with Local Code Enforcement offices. Specifically, they requested clarification of whether compliance is required before initial Certificate of Occupancy issuance, as a condition to renewal, or as a parallel compliance track. The commenter asked how PHL § 1377 might impact the validity of current Certificates of Occupancy and asked that the regulations preserve municipal authority to conduct inspections and explicitly recognize municipal Certificate of Occupancy programs as valid for PHL § 1377 compliance. Additionally, this commenter raised concerns about the expanded inspection and sampling requirements increasing the workload associated with Certificate of Occupancy issuance due to the additional required inspection steps, tracking, and recordkeeping.

DOH Response: Several of these comments were forwarded to the NYS Department of State for consideration as they draft their regulatory amendments as required by Executive Law § 381, which was amended to require documentation of compliance with regulations adopted pursuant to PHL § 1377 for a Certificate of Occupancy to be issued for multiple dwellings (meaning, those with three or more units) in the Communities of Concern. The NYS Department of State is developing rulemaking to support these changes to Executive Law.

It is the Department's position that municipal Certificate of Occupancy programs working with LHDs to implement the Rental Registry Program fall under the definition of a "designated representative" and are therefore recognized as valid for PHL § 1377 compliance.

The Department understands the workload concerns, and procedural solutions will be addressed through collaboration with NYS Department of State and memorialized in guidance. No changes were made in response to these comments.

Comment: Commenters raised concerns about inspector certification requirements and expressed the opinion that all inspectors, including LHD staff, should be required to hold EPA Risk Assessor certification to perform inspections for the Rental Registry Program.

DOH Response: The Department establishes training standards for Department and LHD staff to ensure they are qualified to identify and assess lead-based paint hazards and risks, visual soil lead hazards, and conditions conducive to lead poisoning. LHD staff working on these programs are trained by EPA-certified Lead Risk Assessors. PHL § 1377(7)

expressly allows owners to perform inspections if they meet inspector qualifications specified in regulation; in order to perform lead hazard inspections per Subpart 67-5, owners must be EPA-certified Lead Risk Assessors. No changes were made in response to this comment.

Comment: Several commenters expressed the need for transparency of program elements and public access to the Registry.

DOH Response: The Department intends to make some information collected through the Rental Registry data system publicly available and accessible. Public access may occur in phases as the data system for the Registry is further developed. The Department will also meet the reporting requirements outlined in PHL § 1377(11) for submission of an annual report to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly. No changes were made in response to these comments.

Comment: Commenters requested that regulations should incentivize permanent abatement and raised concerns with allowing paint film stabilization and interim controls.

DOH Response: Permanent abatement measures are incentivized in statute by the availability of an exemption from future inspection requirements, as well as by the availability of remediation funding distributed by NYS Homes and Community Renewal. The NYS Homes and Community Renewal funding is allocated through contracts with LHDs or housing non-profit organizations to support landlords in remediating lead hazards with priority given to permanent abatement.

Paint film stabilization and other interim controls are less costly remediation methods that can control exposure to lead. This type of remediation must be maintained over a course of years and is not a form of abatement. Interim controls are only acceptable for implementation prior to remediation to offer immediate, albeit temporary, protections for tenants. The imposition of interim controls in themselves will not qualify a property for certification. No changes were made in response to these comments.

Comment: Commenters expressed concern that the regulations do not offer adequate tenant protections. Specific requests include adding provisions to strengthen tenant protection during remediation; to address landlord retaliation; to clarify how written notices to tenants must be provided and the language in which they're provided; to strengthen language and increase funds for tenant relocation; and to specify mechanisms with which tenants can report hazards.

DOH Response: The tenant protections in section 67-5.8 are within the enforcement authority and capacity of the Department and LHDs to provide.

The Department will provide standard forms and templates for tenant notifications and other outreach materials to LHDs, owners, third-party inspectors, and tenants. The tenant outreach materials will convey safety information, recourse options and guidance for tenants to follow if they have reason to believe that new hazards have emerged or work has been performed unsafely. Templates will include language to describe the intent and limitations of the inspection and certification.

The Department's website instructs property owners to routinely monitor for and address lead hazards in their rental units, promptly respond to reports of deteriorated paint or bare soil conditions from tenants, and inspect and address lead hazards before renting to a new tenant. The website also advises tenants that they do not have to wait for the three-year inspection cycle to have their unit inspected or repaired. If they identify chipping, peeling or cracking paint, or the potential presence of lead dust in bare soil where children play, they should notify the property owner immediately. If the property owner does not promptly and safely address the hazards, tenants should contact their LHD.

Funding is available for tenant relocation through the NYS Homes and Community Renewal Leading in Lead Prevention Pilot Program. No changes were made in response to these comments.

Comment: Several commenters raised concerns about dust wipe sampling protocols, requesting Subpart 67-5 reference EPA and/or HUD sampling protocols. Specifically, commenters noted that the Department has the authority to update dust wipe thresholds as EPA and HUD standards evolve, and to require dust wipe sampling of open porches.

DOH Response: HUD protocols for dust wipe sampling are not incorporated by reference, and the Department is not making this revision at this time. However, additional references may be included in programmatic guidance to ensure that recommended protocols are specific to meet the needs of the Rental Registry program.

Section 67-5.10 adopted EPA dust wipe and soil sampling standards memorialized at 40 CFR 745.65 through incorporation by reference. In the event that EPA modifies its standards, the Department will reevaluate and update the regulations as it deems necessary.

Due to a lack of EPA standards for dust wipe sampling of exterior surfaces, the Department believes that it is not technically feasible to require dust wipe sampling of exterior porch floors. It should be noted that, if porch floors are observed to have a defective paint surface, they are cited as a hazard and the surface must be safely remediated prior to issuance of a lead safety certificate. No changes were made in response to this comment.

Comment: Commenters suggested the definition of “Owner” is too broad and implicates tenants as a potential owner.

DOH Response: The Department reviewed the definition of “Owner” and as a result of this comments has removed the word “lessee” to ensure that property owner responsibilities described throughout Subpart 67-5 do not fall to tenants.

Comment: Commenters requested clarification about enforcement provisions including a graduated enforcement system with escalating fines and consequences for non-compliance, clear notices of requirements and appeal rights, and inclusion of mandated procedures for false certifications.

DOH Response: Enforcement requirements and appeal rights are included in PHL § 1375 and § 1377 and cannot be substantively changed in regulation. Procedures for false certifications are outlined in section 67-5.9(b). So far as LHDs may require further instruction on enforcement procedures, the Department will provide LHDs with guidance. No changes were made in response to these comments.

Comment: A commenter requested clarification on the exemption process. The commenter stated it is unclear if LHDs need to issue and confirm exemptions with X-ray fluorescence (XRF) analysis and dust wipe sampling or if they can accept third party documentation. Additionally, the commenter requested clarification on what constitutes an ‘on-site’ audit to grant an exemption.

DOH Response: Third party documentation of a surface-by-surface lead paint analyzer inspection for the purposes of exemption is acceptable. However, the Department, an LHD or its designated representative must confirm the findings via an onsite audit. The LHD on-site audit could include a surface-by-surface inspection with a lead paint analyzer, or a visual inspection with a previously conducted surface-by-surface inspection report to confirm the validity of the report. The collection of dust wipe samples during such audit is not required. Additional information will be provided in guidance to the LHDs. No changes were made in response to this comment.

Comment: One comment suggested that Naturally Occurring Retirement Communities (NORC) where homeowners age in place should be exempt from the requirements of the regulations.

DOH Response: Section 67-5.5(n)(3) outlines an exemption option to the lead hazard inspection and dust wipe sampling requirements for owner-occupied units or units occupied by the owner’s immediate family. The Department recognizes that there may be unique housing scenarios that do not fall within the express intent of PHL § 1377. LHDs, in consultation with the Department, can examine the applicability of Subpart 67-5 in relation to these scenarios as they occur. No changes were made in response to this comment.

Comment: A commenter requested the term “certified inspector” appearing in section 67-5.6(a) be replaced with “qualified inspector” and that a definition for “qualified inspector” be added.

DOH Response: Certified inspector was a typographical error and the Department has corrected the term to “qualified inspector” in section 67-5.6(a).

Comment: One comment requested the Department provide a definition and the specific criteria used for identifying the “communities of concern.”

DOH Response: The phrase “communities of concern” has been clearly defined at PHL § 1370-a(3), and used to map such communities since 2014. While the Department provided zip code level criteria for its current determinations about the boundaries of

communities of concern, flexibility was given to LHDs to further refine the areas based on locally available data and criteria. Some LHDs have provided supporting documentation to justify adjustment to the communities of concern boundaries. No changes to the regulation were made in response to this comment.

Comment: Commenters suggested a phased roll-out of the Rental Registry Program or a postponed start to allow owners more time to prepare.

DOH Response: Implementation and compliance dates are mandated by PHL § 1377. The Department does not have the authority to change the deadlines through the regulation and therefore no changes to the regulation were made in response to this comment.