

## 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.

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

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

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

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

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

The instructions for substrate correction readings when using an X-ray fluorescence analyzer are removed from 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 a notice and demand was added to this section to stipulate enforcement for failure to comply with any aspect of the notice and demand, such as adhering to a response timeline or workplan submission requirements. Previously, the owner's compliance with the notice and demand was only referenced as a requirement to remediate conditions conducive to lead poisoning upon receipt of the notice and demand.

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

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

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

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

The term “mils” was reinstated and used as the unit of measure when describing the thickness of plastic sheets in Subpart 67-2.

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

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

Section 67-5.1 outlines the purpose of Subpart 67-5, establishing the administrative requirements for a targeted State rental registry and lead safety certification requirements

in multi-family dwellings built before 1980 in communities of concern as identified pursuant to PHL § 1370-a(3).

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

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

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

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

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

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

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

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

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

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

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

Section 67-2.1 is amended to read as follows:

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

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

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

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

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

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

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

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

(f) Commissioner means the State Commissioner of Health.

(g) Condition conducive to lead poisoning means:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) ug/dL means micrograms per deciliter.

Section 67-2.3 is amended to read as follows:

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

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

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

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

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

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

Section 67-2.6 is amended to read as follows:

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

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

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

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(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] remediation and clean up actions as specified in 67-2.7(a) and (b) and any one or more of the actions listed in 67-2.7(c) through (j) of this section, and dust wipe sample requirements outlined in subdivision (k) of this section, as part of [an abatement] remediation of a dwelling:

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

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

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

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

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

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

(1) after repair of water leaks caused by 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, the United States Department of Housing and Urban Development, 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.

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

(k) Dust wipe samples shall be collected after lead hazards are remediated and the dwelling is thoroughly cleaned in accordance with the requirements of subdivision (b) of this section. Dust wipe samples shall be collected from floors (excluding open porches), and where practicable, interior windowsills and/or window troughs using a procedure



acceptable to the department. Dust wipe sample results must not indicate the presence of lead in a concentration which exceeds standards established by the federal Environmental Protection Agency in 40 CFR 745.65, as published in 89 FR 89416, Nov. 12, 2024.

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

67-2.9 - Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in Subpart 67-2 have been filed with the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled: Code of Federal Regulations, Title 40, Part 745, revised as of November 12, 2024, published by the Office of the Federal Register, National Archives and Records Administration. References to federally approved methods of lead paint analysis and encapsulation issued by the U.S. Department of Housing and Urban Development have been filed with the Office of the Secretary of State, the publication so filed being entitled: Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, Second Edition, July 2012, published by the Office of Healthy Homes and Lead Hazard Control. The reference to professional standards for the application of lead paint encapsulants issued by the American Society of Testing Materials have been filed with the Secretary of State, the publication so filed being entitled: Standard Specification for Non-Reinforced Liquid Coating Encapsulation Products for Leaded Paint in Buildings, ASTM E1795-20a, last updated March 11, 2025. The regulations, guidance and professional standards incorporated by reference may be examined at the Records Access Office, New York State Department of Health, ESP Corning Tower, Albany, New York, 12237 or can be

directly obtained from the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402.

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

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

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

- (a) “Abatement” means actions necessary to permanently discontinue a lead-based paint hazard such as removal or replacement of lead-based paint components.
- (b) “Approved laboratory” means the New York State Department of Health's Wadsworth Center, or a laboratory certified by the New York State Department of Health pursuant to its Environmental Laboratory Approval Program (ELAP).
- (c) “Commissioner” means the State Commissioner of Health.
- (d) “Community of Concern” means an area within the State which the New York State Department of Health has designated as having a disproportionately high

prevalence of children with elevated blood lead levels, pursuant to the requirements of section 1370-a(3) of the Public Health Law.

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

(f) “Designated representative” means the health commissioner or health officer of a city with a population of 50,000 or more, or the health commissioner or health officer of a county health district as described in section 351 of the Public Health Law, the State regional health director, State regional environmental health director or district director having jurisdiction, or any individual so designated by the commissioner pursuant to section 206(8) of the Public Health Law.

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

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

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

(j) “Enclosure” means covering surfaces with durable rigid materials permanently affixed to the surface and sealed or caulked to prevent lead-based paint or any

other material containing lead on such surfaces from becoming accessible to people.

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

(l) “Interim controls” means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, temporary containment, specialized cleaning, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

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

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

(o) “Lead dust hazard” is the presence of dust which, when sampled in a manner acceptable to the department and analyzed by an approved laboratory, indicates

the presence of lead in concentrations exceeding action levels established by the United States Environmental Protection Agency in 40 CFR 745.65, as published in 89 FR 89416, Nov. 12, 2024.

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

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

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

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

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

(u) “Owner” includes the owner or owners of the freehold of the premises or a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, 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 the volume of new lead-based paint chips and lead dust.

(w) “Property class designation” means the property class code used to provide a statewide uniform classification system for assessment as designated by the Department of Taxation and Finance.

(x) “Remediation” includes actions necessary to discontinue lead-based paint hazards and visual lead soil hazards and may include paint film stabilization, encapsulation, enclosure, or abatement activities such as replacement or removal.

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

(z) “Rental registry” is the central statewide data system managed by the department and used to identify residential dwellings built prior to 1980 with two or more units in communities of concern; generate notices to said owners; track lead hazard inspections, violations, and remediation of lead-based paint hazards and visual lead soil hazards; and facilitate the issuance of a lead safety certificate.

(aa) “Rental unit” is a residential dwelling or portion thereof, built prior to 1980, which by virtue of its property class designation is potentially eligible for rent, lease, let, or hiring out as an abode or domicile. For the purposes of inspection, remediation, and certification, the rental unit includes the tenant’s individual unit

as well as all common interior and exterior areas of the dwelling that tenants can access.

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

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

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

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

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

- (a) dwellings located in cities with a population of one million residents or more;
- (b) dwellings which are operated under permit as temporary residences, campgrounds, mass gatherings, children’s camps, or other temporary types of residences which are not intended for occupancy as a person’s primary dwelling;
- (c) dwellings which are operated as correctional facilities, hospitals, medical facilities, nursing or convalescent homes, or which otherwise offer residential or

custodial care to individuals who are physically or mentally unable to completely care for themselves;

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

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

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

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

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



(c) Owner information, including but not limited to mailing address, corporate title, e-mail address, phone number, and any designated contact person, must be reported to the rental registry at the time of initial registration and subsequently within 30 days of any change to said information.

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

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

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

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

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

(c) A lead hazard inspection shall include, at minimum, a visual assessment of paint condition in each rental unit, all common interior and exterior areas of the dwelling, and exterior soil conditions on the property as defined by boundaries recorded in a registered deed or survey. Both the interior and exterior painted

surfaces shall be examined for the presence of deteriorated paint and visible chips, debris, or residue. In cases of a visual assessment, the presence of lead shall be assumed for painted surfaces for structures built prior to 1980 and any deteriorated paint surfaces shall be cited as hazards. The department or its designated representative may also require an environmental investigation using a lead paint analyzer to identify lead-based paint hazards.

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

(e) The department, its designated representative, or a third-party inspector may perform a lead hazard inspection and associated sampling. A qualifying third-

party inspector, including but not limited to property managers, landlords or property owners, must be certified by the EPA as a Lead Risk Assessor.

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

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

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

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

(j) To avoid conflicts of interest regarding lead hazard inspections and dust wipe sampling, all lead risk assessment activities described herein must be performed

by a person or entity independent of those performing lead hazard remediation activities.

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

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

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

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

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

from the registration requirements of this Subpart and are subject to resumption of inspection requirements at the discretion of the department or its designated representative. Rental units may be exempted from inspections as follows:

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

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

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

#### 67-5.6 Lead Safety Certification Requirements.

(a) Any property subject to registration under this Subpart which does not qualify for an exemption must pass an interior and exterior inspection for lead hazards conducted by a certified inspector, which shall be subject to review and confirmation for authenticity and completeness by the department or designated

representative. Interior inspections may be conducted either with consent of the property owner, property manager, or tenant(s), or pursuant to an inspection warrant issued by a court of competent jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

(d) off-site paint removal;

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

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

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

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

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

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

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

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

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

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

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

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

- (a) The owner must provide written notification to tenants of all eligible dwellings that their rental unit is recorded in the rental registry and information on the status of said rental unit and education regarding lead safety for tenants.
- (b) When lead-based paint hazard(s) and/or visual lead soil hazard(s) are identified in a rental unit during a lead hazard inspection, the owner must provide a copy of the lead hazard inspection results to tenants renting affected units within 24 hours of receiving the inspection results.
- (c) The owner shall take all necessary steps to protect tenants from exposure to lead-based paint hazards and visual lead soil hazards while remediation of such hazards is in progress, in a manner acceptable to the department. If only a portion of the units were inspected during initial inspections, it shall be presumed that the other units in the dwelling contain similar hazards to those identified and tenants in those additional units shall be similarly notified.
- (d) Once lead-based paint hazards are identified in a unit, and that unit becomes vacant, the unit shall not be reoccupied until a lead safety certification is issued.
- (e) The department or its designated representative may prohibit the presence of children and pregnant people in part or all of a registered dwelling or rental unit during remediation activities.
- (f) The department or its designated representative may require relocation of occupants to temporary housing until remediation work has been successfully completed. If occupants must be relocated, it shall be the responsibility of the owner to provide suitable temporary housing until occupancy is permitted by the department or its designated representative.

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

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

#### 67-5.9 Enforcement.

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

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

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

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

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

#### 67-5.10 - Incorporation by reference.

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

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

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

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

### **Legislative Objective:**

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

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

### **Needs and Benefits:**

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

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

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



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

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

## **COSTS:**

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

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

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

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

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

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

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

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

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

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

#### **Costs to State and Local Governments:**

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

#### **Costs to the Department of Health:**

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

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

**Local Government Mandates:**

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

**Paperwork:**

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

**Duplication:**

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

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

**Alternatives:**

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

**Federal Standards:**

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

**Compliance Schedule:**

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

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**REGULATORY FLEXIBILITY ANALYSIS**  
**FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

**Effect of Rule:**

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

**Compliance Requirements:**

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



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

**Professional Services:**

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

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

**Compliance Costs:**

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

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

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

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

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

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

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

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

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

#### **Economic and Technological Feasibility:**

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

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

**Minimizing Adverse Impact:**

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

**Small Business and Local Government Participation:**

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

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

## **RURAL AREA FLEXIBILITY ANALYSIS**

### **Types and Estimated Numbers of Rural Areas:**

This rule applies to 25 communities of concern as identified by the Department of Health (Department) pursuant to Public Health Law § 1370-a(3) based on the number of childhood elevated blood lead level cases and the number of eligible rental properties with two or more units built before nineteen hundred eighty (1980). Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. There are 44 counties with a population of less than 200,000 based upon the United States Census estimated county populations for 2020

(<https://www.census.gov/quickfacts/>). Of these 44 counties, 10 include at least one municipality identified as a community of concern. These counties are listed below. The communities of concern impacted by this regulation were selected based partially on number of pre-1980 rental housing units, which are in the more densely populated areas of these rural counties.

Broome

Cayuga

Chautauqua

Chemung

Fulton

Jefferson

Montgomery

Rensselaer

Schenectady

Ulster

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

Albany

Dutchess

Erie

Monroe

Niagara

Oneida

Onondaga

Orange

### **Reporting, Recordkeeping and Other Compliance Requirement:**

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



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

**Costs:**

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

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

**Costs to Regulated Entities:**

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

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

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

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

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

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

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

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

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

**Costs to Local Governments:**

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

**Minimizing Adverse Impacts:**

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

**Rural Area Participation:**

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

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

## **JOB IMPACT STATEMENT**

### **Nature of Impact:**

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

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

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

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

**Categories and Numbers Affected:**

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

**Regions of Adverse Impact:**

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

**Minimizing Adverse Impact:**

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

**Self-Employment Opportunities:**

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



## **SUMMARY OF ASSESSMENT OF PUBLIC COMMENT**

The Department of Health (Department) received approximately 20 written comment letters and emails on the proposed rulemaking published on December 24, 2024 in the State Register during the public comment period. Commenters included several advocacy groups, lead and healthy homes coalitions and centers, Local Health Departments (LHDs), various associations, and community residents. Additionally, several organizations, subject matter experts, physicians, academia, counsel, and some members of the Advisory Council on Lead Poisoning Prevention convened a work group to provide one set of comments.

Commenters requested distinction between Subparts 67-2 and 67-5, which derive statutory authority from PHL §§ 1373 and 1377, respectively, and have unique purposes. Some commenters claimed the Legislature did not intend for the Department to equate “lead paint hazards” with “conditions conducive to lead poisoning.” The Department worked to maintain consistency in definitions of the same terms used in both Subparts to the greatest extent possible. The Department recognizes the differences between Subparts 67-2 and 67-5, and removed “conditions conducive to lead poisoning” from Subpart 67-5 as the phrase is not used in PHL § 1377.

Commenters shared concerns over the scope of Subpart 67-5, suggesting the regulations address other housing quality issues and lead service lines. Commenters raised concern with the Department’s selection process of the Communities of Concern. To remain consistent with PHL § 1377, the Department did not expand the scope of

Subpart 67-5. While the Department provided zip code level definitions for Communities of Concern, flexibility is given to LHDs to further refine the areas.

Several commenters requested additional definitions and clarification to the proposed definitions in Subparts 67-2 and 67-5. The Department provided clarification to the “lead-based paint” definition; added a definition for “paint film stabilization” in both Subparts; added definitions in Subpart 67-5 for “lead-based paint hazard” and “visual lead soil hazard”; and revised the definition of “interim controls” in Subpart 67-2. The Department added an additional unit of measure for lead in paint to the “lead-based paint” definition in both Subparts. The Department removed the definition for “X-ray Fluorescence analyzer” and replaced it with “Lead paint analyzer” in both Subparts. Additional definitions were revised for clarity in both Subparts.

Commenters requested the Department clarify the action levels for dust wipe and soil sample results and conform the action levels with the US Environmental Protection Agency’s (EPA) standards. Action levels for “dust-wipe sampling” are described in both Subparts as not exceeding standards established by the EPA in 40 CFR 745.65, published in 89 FR 89416, Nov. 12, 2024. In Subpart 67-5, the Department added detail concerning assessment of soil and the criteria for which a soil hazard exists established by the EPA in 40 CFR 745.65, Lead-based paint hazards (c.) Soil-lead hazard, as published in 89 FR 89416, Nov. 12, 2024.

Commenters shared concerns with the broad definition of “owner,” the ability for an owner to serve as a “Third-party inspector,” and requested that all “inspectors” be EPA certified Lead Risk Assessors. The Department did not revise the regulation based on these comments. PHL § 1377(7) expressly allows qualified owners to perform

inspections, and Subpart 67-5 indicates that owners must be EPA-certified Lead Risk Assessors to do so.

Commenters requested more specificity in several sections of Subpart 67-2. The Department revised section 67-2.3 to state “any other dwellings where the child visits more than 8 hours per week.”

A commenter requested greater specificity throughout Subpart 67-5. The Department added detail to the inspection, sampling, document submission and reporting, clearance process, and enforcement provisions. Additional details will be provided by the Department in guidance documents, templates, standardized forms, and outreach materials for LHDs, property owners, inspectors, tenants, and other stakeholders.

Commenters raised workforce capacity concerns regarding third-party inspectors, laboratories and LHDs. LHD capacity concerns included staff for implementation and support for enforcement. No changes were made to the regulations based on these comments. The Department will monitor capacities and is working to provide funding, technical assistance and tools for implementation and enforcement to assist LHDs. Several commenters felt the committed resources were insufficient for LHDs to implement the program. The Department believes the funds are sufficient to support the core functions of the program.

Commenters requested additional tenant protections in Subpart 67-5. The Department revised section 67-5.8 to clarify that property owners are responsible for the cost of all required tenant relocations until an approved remediation plan has been completed.

Commenters suggested that program success depends on the Department providing a data system to track implementation and enforcement. Commenters requested public access to various data elements from the system. The Department is working to develop a system to track program implementation, including some public facing information.

Several commenters shared general support for the regulations and the Department acknowledged the support.

## ASSESSMENT OF PUBLIC COMMENT

In response to the December 24, 2024 notice in the State Register, approximately 20 written comments were received during the public comment period. Commenters included several advocacy groups, lead exposure prevention and healthy homes coalitions, the National Center for Healthy Housing (NCHH), Local Health Departments (LHDs), associations including the New York State Association of County Health Officials (NYSACHO), the Learning Disabilities Association of New York State (LDANYS), and the Utica/Oneida branch National Association for the Advancement of Colored People (NAACP), as well as community residents.

Several organizations and individuals collaborated to issue one set of comments. The contributors included: Clean+Healthy, Community Foundation for Greater Buffalo, Earthjustice, Environmental Education Associates, LeadSafe CNY Coalition, Learning Disabilities Association of America, LDANYS, Moms for a Nontoxic NY, NYS American Academy of Pediatrics, Unleaded Kids, WE ACT for Environmental Justice, Emily A. Benfer (Professor of Clinical Law, George Washington University Law School), Darrell Buckingham (Program Officer, Central NY Community Foundation), Cooper Burkett, Shannon Burkett (RN, IBCLC), Matthew J. Chachere, Esq. (Member of NYS Lead Advisory Council, Emeritus Attorney at Northern Manhattan Improvement Corp. Legal Services), Morri Markowitz, MD (Member of NYS Lead Advisory Council, and Director, Lead Program Montefiore Medical Center), and Joseph E. Tifft, Lead Grant Program Coordinator, City of Syracuse NY.

Due to similarities amongst many of the comments, the Department organized its responses into several major categories. The comments and responses are below.

**Comment:** Some commenters requested the Department provide the specific criteria used for identifying the “Communities of Concern.” Commenters recommended that the Department allow the housing stock to determine the geographical limits of the program, not zip code boundaries, and also consider less populous areas.

**DOH Response:** While the Department provided zip code level definitions for Communities of Concern, flexibility is given to LHDs to further refine the areas based on locally available criteria. Some LHDs provided supporting documentation to justify adjustment to the Communities of Concern boundaries. The Department reviewed the documentation and approved changes.

**Comment:** Commenters suggested the Department maintain separation between PHL §§ 1373 and 1377 in terms of regulatory language and definitions so as not to confuse the objectives of each section. As part of this delineation, commenters requested that specific terms including “abatement,” “lead paint hazards” and “conditions conducive to lead poisoning” utilized in Subpart 67-2 remain unchanged, while Subpart 67-5 use terms from PHL § 1377 including “remediation” and “free of lead paint hazards.” Commenters stated the legislature did not intend for the Department to equate “lead paint hazards” with “conditions conducive to lead poisoning.”

**DOH Response:** The Department acknowledges this concern and reviewed the regulations pertaining to PHL §§ 1373 and 1377 to evaluate where regulatory definitions should be consistent between Subparts. The Department retained the proposed

introduction of the term “remediation” to Subpart 67-2, as this term encompasses a larger variety of lead exposure reduction measures including abatement. The term is consistent in practice with the variety of lead exposure reduction measures being performed for both primary and secondary lead poisoning prevention. While abatement remains the preferred outcome, and is incentivized by existing Department programs and reimbursement structures, other remedial options are available and supported by the US Environmental Protection Agency (EPA) and the Department. With the introduction of “remediation,” the Department modified the definition of “abatement” to remove the reference to enclosure. The Department worked to maintain consistency in definitions of the same terms used in both Subparts to the greatest extent possible. The Department recognizes the differences between Subparts 67-2 and 67-5, and on that basis removed “conditions conducive to lead poisoning” from Subpart 67-5 as the term is not applicable to the intent of PHL § 1377.

**Comment:** Multiple commenters requested additional definitions and clarification to the proposed definitions for both Subparts. Specifically, commenters requested the Department clarify or define “lead-based paint,” “lead hazards,” “lead paint hazards,” “lead soil hazard,” “recurring lead hazards” and “paint film stabilization.” Additional comments concerning definitions are included in this Assessment of Public Comments.

**DOH Response:** Based on the comments, the Department reviewed the language in the regulations to ensure it is clear, science-based, and health protective while remaining feasible for implementation. The Department believes that the definitions in the proposed regulations best allow the program to be implemented across the state,

regardless of the circumstances of each LHD. Additional details will be provided in guidance documents to enable LHDs to implement the program and the regulated community to comply with the regulations.

While several definitions remain unchanged, the Department provided clarification to the “lead-based paint” definition by adding a measure for milligrams per square centimeter of lead in both Subparts; added a definition for “paint film stabilization” in both Subparts; added definitions in Subpart 67-5 for “lead-based paint hazard” and “visual lead soil hazard”; and clarified additional definitions.

**Comment:** In the definition for “interim controls” for Subpart 67-2, some commenters requested the term “lead hazards” replace “lead-based paint hazards” when describing the temporary reduction of lead exposure that such controls provide. Commenters acknowledged the differences in the Department’s proposed definition for “interim controls” compared to the EPA definition, and highlighted the importance of outreach and education to owners so they do not proceed with repairs and painting until a Notice and Demand is received.

**DOH Response:** The Department revised the definition for “interim controls” in Subpart 67-2 as requested. “Interim controls” in Subpart 67-5 references lead-based paint hazards as this term encompasses both paint and dust hazards in the Subpart and is consistent with the intent of PHL § 1377. The Department will ensure that education materials to owners and third-party inspectors describe which activities qualify as interim controls and which do not.



**Comment:** Commenters requested the regulation define levels of lead in dust and soil that constitute a hazard and describe conditions for paint, dust, and soil lead hazards that qualify a dwelling as free of lead paint hazards in Subpart 67-5. Some commenters requested that the NYS Department of Environmental Conservation's (DEC) Soil Cleanup Objective for unrestricted property use serve as the soil action level.

**DOH Response:** The definition for "lead-based paint hazards" includes both lead-based paint and similar surface coating and lead dust hazards. The definition for "lead-based paint" includes measures of lead in paint by weight and by lead paint analyzer evaluation. Action levels for "dust-wipe sampling" are described in both Subparts as not to exceed standards established by the EPA in 40 CFR 745.65, as published in 89 FR 89416, Nov. 12, 2024. The Department added details concerning assessment of soil and criteria for which a soil hazard exists in Subpart 67-5. The criteria for soil are found at 40 CFR 745.65, Lead-based paint hazards (c.) Soil-lead hazard, as published in 89 FR 89416, Nov. 12, 2024.

The NYS DEC's Soil Cleanup Objectives for unrestricted property apply to NYS DEC remedial programs and were not applied here.

**Comment:** There were multiple comments concerning "dust-wipe sampling" requirements in Subpart 67-5. Commenters requested that clearance language align with EPA guidance and standards. Some commenters shared concern over the increased

workload and costs associated with dust wipe sampling for LHDs and owners. Others raised laboratory capacity concerns.

**DOH Response:** The dust wipe sampling requirements contained in Subpart 67-5 are consistent with the plain language of PHL § 1377(8). The Department will monitor LHD workload, owner complaints and any laboratory capacity challenges that may arise when implementation begins. No changes were made in response to this comment.

**Comment:** Several commenters outlined the need to require dust wipe sampling on exterior porches for Subpart 67-5.

**DOH Response:** Due to a lack of federal standards for dust wipe sampling of exterior surfaces, the Department believes that it is not technically feasible to require dust wipe sampling of exterior porch floors and, therefore, no changes were made in response to this comment. It should be noted that, if porch floors are observed to have a defective paint surface, they are cited as a hazard in the Notice and Demand and the surface must be safely remediated.

**Comment:** Commenters requested that condition conducive to lead poisoning described in section 67-2.2 include friction and impact surfaces.

**DOH Response:** The existing definition at subdivision 67-2.2(g) includes “the presence of other environmental conditions which may result in lead exposure,” which is intended to cover friction and impact surfaces. No changes were made in response to this comment.

**Comment:** Commenters requested the regulations align with EPA guidance and standards and incorporate EPA language in the regulation.

**DOH Response:** The Department revised several definitions to align with the EPA guidance and standards, adding references to EPA action levels and criteria specific to dust wipe test results, soil lead test results, and the identification of lead-based paint.

**Comment:** Commenters noted that there are other accepted lead paint analysis options in addition to the X-ray fluorescence analyzer referenced in both Subparts.

**Response:** The Department replaced the “X-ray fluorescence analyzer” definition in both Subparts with “lead paint analyzer,” which captures instruments approved by the U.S. Department of Housing and Urban Development to measure lead concentrations in milligrams per square centimeter.

**Comment:** Commenters requested that the definition of “Inspector” in Subpart 67-5 require that all inspectors be EPA-certified Lead Risk Assessors. Commenters also requested that “owners” be prohibited from serving as an “inspector.”

**Response:** The Department establishes training standards for Department and LHD staff to ensure they are qualified to identify and assess lead-based paint hazards and risks, visual soil lead hazards, and conditions conducive to lead poisoning. LHD staff working on these programs will be trained by an EPA-certified Lead Risk Assessor.

PHL § 1377(7) expressly allows owners to perform inspections if they meet qualifications specified in regulation; in order to perform lead hazard inspections per Subpart 67-5, owners *must* be EPA-certified Lead Risk Assessors. No changes were made in response to this comment.

**Comment:** Commenters requested the definition for “owner” in Subpart 67-5 exclude several agents and representatives so owners are clear as to who the responsibilities of the regulation apply. As written, commenters contest that multiple people may qualify as an “owner” for the same property. A commenter requested the definition of “owner” also include owner(s) on the deed.

**DOH Response:** The definition of “owner” was intentionally broad to maximize the range of persons an owner-in-fact may designate to perform the owner's legal duties under PHL § 1377 and to prevent absentee landlords from attempting to exploit an overly narrow definition to avoid their obligations under PHL § 1377. The Department believes that any owner named in the deed for a specific property is necessarily implicated in the current definition. No changes were made in response to this comment.

**Comment:** A commenter raised concern that by using the property class designation, properties that are not properly reported will be excluded.

**DOH Response:** The Department is expressly obligated under PHL § 1377(1) to rely on property class designation as a basis for identifying properties subject to the statute’s registration and testing requirements. The Department intends to investigate any properties discovered to be rentals which are not appropriately designated as such by

property class. If a property is found to fall under the requirements of the registry due to rental status, the Department and LHD will work to enforce the regulations and update the property class designation. The Department may report such findings to relevant codes, tax or zoning authorities as part of that process. No changes were made in response to this comment.

**Comment:** In section 67-2.3, a commenter requested provision (3) provide more specificity indicating “dwelling” should replace “area” and “eight-hours” should replace “a significant amount of time.”

**DOH Response:** The Department revised the text as requested, as this is consistent with existing practice for the primary and secondary lead poisoning prevention programs.

**Comment:** One commenter recommended expansion to the scope of Subpart 67-5 to address other housing issues (electrical, structural, etc).

**DOH Response:** It is beyond the authorized scope of these regulations under the PHL § 1377 to address other housing quality issues. No changes were made to the proposed regulation.

**Comment:** Commenters expressed concern that section 67-5.3 does not apply to single-family rental properties. Commenters suggested that some of the impacted municipalities have a large proportion of single-family rental units and landlords are intentionally

purchasing single-family dwellings to skirt the requirements of the regulation and other rental registries.

**DOH Response:** The Department's regulations conform to the program restrictions expressed in PHL § 1377(1) which limit its applicability to buildings with two or more units. A statutory amendment would be required to expand the regulations to single-family rental buildings. No changes were made in response to this comment.

**Comment:** Commenters requested the Department clarify the approval criteria that will be used by the Department or LHDs when reviewing Rental Registry Registrations per section 67-5.4.

**DOH Response:** The Department will provide clear instructions for the registration process to owners and the LHDs. No changes were made to the proposed regulation.

**Comment:** Commenters requested clarification to section 67-5.4 on how property transfers will be tracked in the Rental Registry.

**DOH Response:** The Department will establish guidance for LHDs to address this concern. No changes were made to the proposed regulation.

**Comment:** Several comments highlighted the importance of public access to the Rental Registry.

**DOH Response:** The Department intends to make some information collected through the Rental Registry publicly available and accessible. Public access may occur in phases once the software/data system for the registry is active. No changes were made in response to this comment.

**Comment:** Commentors requested clarification to the inspection, sampling, and clearance process described in section 67-5.5. Comments cited concerns regarding inspection of interior, exterior, and common spaces; submittal timeframes for satisfactory lead hazard inspection reports and satisfactory dust wipe samples; the need for standardized forms and templates; inspection protocols for multiunit (6+) buildings; timeframes for LHD audits; and LHD issuance of Notices based on third party inspections.

**DOH Response:** The Department added details to several provisions throughout Subpart 67-5 to provide additional specificity on sampling, document submission, and action levels. Specific timeframes for submitting satisfactory lead hazard inspection reports and satisfactory dust wipe samples were not added and remains as “due by the date specified by the department or its designated representative.”

In instances where adding detail would be impractical for statewide applicability purposes, guidance will be developed to ensure consistent and appropriate implementation. The Department will provide guidance on timelines for compliance, document submission, and audits. The Department will provide standardized forms for all components of the inspection, as well as templates for inspections, certifications, and

tenant notifications. Guidance will also be provided for dust wipe sampling protocols for multiunit (6+) buildings and LHD issuance of Notices based on third party inspections.

**Comment:** Commentors requested clarification of what constitutes a lead soil hazard and how it must be assessed and/or tested, and raised concern that soil cover conditions can change following an assessment. Commenters also shared concern that during winter months, a visual assessment may not be possible due to snow cover, and that remediation may be delayed until warmer weather.

**DOH Response:** The Department expanded the lead soil hazard assessment provisions to include visual assessment details, when testing is required, allowable limits for comparing test results as defined by EPA in 40 CFR 745.65, acceptable remediation methods, and the issuance of lead safety certificates when soil cannot be assessed due to snow cover. While soil cover conditions can change following an assessment such that new areas of a yard may become bare and exposed, the lead hazard inspection represents conditions at a point in time. The regulation requires lead hazard inspections every three years to assess any change in conditions. Additionally, tenants may share concerns with the Department or LHDs should they have reason to believe that new hazards have emerged.

**Comment:** Several commenters requested subdivision 67-5.5(h) replace the term “abated” with “remediated” when describing how to handle one or more failed rounds of clearance dust wipe samples on friction surfaces including windows.



**DOH Response:** The Department revised subdivision 67-5.5(h) to state, “The lead-based paint hazard(s) shall be remediated or abated in a manner acceptable by the department or its designated representative prior to further dust wipe sampling.” Wherever practicable, abatement should be used on friction surfaces such as windows to address failed rounds of clearance dust wipe samples. However, the Department also recognizes that removal of “enclosure” from the definition of “abatement” may create feasibility challenges, so the term “remediated” was added

**Comment:** Commenters requested section 67-5.6 include the lead safety certification document that will be used by the Department, and describe the submission process.

**DOH Response:** The Department will provide a standardized lead safety certification form for owners to use. This form will not be included in the regulation. Key components of the certification are described in the subdivision 67-5.6(b). The submission process will be described through guidance to LHDs and owners. No changes were made in response to this comment.

**Comment:** Commenters urged the Department to provide accurate and understandable language on lead safety certificates and in tenant notification tools, and explain the limitations of the certifications (specific to time of inspection, based on visual inspection, etc).

**DOH Response:** The Department will provide standard templates for certification and tenant notifications and other outreach materials to LHDs, owners, third-party inspectors, and tenants. The tenant notification materials will convey safety information, recourse options and guidance for tenants to follow if they have reason to believe that new hazards have emerged or work has been performed unsafely. Templates will also include language to describe the intent and limitations of the inspection and certification. No changes were made in response to these comments.

**Comment:** Commenters raised concern that the provisions of section 67-2.6 describing the Notice and Demand requirements and actions that must occur prior to remediation are not consistent with the definition of “workplan.” The same comment was shared for Subpart 67-5.

**DOH Response:** The definition of workplan and description in the Notice and Demand sections of both Subparts were revised to address this comment.

**Comment:** Commenters raised concern with the enforceability of outstanding remediation and Notice and Demand requirements when a dwelling is to remain vacant.

**DOH Response:** It is incumbent on an owner to prevent habitation of a subject property during the remediation process. The Department is working through enforcement related concerns and will provide further direction through guidance to LHDs. No changes were made in response to these comments.

**Comment:** Related to subdivision 67.5-5(n), one commenter stated that tenant-occupied units in a dwelling with an owner-occupied unit should also be exempt from inspection unless a child resides there.

**DOH Response:** PHL § 1377 does not allow for such an exemption. Tenant-occupied units must be tested regardless of the presence of child occupants. There may be unique rental circumstances that will be handled on a case-by-case basis by LHDs. No changes were made in response to this comment.

**Comment:** In regard to paragraph 67.5-7(d)(3), a commenter suggested there will be insufficient EPA certified contractors to consult and perform abatement as required by this provision.

**DOH Response:** The Department will monitor complaints and capacity concerns during implementation of the program. No changes were made in response to this comment.

**Comment:** Commenters discussed the need to incentivize permanent abatement measures.

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

remediating lead hazards with priority given to permanent abatement. No changes were made in response to this comment.

**Comment:** A commenter requested Subpart 67.5 provide exemption for units previously abated. The commenter asked whether records from previous LHD inspections/clearance could be used for an exemption.

**DOH Response:** Since abatement measures do not in all cases remove lead hazards indefinitely, aging of or damage to previous measures may result in recurring lead hazard(s) over time. Provisions of subdivision 67-5.5(n) allow for the Department or LHDs to apply discretion on a case-by-case basis as to whether a unit may be exempt from inspection based on recent abatement history. Such determinations do not exempt property owners from the other registration requirements of the Subpart.

**Comment:** Commenters requested clarification to section 67-5.8 to describe the format by which owners must notify tenants that their unit is part of the Rental Registry and of inspection findings. Commenters also recommended the regulation state that owners must provide temporary housing should tenants require relocation.

**DOH Response:** The Department revised subdivision 67-5.8(a) to require *written* notification to tenants. Similar changes are reflected in (b). The Department also added a statement indicating it is an owner's responsibility to provide temporary housing if the Department or designated representative requires relocation of occupants.

**Comment:** LHDs and organizations associated with them shared concerns that LHDs lack the capacity to implement and enforce the program as outlined in the regulations. Commenters shared enforcement concerns in areas where LHDs lack the ability to track certain activities or act on non-jurisdictional issues such as tenants not allowing entry for inspection, enforcing landlord payment for tenant relocation, retaliatory actions against tenants, changes in vacancy, transfer of properties, and conflicts of interest protections including ensuring that separate contractors perform remediation and clearance on properties.

**DOH Response:** The Department’s Division of Legal Affairs reviewed these concerns. The Department will develop guidance and provide responsive enforcement tools to the LHDs. Additionally, the Department modified section 67-5.8 to clarify protections for tenants.

**Comment:** Some commenters wanted greater specificity in section 67-5.8, Protections for Tenants, and requested temporary housing be defined as a comparable unit in the same general location, or, if comparable housing is not available, the unit must at least be appropriate for the size of the tenant’s family.

**DOH Response:** The Department modified section 67-5.8 to enhance protections for tenants including assignment of responsibility for providing temporary housing to the owner and adding the term “suitable” to the description of temporary housing. Relocations will be monitored by the Department and LHDs.

**Comment:** Several commenters requested additional specificity in section 67-5.9 to describe each of the provisions from Subpart 67-5 that may result in an enforcement action.

**DOH Response:** The Department utilized broad language in section 67-5.9 to ensure that all requirements of the Subpart can be enforced. Revisions to further clarify the requirements of the Subpart are reflected throughout Subpart 67-5 and are described in this Assessment of Public Comments. No changes were made in response to this comment.

**Comment:** Commenters raised concern that property owners will want full XRF inspections for exemption, which will overwhelm LHD Childhood Lead Poisoning Primary Prevention (CLPPP+) Programs. Concerns were also raised to the effect that, where inspections are completed, they would be inadequate for exemption purposes as LHD staff lack the resources to access certain surfaces (high ceilings, exterior building cornices, etc).

**DOH Response:** While property owners may contest the validity of an inspection conducted by LHD or code enforcement staff, any additional inspection(s) will be at the cost of the property owner. If a property owner desires a full XRF or lead paint analyzer inspection, they may procure one at their own cost. LHDs are not responsible for providing more intensive inspections for the purpose of hazard verification or exemption. The Department revised the regulations to clarify that property owners are responsible for remediation of any hazard identified during an inspection conducted by LHD or code

enforcement staff. Additionally, all tenants concerned that lead hazards were not identified during the inspection or remain a risk after remediation may report such concerns to LHD staff who may provide inspections under the rental registry or CLPPP+ programs.

**Comment:** Commenters communicated fear that additional demands on landlords as a result of these regulations will exacerbate the housing crisis and prevalence of unhoused individuals in the impacted municipalities.

**DOH Response:** The intent of the regulation is to protect children from the often debilitating effects of lead exposure. Studies show that no amount of lead exposure is safe for children. NYS 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. Any negative consequences of this rulemaking will be monitored by the Department and LHDs. The Department and LHDs will maintain open communication with owners and tenants to understand actual hardships that may arise as a result of lead hazard cleanup efforts. No changes were made in response to this comment.

**Comment:** It was noted that in order for LHDs to succeed with implementation of Subpart 67-5, the Department must provide a data system capable of tracking enforceable components (such as multiple rounds of failed dust wipe samples) and accepting uploaded data from other systems existing in some municipalities.

**DOH Response:** A data system which will track elements of an inspection requiring follow-up (including dust wipe sample failures) is currently in the procurement phase. The Department will work to include requirements in its procurement to allow for data uploads or similar features to import existing datasets to the new data system. The new data system will also serve as a standalone system for communities without existing data systems. No changes were made in response to this comment.

**Comment:** Commenters suggested the Department's committed resources are inadequate to support full implementation of regulations. LHDs and organizations aligned with LHDs raised concern that despite the fiscal investment and commitment to provide a data system, elements of the program provided by the Department are inadequate to comply with regulations. Additional concern was raised for rural counties, suggesting the cost will be higher for them.

**DOH Response:** Approximately \$15.86 million of State funding will be allocated to LHDs to support local implementation and enforcement of this program. Funds for each LHD will vary from approximately \$500,000 in the county with the least number of units in a community of concern, to \$1.3 million in the county with multiple communities of concern and the largest number of rent-eligible units in those communities. The Department worked collaboratively to develop the cost estimates supporting the rulemaking using data from the CLPPP+ program, the National Center for Healthy Housing and 2020 census data. The funds 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 Department



considers these funds sufficient for rural counties as well. The State committed another \$20 million to assist landlords with remediation costs. No changes were made to the proposed regulation in response to this comment.

**Comment:** Commenters cited the following as barriers to successful implementation of the program by LHDs: inaccurate cost estimates related to the development of this program, inadequate funding and the inability to roll over unspent funds from one year to another.

**DOH Response:** The Department worked collaboratively to develop the cost estimates included in the rulemaking using data from NYS CLPPP+ program, the National Center for Healthy Housing and 2020 census data. NYS provided roughly \$18 million to support program needs and another \$20 million for owners to remediate lead hazards. No changes were made to the proposed regulation in response to this comment.

**Comment:** One commenter requested scope expansion to include lead service line replacement and suggested an alternative mitigation measure to the traditional removal of lead service lines.

**DOH Response:** The federal EPA's Lead and Copper Rule Improvements of 2024 requires all lead service lines be replaced by 2037. That regulation and any alternatives to it are outside the purview of PHL § 1377 and these regulations.

**Comment:** Many commenters shared support for the regulations. Several comments received by organizations and residents of impacted communities communicated relief

and gratitude that regulations were drafted to ensure lead safe rental housing in areas that have predominantly struggled with lead in rental housing.

**DOH Response:** The Department gratefully acknowledges this support.