

Summary of Express Terms

The following summarizes the proposed 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 of the amendments to Subpart 67-2.

In repealing and replacing section 67-2.2 the definitions of “abatement,” “encapsulation,” “enclosure,” and “conditions conducive to lead poisoning” 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. Conditions conducive to lead poisoning is modified to remove the word “significant” because all exposure to lead is considered significant. 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 permanently affixed to lead-containing surfaces to render them inaccessible.

Also in repealing and replacing section 67-2.2, definitions were added including “interim controls,” “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

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, or abatement activities such as replacement, enclosure, or removal. The definition of workplan is added because it is referenced in section 67-2.6(b).

The instructions for substrate correction readings when using an X-ray fluorescence analyzer are removed from the section 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. The previous version incorrectly referenced PHL § 1373(2) and this was corrected to reference PHL § 1373(1). The requirement for the owner of a qualifying dwelling to comply with the 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 the response timeline or the 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.

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 rules and regulations was removed because the next section clearly states it is the owner of the dwelling who is responsible for complying with all federal, State, and local laws and 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.

References to the short-form term “mils” were replaced with “millimeters.”

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 an abatement 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 for which the Subpart does not apply, including dwellings located in cities of a population of one million residents or more. Other residential environments for 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, does 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 outlines the requirement for issuance of a notice and demand (or equivalent) when conditions conducive to lead poisoning are identified, and requires the owner to comply with the notice and demand (or equivalent) including reporting of remediation methods and timelines. 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 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 67-5.9 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 provision of fraudulent information into the rental registry.

Pursuant to the authority vested in the Commissioner 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, to be effective upon publication of a Notice of Adoption in the New York State Register.

Subpart 67-2 is amended, and a new Subpart 67-5 added, to read as follows:

Subpart 67-2 – The title is amended to read as follows:

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 actions necessary to discontinue a condition conducive to lead poisoning such as removal, replacement, or enclosure of lead-based paint components which render such components permanently inaccessible.

(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 a 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 health officer of a city of 50,000 population or more, or the health commissioner or health officer of a county or part-county health district, the State regional health director, the State regional environmental health director, the district director having jurisdiction, or 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 property, which is occupied in whole or in part as the home, residence or sleeping place, 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 a method of abatement that involves covering of 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-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.

(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.

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

(p) 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.

(q) 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 delead components.

(r) Workplan means a plan intended to outline all conditions conducive to lead poisoning requiring remediation, as well as proposed actions to eliminate the condition(s), and a timeline in which the remediation will occur. Workplans are to be prepared by the property owner or agent and submitted to the commissioner or their designated representative for review and approval.

(s) X-ray fluorescence analyzer, or XRF, means any instrument which measures lead concentrations in milligrams per square centimeter by measuring emission of x-ray photons activated by a radioactive source within the instrument.

(t) 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]ommissioner 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 accessible to a child; (2) any child care facility; and (3) any other 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 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 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] submit a workplan outlining the conditions conducive to lead poisoning and proposal to remediate such conditions.

The extent of [abatement] remediation, a timeline for completion, and method(s) to be used shall be determined by the [C]ommissioner or their [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]ommissioner or [his] their designated representative shall require in the notice and demand, where necessary, pre-abatement 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) 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] millimeters and sealed; (2) room openings must be sealed with plastic sheets that have a minimum thickness of six [mils] millimeters and (3) floors or in place carpet must be covered with two sheets of plastic a minimum thickness of six [mils] millimeters 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] millimeter or six [mils] millimeter 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 and shall include, but not be limited to, [an] a HEPA filtered vacuuming of all interior surfaces, including window sills, 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] remediation work specified has been 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 structured 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:

(1) Lead-containing surfaces shall be coated with materials approved as an encapsulant of lead-based 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.

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

(3) 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] millimeters, 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. The regulations 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.

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 discontinue a condition conducive to lead poisoning such as removal, replacement, or enclosure of lead-based paint components which render such components permanently inaccessible.

(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) “Condition conducive to lead poisoning” means: 1) the presence of lead-based paint or other similar surface coating 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; 2) the presence of lead dust hazards; or 3) the presence of lead soil hazards.

(f) “Department” means the New York State Department of Health.

(g) “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 or partial-service county health district, the State regional health director, State regional environmental health director or district director having jurisdiction, or 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.

(h) “Dust-wipe sampling” is a method of testing for the presence of lead in settled dust following a procedure acceptable to the department.

(i) “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.

(j) “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.

(k) “Enclosure” means a method of abatement that involves covering of 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) “Inspector” means a person who is qualified to identify and assess lead hazards and risks and is certified or trained in a manner acceptable to the department.

(m) “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.

(n) “Lead dust hazard” is the presence of dust which, when sampled using a procedure acceptable to the department and analyzed by a New York State Department of Health Environmental Laboratory Approval Program (ELAP) certified laboratory, indicates the presence of lead in concentrations exceeding

action levels established by the EPA, in 40 CFR 745.65, as published in 89 FR 89416, Nov. 12, 2024.

(o) “Lead hazard” is the presence of any condition(s) conducive to lead poisoning.

(p) “Lead hazard inspection” means an environmental investigation to identify conditions conducive to lead poisoning conducted by an inspector meeting the qualifications established by the department.

(q) “Lead hazard inspection report” means a record of environmental conditions conducive to lead poisoning 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-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.

(s) “Lead-safe work practices” are ways to perform paint-disturbing work so that occupants, workers, and 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 leadbased paint hazard to the occupants in the dwelling’s current condition. The lead safety certification must be received in a format approved by 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, lessee, 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 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 a condition conducive to lead poisoning and may include paint film stabilization, encapsulation, or abatement activities such as replacement, enclosure, 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 which must be registered by property owners; generate notices to said owners; track lead hazard inspections, violations, and remediation of conditions conducive to lead poisoning; 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) "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. Workplans are to be prepared by the property owner or agent and submitted to the department or its designated representative for review and approval.

(ae) "X-ray fluorescence analyzer," or "XRF," means any instrument which measures lead concentrations in milligrams per square centimeter by measuring emission of X-ray photons activated by a radioactive source within the instrument.

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 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 January 2, 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 or in a valid certificate of occupancy, must register their units in the rental 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, corporation title, e-mail address, phone number, and 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, 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 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 assessment of soil conditions on the property as defined by boundaries recorded in a registered deed. 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 an XRF to identify lead hazards.

(d) 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.

(e) Dust wipe samples shall be collected after lead hazards are remediated, and the unit is thoroughly cleaned. Visible dust or debris in outdoor living areas shall be cleaned and visible paint chips on the ground must be completely removed before final inspection.

(f) 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.

(g) When a lead dust wipe sample exceeds EPA dust lead action levels, the 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 hazard if they do not open or close easily. The lead hazard(s) shall be abated prior to further dust wipe sampling.

(h) All samples of painted surfaces, paint, dust, soil, or other potential lead sources collected during a lead hazard inspection must be analyzed by a New York State Environmental Laboratory Approval Program (ELAP) certified laboratory.

(i) 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.

(j) Lead hazard reduction, remediation, abatement, or interim controls must be conducted in accordance with all applicable laws, rules, and regulations.

(k) Lead hazard inspections that identify condition(s) conducive to lead poisoning will be considered unsatisfactory and a lead safety certification must not be issued. Third-party lead hazard inspection reports identifying a condition conducive to lead poisoning must be submitted by the owner to the Local Health Department within 15 days of the inspection taking place. Unsatisfactory dust wipe sample results must be submitted to the Local Health Department within seven days of receipt by the third-party inspector or the owner of the rental unit or the owner's representative.

(l) Third-party inspector conducted inspections and associated lead safety certifications are subject to audit by the department or its designated representative to include confirmatory inspection(s) and 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.

(m) Dwelling unit(s) subject to the requirements of this Subpart may be exempted from lead hazard inspections and dust wipe sampling, for the purposes of the rental registry. Those dwelling 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. Dwelling units may be exempted from inspections as follows:

(1) Where the dwelling unit is determined to be free of lead-based paint, as evidenced by a surface-by-surface XRF 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 hazards have been abated by removal or replacement. This may require confirmation by an XRF inspection and dust wipe samples at the department's discretion.

(3) Where the department or its designated representative confirms that lead hazards have been abated by enclosure, and where the owner of such dwelling unit verifies that the integrity and thoroughness of the enclosure is sufficient to eliminate any further risk of lead exposure. Attestations must be submitted to the department or its designated representative at least once every three years. Failure to submit the required attestations shall render the inspection exemption invalid.

(4) Where the dwelling unit is not rented and is occupied by the owner or the immediate family of the owner, and the owner provides written attestation that they occupy the 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 the lead hazard inspection and dust wipe sampling exemption invalid.

67-5.6 Lead Safety Certification Requirements. (a) 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.

(b) The lead safety certification must indicate that, at the time of attestation, the rental unit was free of lead-based paint hazards, lead dust hazards, and lead soil hazards and did not have lead dust 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.

(c) Dwelling unit(s) subject to the requirements of this subpart may be exempted from lead safety certifications where the dwelling unit is not rented and is

occupied by the owner of the dwelling or immediate family and the owner of the dwelling provides written attestation that they occupy the 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 the lead safety certification exemption invalid.

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

(a) Whenever the department or its designated representative determines that any condition(s) conducive to lead poisoning exists in a registered dwelling, a written notice and demand (or equivalent notification) for discontinuance of the lead hazards will be issued in accordance with section 1373(2) of Public Health Law.

(b) Following issuance of a notice and demand (or equivalent notification) by the department or its designated representative for discontinuance of conditions conducive to lead poisoning, 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) In response to a lead hazard inspection, no person shall commence lead-based paint remediation prior to receipt of a written notice and demand (or equivalent notification) which, at the discretion of the department or its designated representative, may include the requirement for submission of a proposed workplan for review and approval. Interim controls that do not disturb paint or generate dust may proceed immediately after lead hazard(s) are identified.

(d) The property owner shall attest in writing that they will 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 millimeters and sealed; and,

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

(iii) floors or in-place carpet must be covered with two sheets of plastic with a minimum thickness of six millimeters, 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-millimeter or six-millimeter 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 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 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 dwelling 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).

(e) 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 hazards may include:

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

(ii) Removal. 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 millimeters, 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.

(iii) Enclosure. 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.

(iv) 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 or the United States Department of Housing and Urban Development, or at the discretion of the commissioner, the American Society for Testing and Materials.

- (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) Other procedures acceptable to the department or its designated representative.

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

- (a) The owner must notify tenants of all eligible dwellings that their unit is part of the rental registry and provide, as directed by the department or its designated representative, information on the status of their rental unit in the registry and education regarding lead safety for tenants.
- (b) When lead hazard(s) are identified in a rental unit during a lead hazard inspection, the owner must notify tenants renting affected units of the results of the lead hazard inspection within 24 hours of receiving the inspection results.
- (c) The owner shall take all necessary steps to protect tenants from exposure to lead 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 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.
- (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 imminent 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' 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 condition conducive to lead poisoning, the procedures for enforcement, including conducting 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 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, 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) All enforcement activities, including participation in formal hearings, may at the discretion of the commissioner 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. The regulations 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 lead poisoning prevention program responsible for establishing and coordinating activities to prevent lead poisoning and minimize risk of exposure to lead. PHL § 1373 authorizes the Department to designate areas at 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 set forth in PHL § 1377 is to protect the health and safety of children by reducing the risk of 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 of high risk with the highest prevalence of children with elevated blood lead levels in the State. The ultimate objective is to protect children from the hazardous effects of lead poisoning. The proposed amendments to Part 67 (addition of Subpart 67-5 Targeted State Rental

Registry and Proactive Lead Hazard Inspections and amendments to Subpart 67-2 Environmental Assessment and Abatement) 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 any conditions conducive to lead poisoning be safely remediated, such that a lead safety certification can be issued for each eligible unit on a 3-year recurring cycle. Additionally, the amendments provide for protection of the tenants and clarify necessary administrative provisions for program oversight and implementation.

Needs and Benefits:

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

Proactive remediation of lead hazards in New York State can help decrease the number of children with elevated blood lead levels. According to NYS LeadWeb database, in 2021 there were roughly 7,000 children in New York State diagnosed with elevated blood lead levels. Lead poisoning can lead to several societal impacts including but not limited to healthcare costs, lost tax revenue, increased crime, special education costs, and IQ loss 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 then 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 in New York State are located along the Hudson River and the historic Erie Canal, and this is where the oldest housing stock can be found. Although the use of lead in household paint has been prohibited since 1978, leaded building components, despite being poisonous to children, 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 with keeping these surfaces intact and their propensity to create lead dust. These areas with the oldest housing stock represent high risk for child lead poisoning and are where a significant percentage of the communities of concern are found.

The targeted 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 conditions conducive to lead poisoning 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), 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 condition(s) conducive to lead poisoning 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. 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 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 \$1200.00 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 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 will cover costs associated with staff salary, travel, overhead, and supplies.

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% 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 via Homes and Community Renewal 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 NYSDOH to support implementation of this program. A majority of these funds, approximately \$15.86 million, will be allocated to Local Health Departments (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 NYSDOH 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 DOH and HCR, is estimated to be approximately \$120 million for the first three-year compliance period.

Costs to the Department of Health:

The Department of Health will need to create and maintain a data management system to collect, track, and report data on all aspects of the rental registry program. 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 NYSDOH to support effective implementation and evaluation of this program.

Local Government Mandates:

This regulation affects local health departments and their partners such as Local Codes Enforcement. Local Health Departments (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. LHD. 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 database management system will support automation of many, if not all, of these activities so additional paperwork burden is expected to be minimal.

Paperwork:

This regulation requires that Local Health Departments 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 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 United States Environmental Protection Agency (EPA) and Housing and Urban Development (HUD) related to the Residential Lead-Based Paint Hazard Reduction Act.

Alternatives:

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

Federal Standards:

There are no federal standards for administering a lead rental registry or conducting proactive inspections. The United States Environmental Protection Agency (EPA) does oversee a Risk Assessor Certification Program to license professionals conducting a Lead Risk Assessment as well as Lead Renovation, Repair, and Painting and Lead Abatement contractor certifications to support use of lead safe work practices when conducting remediation and abatement.

Compliance Schedule:

This proposed rule will become effective immediately upon adoption. Based on PHL § 1377, Local Health Departments and the regulated community will be required to implement and adhere to these regulations by November 3, 2025. Regulated entities can register, inspect, and be granted a Lead Safety Certification throughout the three-year monitoring period. If lead hazards are identified, regulated entities must take corrective actions immediately to address the lead hazards as appropriate in order to receive a Lead Safety Certification as required.

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Subpart 67-5 is needed in response to PHL Section 1377 that was created in 2023. PHL 1377 requires that the Department of Health (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 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 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 small businesses is unknown.

Compliance Requirements:

County Local Health Departments (LHDs) 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 code 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 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 EPA requirements, conduct a clearance inspection, 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 in order to conduct business using best practices related to lead risk assessment and lead safe work practices. Some corrective actions to address lead 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), 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 condition(s) conducive to lead poisoning 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. Owners (regulated parties) might be a small business owning 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 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 Local Health Department (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 Homes and Community Renewal 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 NYSDOH to support implementation of this program. A majority of these funds, approximately \$15.86 million, will be allocated to Local Health Departments (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 NYSDOH 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 DOH 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 the clearance inspection and subsequent lead dust wipe sampling. 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. Funding is available to LHDs to staff and implement this program through funds administered by NYSDOH. 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 the creation of Public Health Law § 1377 and will impact LHDs and several groups in the housing sector including landlords, inspectors, and contractors. Local Health Departments 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 defined by the Department of Health 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 once every three years. A satisfactory lead hazard inspection and satisfactory dust wipe samples 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. Local Health Departments 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 State by the Local Health Department so the commissioner can meet the annual reporting requirements established in Public Health Law 1377. 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), 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 condition(s) conducive to

lead poisoning 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 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 Local Health Department (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 Homes and Community Renewal 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 NYSDOH to support implementation of this program. A majority of these funds, approximately \$15.86 million, will be allocated to Local Health Departments (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:

NYSDOH 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 the creation of Public Health Law § 1377. 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 of Health (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. Inspections will include, at minimum, visual inspections for deteriorated paint and dust wipe sampling if no visible hazards are identified. 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 Environmental Laboratory Approval Program (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.