

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Civil Infractions: Schedule of Fines Amendments

Section 3662, LEAD-BASED PAINT ABATEMENT AND CONTROL INFRACTIONS, is repealed and replaced with a new Section 4003, LEAD-BASED PAINT ACTIVITIES INFRACTIONS, to read as follows:

4003 LEAD-BASED PAINT ACTIVITIES INFRACTIONS

4003.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) D.C. Official Code § 8-231.02(b) (applying a lead-based paint or glaze to any surface of a residential, public, or commercial building, bridge, or other structure or superstructure, or on any paved surface);
- (b) D.C. Official Code § 8-231.05(b)(1) (continuing work stopped by a Department order);
- (a) 20 DCMR § 3304.2 (applying paint with a lead content of more than 0.009%, in accordance with 16 C.F.R. § 1303.1);
- (b) 20 DCMR § 3316.4 (failure to obtain a permit for raze or demolition of a pre-1978 building);
- (c) 20 DCMR § 3318.5(b) (failure to obtain a permit required by 20 DCMR § 3316 before beginning abatement work);
- (d) 20 DCMR § 3318.8 (clearance examination conducted by a prohibited individual following elimination of a lead-based paint hazard);
- (e) 20 DCMR § 3319.4 (failure to timely comply with relocation as ordered by DDOE);
- (f) 20 DCMR § 3321.1(b) (misrepresenting facts relating to a lead-based paint activity to a client, customer, or DDOE);
- (g) 20 DCMR § 3321.1(c) (making a false statement or misrepresentation material to the issuance, modification, or renewal of a certification, permit, or accreditation); or
- (h) 20 DCMR § 3321.1(d) (submitting a false or fraudulent record, invoice, or report).

4003.2

In addition to § 4003.3, violation of any of the following provisions shall be a Class 2 infraction:

- (a) 20 DCMR § 3300.2 (failure to maintain structures built before 1978 free of “lead-based paint hazards”);
- (b) 20 DCMR § 3302.4(a)(1) (failure to comply with 40 C.F.R. § 745.226 (regarding certification of individuals and firms engaged in lead-based paint activities) and 40 C.F.R. § 745.227 (regarding work practice standards for lead-based paint activities), or any successor regulation of EPA);
- (c) 20 DCMR § 3302.4(a)(2) (failure to comply with U.S. Department of Labor, Occupational Safety and Health Administration standards relating to lead, including those found at 29 C.F.R. § 1926.62 (construction work) and 29 C.F.R. § 1910.1025) (occupational exposure to lead generally), and any successor regulations);
- (d) 20 DCMR § 3302.4(a)(3) (failure to comply with any requirement of 24 C.F.R. Part 35 (lead-based poisoning prevention for residential structures) and any successor regulations);
- (e) 20 DCMR § 3302.4(b) (use of any prohibited method of paint removal in violation of 24 C.F.R. § 35.140 and 20 DCMR § 3304 (prohibited methods of paint removal));
- (f) 20 DCMR § 3304.1 (engaging in a prohibited practice when performing any lead-based paint activity or any renovation activity that disturbs presumed lead-based paint);
- (g) 20 DCMR § 3306.6 (failure to comply with the provisions of 20 DCMR §§ 3302, 3304, and all other applicable laws);
- (h) 20 DCMR § 3310.1 (failure to obtain a renovation permit from DDOE);
- (i) 20 DCMR § 3311.2(b) (failure to ensure that employees and sub-contractors of a business entity or firm conducting a lead-based paint activity, clearance examination, or renovation comply with 20 DCMR §§ 3302, 3304, and 3310);
- (j) 20 DCMR § 3316.1 (failure by an individual or business entity to obtain an abatement permit from DDOE before performing abatement activity);
- (k) 20 DCMR § 3316.3(c) (engaging in a prohibited practice enumerated in § 3304 during raze or demolition of a pre-1978 building);

- (l) 20 DCMR § 3316.9 (abatement performed by an individual not certified as a lead abatement worker or supervisor);
- (m) 20 DCMR § 3316.10(f) (undertaking any other raze or demolition activity before submitting a clearance report to DDOE);
- (n) 20 DCMR § 3317.8 (failure to verify that workers engaged in lead-based paint activities are properly trained or certified under the requirements in 20 DCMR Chapter 33 and that such requirements are clearly articulated in accordance with 20 DCMR § 3317.3);
- (o) 20 DCMR § 3318.5(c) (failure to ensure that persons performing an abatement activity are certified and adhere to the lead-safe work practice requirements under 20 DCMR § 3302);
- (p) 20 DCMR § 3318.5(d) (failure to timely submit a copy of the clearance report to DDOE and tenant that has been prepared by a risk assessor pursuant to D.C. Official Code § 8-231.11(f)(1), and that complies with the clearance report requirements under 20 DCMR § 3318.7);
- (q) 20 DCMR § 3318.6(a) (failure to timely comply with a DDOE order to apply interim controls, in conformance with D.C. Official Code § 8-231.15(a));
- (r) 20 DCMR § 3318.6(b) (failure to ensure that workers applying interim controls are certified, trained in lead-safe work practices under 20 DCMR § 3302, and adhere to lead-safe work practices);
- (s) 20 DCMR § 3318.6(c) (failure to comply with rules for the application of interim controls under 20 DCMR § 3315);
- (t) 20 DCMR § 3319.1 (failure to take all necessary steps to provide temporary comparable alternative living arrangements whenever DDOE orders relocation due to the presence of lead-based paint hazards);
- (u) 20 DCMR § 3319.1(a) (failure to provide tenant with timely written notice of relocation);
- (v) 20 DCMR § 3319.1(b) (failure to provide tenant with written, signed statement of right to return);
- (w) 20 DCMR § 3319.1(c) (failure to minimize duration of any temporary relocation);

- (x) 20 DCMR § 3319.1(d) (failure to offer any appropriate temporary relocation units within same property);
- (y) 20 DCMR § 3319.1(e) (failure to offer any appropriate temporary relocation units within same school district or ward and close to public transportation); or
- (z) 20 DCMR § 3319.1(f) (failure to offer other reasonably located, appropriate, and available temporary relocation units if no such unit described in (y) above is available).

4003.3 In addition to § 4003.2, violation of the following provision shall be a Class 2 infraction:

- (a) 20 DCMR § 3319.2 (failure to pay all reasonable temporary relocation expenses).

4003.4 In addition to §§ 4003.5 and 4003.6 violation of any of the following provisions shall be a Class 3 infraction:

- (a) 20 DCMR § 3302.1 (failure to use lead-safe work practices for an activity that may generate a lead-based paint hazard, in 20 DCMR Chapter 3302 and D.C. Official Code § 8-231.11);
- (b) 20 DCMR § 3302.3 (failure by an individual, firm, or entity to comply with each specified lead-safe work practice);
- (c) 20 DCMR § 3302.4(c) (failure to prevent dispersal of paint dust, chips, debris, or residue, or increasing the risk of public exposure to lead-based paint);
- (d) 20 DCMR § 3302.4(d) (failing to comply with residential property renovation requirements under 40 C.F.R. § 745.80 through 745.92);
- (e) 20 DCMR § 3305.10 (failure to issue course completion certificates with proper expiration dates);
- (f) 20 DCMR § 3306.1 (performing a lead-based paint activity, clearance examination, or renovation without certification by DDOE according to 20 DCMR § 3306 or § 3307 or § 3308, as applicable);
- (g) 20 DCMR § 3307.1 (failure to obtain certification from DDOE for individuals in specified disciplines before performing a renovation, a clearance examination, or any lead-based paint activity except for interim controls);

- (h) 20 DCMR § 3309.1(b) (failure of a dust sampling technician to comply with clearance examination requirements under 20 DCMR §§ 3310.4-8 or 3314.9 and 3314.10, as applicable);
- (i) 20 DCMR § 3309.2 (dust sampling technician conducting initial clearance examination activities for prohibited purposes);
- (j) 20 DCMR § 3310.4 (failure to perform a clearance examination following work that required a renovation permit);
- (k) 20 DCMR § 3310.6 (failure to have a clearance examination conducted by a required person);
- (l) 20 DCMR § 3310.7 (failure to file a clearance report with DDOE within seven (7) business days following the clearance examination);
- (m) 20 DCMR § 3310.9 (failure to comply with 40 C.F.R. § 745.85(a) (work practice standards for renovation activities) and § 745.85(b) (standards for post-renovation cleaning verification) when undertaking renovation work as defined in 40 C.F.R. §§ 745.80 *et seq.* that does not trigger a permit requirement under 20 DCMR Chapter 33);
- (n) 20 DCMR § 3310.16 (failure to use lead-safe work practices as set forth in 20 DCMR §§ 3302 and 3304 for renovation work);
- (o) 20 DCMR § 3311.2(a) (failure to ensure that employees and subcontractors of a business entity conducting a lead-based paint activity, clearance examination, or renovation are certified pursuant to 20 DCMR §§ 3307 or 3308);
- (p) 20 DCMR § 3311.2(c) (failure to ensure that employees and subcontractors of a business entity conducting a lead-based paint activity, clearance examination, or renovation comply with all applicable federal and District laws, regulations, and rules governing the disposal of waste containing lead);
- (q) 20 DCMR § 3313.1 (failure to disclose information about lead-based paint, lead-based paint hazards, and pending actions to a purchaser or tenant of a dwelling unit constructed before 1978);
- (r) 20 DCMR § 3313.2 (failure to provide required disclosures to a purchaser or tenant to purchase or lease a dwelling unit as required);
- (s) 20 DCMR § 3313.3 (failure to provide lead disclosure form and clearance report for units that will be occupied or regularly visited by a child under

the age of six (6) or pregnant woman, before tenant is signs a lease for the unit);

- (t) 20 DCMR § 3313.4 (failure to timely provide clearance report for a dwelling unit for which a tenant has notified the owner that a person at risk resides or regularly visits);
- (u) 20 DCMR § 3313.6 (failure to provide tenants with notice of their rights whenever a tenant executes or renews a lease or the owner provides notice of a rent increase);
- (v) 20 DCMR § 3313.8 (failure notify a tenant within ten (10) days of the presence of lead-based paint and to provide a Lead Warning Statement or lead hazard information pamphlet);
- (w) 20 DCMR § 3313.9 (failure to maintain and make available copies of all lead-related reports for a property);
- (x) 20 DCMR § 3313.10 (failure to document and make available for DDOE the date on which a Tenant Rights form under 20 DCMR § 3313.6 was provided to tenant);
- (y) 20 DCMR § 3314.1(a) (failure to provide a prospective tenant with a clearance report, if tenant informs property owner that the household will include a pregnant individual or a child under six (6) years of age); or
- (z) 20 DCMR § 3314.1(b) (failure to give a prospective tenant an acknowledgement form upon receipt of clearance report).

4003.5 In addition to §§ 4003.4 and 4003.6 violation of any of the following provisions shall be a Class 3 infraction:

- (a) 20 DCMR § 3314.1(c) (failure to retain a copy of an acknowledgement form for at least six (6) years or make it accessible to DDOE);
- (b) 20 DCMR § 3314.2(a) (failure to provide, upon written request by a tenant who is pregnant or has a child under six (6) years of age, a clearance report issued within twelve (12) months of the request);
- (c) 20 DCMR § 3314.2(b) (failure to ask a tenant sign and date acknowledgement of receipt of the clearance report);
- (d) 20 DCMR § 3314.2(c) (failure to retain a copy of an acknowledgement form or make it accessible to DDOE);

- (e) 20 DCMR § 3314.3 (issuance of clearance report by an unauthorized person);
- (f) 20 DCMR § 3314.8(a) (failure by owner of “lead-free unit” to disclose the presence of enclosed lead-based paint);
- (g) 20 DCMR § 3314.8(b) (failure by owner of “lead-free unit” to provide a tenant with a copy of the property’s Operations and Maintenance Plan);
- (h) 20 DCMR § 3315.5 (issuance of an initial clearance report or any subsequent clearance reports by an unauthorized person);
- (i) 20 DCMR § 3316.2 (failure to have individuals trained in lead-safe work practices perform listed activities);
- (j) 20 DCMR § 3316.3(b) (failure to use lead safe work practices in conformance with § 3302 or properly dispose of components containing presumed or identified lead-based paint during the raze or demolition of a pre-1978 building involving painted surfaces);
- (k) 20 DCMR § 3316.4 (undertaking the raze or demolition of a pre-1978 building without a lead abatement permit as required);
- (l) 20 DCMR § 3316.5 (failure to use approved encapsulation products);
- (m) 20 DCMR § 3316.10 (failure to timely submit a clearance report within seven (7) days following abatement activities undertaken pursuant to 20 DCMR § 3316.4);
- (n) 20 DCMR § 3316.10(a) (failure to conduct a timely clearance examination and repeat examination until a passing clearance report is issued);
- (o) 20 DCMR § 3316.10(b) (performance of clearance examination by an unqualified person);
- (p) 20 DCMR § 3316.10(c) (performance of clearance examination that does not include a visual inspection of, and dust sampling in, common areas on each floor in a multi-family property containing an occupied unit);
- (q) 20 DCMR § 3316.11 (failure to timely submit a clearance report upon completion of abatement activities);
- (r) 20 DCMR § 3316.11(a) (failure to conduct a timely clearance examination upon completion of abatement activities);

- (s) 20 DCMR § 3316.11(b) (performance of clearance examination by an unqualified individual, if there is no Order to Eliminate Lead-Based Paint Hazards);
- (t) 20 DCMR § 3316.11(c) (failure to perform a clearance examination when there is no Order to Eliminate Lead-Based Paint Hazards, as required);
- (u) 20 DCMR § 3316.11(d) (failure to analyze environmental samples taken during a clearance examination by an appropriately accredited lab and to include blank samples as required);
- (v) 20 DCMR § 3318.5(a) (failure to timely comply with a DDOE Order to eliminate a hazard by lead-based paint hazard abatement);
- (w) 20 DCMR § 3318.6(d) (failure to prepare and submit a clearance report, as required);
- (x) 20 DCMR § 3318.7 (failure to conduct a timely clearance examination pursuant to an Order to Eliminate Lead-Based Paint Hazards);
- (y) 20 DCMR § 3318.7(a) (failure to comply with clearance examination requirements, as required, pursuant to a DDOE Order to Eliminate Lead-Based Paint Hazards); or
- (z) 20 DCMR § 3318.7(b) (failure to review specified documents before performing a clearance examination).

4003.6

In addition to §§ 4003.4 and 4003.5, violation of any of the following provisions shall be a Class 3 infraction:

- (a) 20 DCMR § 3318.7(c) (failure to provide DDOE with timely notice of a dust test);
- (b) 20 DCMR § 3318.7(d) (failure to transmit results of clearance examination within seven (7) days to a property owner);
- (c) 20 DCMR § 3318.7(e) (failure to address underlying condition of the property that has caused the failure of the clearance examination);
- (d) 20 DCMR § 3318.7(f) (failure to analyze environmental samples taken during a clearance examination by an appropriately accredited lab and to include blank samples, as required); or
- (e) 20 DCMR § 3318.7(g) (failure to include items required in clearance report).

4003.7

In addition to § 4003.8, violation of any of the following provisions shall be a Class 4 infraction:

- (a) 22 DCMR § 7301.2 (failure by health care provider or health care facility to document the reason for not performing a BBL test);
- (b) 20 DCMR § 3302.4(a)(4) (failure to comply with any other standard required under 20 DCMR Chapter 33);
- (c) 20 DCMR § 3305.1 (failure of a training provider to obtain accreditation for each training and refresher course for required disciplines);
- (d) 20 DCMR § 3305.3 (failure to timely notify DDOE about a training course or any changes);
- (e) 20 DCMR § 3305.4 (failure to timely notify DDOE about a course cancellation);
- (f) 20 DCMR § 3305.5 (failure to timely provide DDOE with a copy of course certificates awarded, or a list of students who successfully complete a training course);
- (g) 20 DCMR § 3305.6 (failure to timely notify DDOE of any change in key staff);
- (h) 20 DCMR § 3309.1(a) (failure of dust sampling technician to have in their possession at any job site a copy of their DDOE-issued certification card or EPA issued certificate);
- (i) 20 DCMR § 3310.4(a) (failure to conduct required dust sampling in each room that contains a work area, as specified, as part of a clearance examination conducted under 20 DCMR § 3316.2(a) or any provision under 40 C.F.R. § 745.85 (requiring distribution of lead hazard information pamphlet to owners and occupants before beginning renovation));
- (j) 20 DCMR § 3310.4(b) (failure to take proper floor samples for work that involves door replacement under 20 DCMR § 3316.2(a), as part of a clearance examination);
- (k) 20 DCMR § 3310.4(c) (failure to take proper dust samples for exterior work areas and work areas involving exterior windows or doors, as part of a clearance examination);
- (l) 20 DCMR § 3310.4(d) (failure of a lead-based paint inspector or risk assessor to make a required determination of adequate clean soil or

ground cover, as part of clearance examination, and to include in clearance report a description of methodology underlying such determination);

- (m) 20 DCMR § 3310.4(e) (failure to timely conduct a clearance examination after completion of renovation or other activities listed in 20 DCMR § 3316.2(a) and (b));
- (n) 20 DCMR § 3310.11 (failure to timely provide pre-renovation education and documentation, as required, to listed recipients before undertaking renovation activity for compensation in a residential property or child-occupied facility);
- (o) 20 DCMR § 3311.4 (failure of business entity or firm performing lead-based paint or renovation activities to comply with recordkeeping requirements of D.C. Official Code §§ 8-231.01 *et seq.*);
- (p) 20 DCMR § 3314.9 (failure to include required elements in a clearance report prepared at change in occupancy of rental units);
- (q) 20 DCMR § 3314.10 (failure to submit environmental samples taken pursuant to 20 DCMR § 3314 to an appropriately accredited lab);
- (r) 20 DCMR § 3315.1 (failure of a person performing interim controls to be trained in the lead-safe work practices set forth in 20 DCMR § 3302);
- (s) 20 DCMR § 3315.2 (failure to provide proof of training in lead-safe work practices upon request by DDOE; failure by business entity to ensure that workers comply with these standards);
- (t) 20 DCMR § 3315.4 (failure to conduct timely clearance examination for non-abatement activities undertaken pursuant to an Order to Eliminate Lead-Based Paint Hazards);
- (u) 20 DCMR § 3315.7(failure to provide timely notice of dust test to DDOE when performing interim controls);
- (v) 20 DCMR § 3315.8 (failure to timely submit a copy of a clearance report to DDOE when performing interim controls).
- (w) 20 DCMR § 3316.6 (use of encapsulation to eliminate lead-based paint hazards on friction or impact surfaces, when identified as part of a Notice of Violation and Order to Eliminate Lead-Based Paint Hazards);
- (x) 20 DCMR § 3316.10(d) (failure to provide timely notice of dust test to DDOE);

- (y) 20 DCMR § 3316.10(e (failure to analyze environmental samples taken during a clearance examination by an appropriately credited lab and to include one blank sample for each permit issued pursuant to 20 DCMR § 3316.4); or
- (z) 20 DCMR § 3317.3 (failure to provide a timely and sufficient written request for permission to enter an occupied residential rental dwelling unit).

4003.8 In addition to § 4003.7, violation of any of the following provisions shall be a Class 4 infraction:

- (a) 20 DCMR § 3317.4 (failure to provide a consent form to a tenant as part of a written request for permission to enter a residential rental dwelling unit under 20 DCMR § 3317.3);
- (b) 20 DCMR § 3317.5 (failure to meet the tenant's reasonable conditions for access to a residential rental dwelling unit under 20 DCMR § 3317.4);
- (c) 22 DCMR § 7301.3 (failure to conduct additional BLL screening under specified circumstances); or
- (d) 22 DCMR § 7301.4 (failure to provide family lead education and referrals for social and environmental services to the family of a child with an elevated blood lead level).

4003.9 Violation of any provision of the Childhood Lead Screening Amendment Act of 2006, effective March 14, 2007, as amended (D.C. Law 16-265; D.C. Official Code §§ 7-871.01 to 7-871.06); the Lead-Hazard Prevention and Elimination Act of 2008, effective March 31, 2009, as amended (D.C. Law 17-381; D.C. Official Code §§ 8-231.01 to 8-231.20); or the implementing rules in 20 DCMR Chapter 33, which is not cited elsewhere in this section, shall be a Class 4 infraction.