

**DISTRICT’S PROPOSED LEAD REGULATIONS:
2011 Proposed Version Compared to March 2012 Proposed Revisions**

In July, 2011, the District issued a set of Proposed Regulations to implement the District’s Lead Hazard Prevention and Elimination Act (as amended). The District Department of the Environment (DDOE) received a number of comments during the official review and comment period, as well as some additional comments after the official comment period had closed. DDOE program staff reviewed and discussed the comments with attorneys from DDOE’s Office of the General Counsel, and significantly revised the originally proposed regulations in March, 2012. The principal differences between the two versions are summarized below.

Sequence of Regulatory Sections

There are major organizational differences between the 2011 and the 2012 versions of the proposed regulations. Here is a cross-walk of those differences:

2011 Sections	2012 Sections
3300 (General)	3300 (General)
3301 (Presumption)	3301 (Presumption)
3302 (Notice and Order)	3318 (Notice and Order)
3303 (Enforcement and Cost Reimbursement)	3320 (Enforcement and Cost Reimbursement)
3304 (Interim Controls)	3315 (Interim Controls)
3305 (Abatement Requirements)	3316 (Abatement Requirements)
3306 (Renovation Requirements)	3310 (Renovation Requirements)
3307 (Access to Properties)	3317 (Access to Properties)
3308 (Cease & Desist and Other Orders)	3320 (Enforcement and Cost Reimbursement)
3309 (Requirements for Temporary Relocation)	3319 (Requirements for Temporary Relocation)
3310 (Disclosure Requirements / Tenant Rights)	3313 (Disclosure Requirements / Tenant Rights)
3311 (Clearance at Change of Occupancy)	3314 (Clearance at Change of Occupancy)
3312 (Dust Sampling Technician Requirements)	3309 (Dust Sampling Technician Requirements)
3313 (Certification Requirements – General)	3306 (Certification Requirements – General)
3314 (Certification Requirements – Specific)	3307 (Certification Requirements – Specific)
3315 (Certification by Reciprocity)	3308 (Certification by Reciprocity)
3316 (Certification of Business Entities and Firms)	3311 (Certification of Business Entities and Firms)
3317 (Exceptions to Cert. Requirement)	3312 (Exceptions to Cert. Requirement)
3318 (Certification & Accreditation Denial, Suspension or Revocation)	3321 (Notice of Suspension or Revocation, or Denial of a License, Accreditation or Certification)
3319 (Lead-Safe Work Practices: General)	3302 (Lead-Safe Work Practices: General)
3320 (Exceptions to LSWP Requirements)	3303 (Exceptions to LSWP Requirements)
3321 (Prohibited Practices)	3304 (Prohibited Practices)
3322 (Accreditation of Training Providers)	3305 (Accreditation of Training Providers)
3323 (Lead Poisoning Prevention Fund)	REPEALED
3324 (Fees: Cert., Permitting & Accreditation)	3322 (Fees: Cert., Permitting & Accreditation)
3399 (Definitions)	3399 (Definitions)

Substantive Changes

The following summary provides an overview of all significant substantive changes made to the 2011 set of proposed rules, as reflected in the 2012 version. All referenced sections and sub-sections are those in the 2012 version.

Lead-Safe Work Practices:

- Added to the list in § 3302.3, in order to match the list required by EPA's Renovation, Repair and Painting Rule (RRP).

Accreditation of Training Providers:

- Added clarification in § 3305.10 that course completion certificates awarded to renovators and dust sampling technicians expire after 5 years from the course date, rather than after 2 years.
- Added new § 3305.11, which specifies that the refresher course curriculum for risk assessors must cover the essential elements in both the initial inspector course curriculum and the initial risk assessor course curriculum.

Renovation Requirements:

- Clarified in § 3310.2 that neither the demolition nor the gut rehab of a building is subject to the renovation permit requirement. However, Sections 3316.3 and 3316.4 both specify conditions under which a lead abatement permit may be required when demolition or gut rehab is being contemplated.
- Added § 3310.9(c), providing options for contractors to prove compliance with § 3310.9(a).

Disclosure Requirements and Tenant Rights Form:

- Added clarification in § 3313.5(a) that a unit in a multi-family property may be considered "lead-free" if a risk assessment of the multi-family property found the entire property to be lead-free, pursuant to HUD Guidelines.
- Added § 3313.7 to confirm that a tenant's right to register a complaint about violations of the lead law is protected by District law.
- Added § 3313.10 to require landlords to retain documentation showing they provided the Tenant Rights form to their tenants, including the date the form was provided.

Clearance Requirements at Change in Occupancy of Rental Units:

- In § 3314.5(d)(1), clarified that a unit in a multi-family property may be considered "lead-free" if a risk assessment of the multi-family property found the entire property to be lead-free, pursuant to HUD Guidelines, and in § 3314.5(d)(2), clarified that when an XRF inspection detects no lead-based paint in a unit, but the owner or the owner's agent knows that lead-based paint is present behind an enclosure, the unit may still be considered a "lead-free unit" and therefore is not subject to the turnover clearance requirements, provided that disclosure of the lead-based paint is made, and provided a copy of the O&M Plan is submitted as part of such disclosure, containing a section that discusses how the owner intends to keep the lead-based paint in intact condition.

Lead-Based Paint Hazard Abatement Requirements:

- In § 3316.2, removed the provision exempting window replacements from abatement requirements.
- Added § 3316.3 to address situations involving the “raze” or the gut rehab (“demolition”) of a property, by requiring the use of lead-safe work practices as the default standard for work that involves painted surfaces in pre-1978 buildings, with a requirement for a lead abatement permit if such surfaces are either stripped, grinded, sanded or mechanically abraded during the removal process, and with no requirement for either a permit or lead-safe work practices, if the paint has been tested by a lead inspector who certifies that it is not lead-based paint.
- Added § 3316.4 to address situations involving the raze or demolition of a property, when the work area is either on the same floor as an occupied unit or if the property where the work is occurring is within 100 feet of a child-occupied facility. In both those situations, a DDOE lead abatement permit is required.
- Added an exception to the requirement in § 3316.7(e) requiring proof of insurance for at least \$1 million when seeking a DDOE lead abatement permit. The exception, found in § 3316.7(f), is limited to applicants who want to work on their own home, and only applies if there are no tenants in the home, if the home is not a unit in a multifamily property, and if the work does not involve the demolition or the raze of the home.

Access to Properties:

- In consultation with the Office of the Tenant Advocate, § 3317.3 was re-written to include more specifics about what a property owner must include in the written notice the owner provides to tenants, when requesting access to the tenant’s unit in order to conduct lead-based paint-related activities.
- In consultation with the Office of the Tenant Advocate, § 3317.4 was re-written to include the concept of a consent form, enabling tenants to grant or deny access in writing and to state conditions for such access.
- Clarified in § 3317.8 that a tenant may deny access to an inspector or worker engaging in lead-based paint activities who is unable to provide proof of appropriate training or certification.

Notice of Violation or Notice of Infraction, and Order to Eliminate Lead-Based Paint Hazards (“Notice & Order”):

- Clarified in § 3318.4 that anyone who wants to appeal receipt of a Notice and Order needs to submit their appeal to the District’s Office of Administrative Hearings, rather than to DDOE directly.

DDOE Enforcement Actions and Cost Reimbursement:

- In response to comments received urging DDOE to be more specific about civil and criminal penalties and DDOE enforcement generally, DDOE took the section from the 2011 set of proposed regulations entitled “Cease and Desist and Other Orders” and folded it into this new section, and added subsections detailing civil and criminal penalty provisions.

Fees: Certification, Permitting, and Accreditation:

- In §§ 3322.1 and 3322.2, added an extra charge to certify those whose course completion certificates are not from a DDOE-accredited training provider.

Definitions:

- In consultation with the Department of Consumer and Regulatory Affairs (DCRA), added two new definitions to § 3399: “demolition” and “raze.” The definitions of these terms are consistent with DCRA definitions, and they are relevant to these regulations especially with respect to §§ 3310 and 3316.