

New York Codes, Rules and Regulations

SubPart 67-2 - Environmental Assessment and Remediation

Effective Date: 04/08/2026

Section 67-2.1 Purpose. The purpose of this regulation is to define requirements for the assessment and remediation of conditions conducive to lead poisoning.

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

- (a) Abatement means all actions necessary to permanently discontinue a condition conducive to lead poisoning such as replacement or removal of lead-based paint components.
- (b) Accessible mouthable surfaces are those surfaces located within five feet of the floor or ground that form a protruding corner or similar edge, or protrude one-half inch or more from a flat wall surface, or are located so that a child may place their mouth on such protruding surface.
- (c) Area of high risk means an area designated as such by the commissioner or their designated representative and may consist of one or more dwellings in which a condition conducive to lead poisoning of children exists.
- (d) Approved laboratory means the New York State Department of Health's Wadsworth Center or a laboratory certified by the New York State Department of Health pursuant to the department's Environmental Laboratory Approval Program.
- (e) Child care facility means any facility licensed by the New York State Office of Children and Family Services to offer or provide day care services or child care and any public or private schools attended by children six years of age or younger.
- (f) Commissioner means the State Commissioner of Health.
- (g) Condition conducive to lead poisoning means:
 - (1) the presence of lead-based paint or other similar surface coating on any accessible mouthable surface or any other surface in a condition accessible for ingestion or inhalation, where peeling, cracking, blistering, flaking, chipping or powdering of such paint or similar surface coating material occurs or is likely to occur; or

- (2) the presence of other environmental conditions which may result in lead exposure.
- (h) Designated representative means the health commissioner or public health officer of a city of 50,000 population or more, or the health commissioner or public health officer of a county or part-county health district, a State regional health director, a State regional environmental health director, a district director having jurisdiction, any county health director having all the powers and duties prescribed in section 352 of the Public Health Law, or any individual so designated by the commissioner pursuant to section 206(8) of the Public Health Law.
- (i) Dwelling means all buildings or structures or portions thereof that are on or appurtenant to a deeded property, which are occupied in whole or in part as the home, residence, sleeping place or site of supervised care of one or more human beings, including childcare facilities for children under six years of age, kindergartens and nursery schools.
- (j) Encapsulation means an alternative to paint film stabilization in which lead-based paint is covered by a specialized material explicitly made to prevent the spread of lead chips or particles in an affected space. Encapsulants must be applied by appropriately certified individuals. Encapsulation is intended to address lead hazards for at least 10 years, and shall not be regarded as a permanent abatement method.
- (k) Enclosure means covering surfaces with durable rigid materials permanently affixed to the surface and sealed or caulked to prevent lead-based paint or any other material containing lead on such surfaces from becoming accessible to children.
- (l) High efficiency particulate air (HEPA) filter means a filter capable of filtering at least 99.97% by weight of particles 0.3 microns or greater in diameter from air passed through the filter.
- (m) Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead hazards. Interim controls include, but are not limited to, temporary containment, specialized cleaning, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.
- (n) Lead-based paint means paint, plaster or other surface coating material containing more than one half of one percent of metallic lead based on the total weight of the

contained solids or dried film of the paint or plaster or other similar surface coating material or which exceeds 1.0 milligram per square centimeter of lead.

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

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

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

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

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

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

(u) ug/dL means micrograms per deciliter.

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)(10), the commissioner or 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.

67-2.4 Sampling for lead.

(a) Paint or other similar surface coating that is peeling, cracking, blistering, flaking, chipping or powdering or is on an accessible mouthable surface may be sampled for lead by the following methods:

(1) At least one gram of paint or other surface coating should be collected from each surface for approved laboratory analysis, or

(2) A portable lead paint analyzer may be used to determine the presence of lead-based paint.

(b) Any samples of painted surfaces, paint, water, dust, soil, food, consumer products and other potential lead sources collected during an environmental investigation must be analyzed by an approved laboratory as specified by the Commissioner. The sample results may be used to evaluate possible sources of lead exposure.

67-2.5 Environmental testing and reporting. An approved laboratory shall examine paint and any other environmental samples according to generally accepted scientific methods specified by the Commissioner and shall report the results of all lead analyses to the designated representative in whose jurisdiction the samples were collected.

67-2.6 Notice and demand. Whenever the Commissioner or his designated representative determines that a condition conducive to lead poisoning exists in a dwelling, a written notice and demand for discontinuance of such may be issued in accordance with of section 1373(2) of the Public Health Law.

(a) No person shall commence lead paint abatement in any designated area of high risk prior to issuance of a written notice and demand. Risk reduction efforts 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 such conditions. The extent of abatement and method(s) used shall be determined by the Commissioner or his designated representative, in accordance with applicable laws or rules and regulations.

(c) 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. The owner of the dwelling must provide, upon request, to the Commissioner or his designated representative, such documentation as shall show that the owner has fully complied with these laws.

(d) Any vacancy or change in occupancy of the dwelling before abatement has been completed shall not relieve the owner of that dwelling from compliance with the notice and demand.

67-2.7 Environmental intervention and remediation. The commissioner or their designated representative shall require in the notice and demand, where necessary, pre-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 remediation of a dwelling:

(a) 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 mil 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 remediation and shall include, but not be limited to, a HEPA filtered vacuuming of all interior surfaces, including window sills, followed by a wet mopping of all surfaces with a heavy duty household cleaning solution, followed by a second HEPA filtered vacuuming. In some instances, the commissioner or 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 specified remediation work 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 commissioner or their designated representative determines that the dwelling has been remediated.

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

(f) Encapsulation of surfaces coated with lead-based paint shall occur only after repair of structural and plumbing deficiencies including any water leaks and defective substrates and the removal of deteriorated paint in accordance with the following protocols:

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

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

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

(g) Enclosure of lead-containing surfaces with durable materials 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 all components containing lead with lead-free materials.

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

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

(2) Machine sanding, using a sander equipped with a high efficiency particle air filter

device, to feather edges and prepare surfaces for repainting or sealing.

(3) When used with appropriate respiratory protection, a heat gun, which produces a temperature not exceeding 1,100 degrees Fahrenheit, with hand scraping.

(4) Off-site paint removal.

(5) Other procedures acceptable to the Commissioner.

(j) Remediation of exterior surfaces by any of the methods described in subdivisions (a-i) of this 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.

67-2.8 Enforcement. When an owner of a dwelling fails to comply with a written notice and demand for discontinuance of a condition conducive to lead poisoning, the procedures for enforcement, including formal hearings, receivership and cooperation and assistance from those public officers, departments and agencies of the State and its political subdivisions, as provided in sections 1373, 1374 and 1375 of the Public Health Law, shall be followed.

67-2.9 - Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in Subpart 67-2 have been filed with the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled: Code of Federal Regulations, Title 40, Part 745, revised as of November 12, 2024, published by the Office of

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