

CHAPTER 17**LEAD HAZARD EVALUATION
AND ABATEMENT CODE****Authority**

N.J.S.A. 52:27D-124 and 52:27D-436.

Source and Effective Date

R.2000 d.311, effective July 5, 2000.
See: 32 N.J.R. 737(a), 32 N.J.R. 2864(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 17, Lead Hazard Evaluation and Abatement Code, expires on January 1, 2006. See: 37 N.J.R. 563(a).

Chapter Historical Note

Chapter 17, Retirement Community Full Disclosure Requirements, was adopted as R.1970 d.61, effective June 1, 1970. See: 2 N.J.R. 38(b), 2 N.J.R. 53(b).

Pursuant to Executive Order No. 66(1978), Chapter 17, Retirement Community Full Disclosure Requirements, was readopted as R.1984 d.300, effective June 27, 1984. See: 16 N.J.R. 1137(b), 16 N.J.R. 1968(a).

Chapter 17, Retirement Community Full Disclosure Requirements, was repealed by R.1989 d.317, effective June 19, 1989. See: 21 N.J.R. 958(a), 21 N.J.R. 1669(a).

Chapter 17, Lead Hazard Evaluation and Abatement Code, was adopted as new rules by R.1995 d. 381, effective July 17, 1995. See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Pursuant to Executive Order No. 66(1978), Chapter 17, Lead Hazard Evaluation and Abatement Code, was readopted as R.2000 d.311, effective July 5, 2000. See: Source and Effective Date.

Law Review and Journal Commentaries

Getting the Lead Out: An Overview of the New Federal Lead-Based Paint Disclosure Requirements. Vincent P. Maltese, Joseph J. Jankowski, 182 N.J. Law. 7 (Mag.)(Jan./Feb. 1997).

Lead Based Paint: Abate or Wait? Your Insurance Policy May Hold the Answer. Eugene R. Anderson, Joan L. Lewis, 182 N.J. Law. 10 (Mag.)(Jan./Feb. 1997).

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SUBCHAPTER 1. GENERAL PROVISIONS**5:17-1.1 Title; scope; intent**

(a) This chapter, adopted pursuant to P.L. 1993, c.288, Lead-Based Paint Hazard Abatement and Lead-Based Paint Abatement Contractor Certification Act, shall be known and shall be cited throughout the rules as “N.J.A.C. 5:17” and, when referred to in this part of the rules, may be cited as “this chapter.”

(b) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section, or provision of this chapter.

(c) This chapter controls the abatement of lead-based paint hazards and the certification of lead-based paint hazard evaluation or abatement contractors.

(d) This chapter seeks to provide and ensure public safety, health, and welfare insofar as they are affected by the identification and abatement of lead-based paint hazards. It is not intended to, nor shall it be construed to, conflict with or limit the applicability of the lead exposure in construction standards promulgated by the Occupational Safety and Health Administration (OSHA), 29 C.F.R. 1926.62.

(e) The removal, repair, encapsulation, or enclosure of the lead-based paint or lead-contaminated soil shall require a construction permit issued pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.). Any encapsulation or enclosure materials or methods shall conform to the construction requirements of the Uniform Construction Code (UCC) except that there shall be no requirement to increase the size of door or window openings.

(f) The Departments of Health and Labor, pursuant to P.L. 1993, c.288, and agreements between the Departments, shall share information about certifications and abatements pursuant to this Chapter.

1. In instances in which a child with an elevated blood lead level is identified pursuant to Chapter XIII of the State Sanitary Code (N.J.A.C. 8:51), that code shall control inspection, risk assessment and abatement of premises identified as contributing to the elevated blood lead level.

5:17-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“ASTM” means the American Society for Testing and Materials.

“Business firm” means and includes any corporation, company, association, society, firm, partnership or joint stock company, or any sole proprietor, engaged in, advertising, or holding itself out to be in the business of lead evaluation or lead abatement.

“Child occupied facility” means a building, or a portion of a building, constructed prior to 1978, that is visited regularly by the same child, six years of age or under. Such facilities include, but are not limited to, day care centers, preschools and kindergarten classrooms.

“Clearance technician” means a person with proof of having completed a State certified or HUD approved training course as a clearance technician. This person is qualified to take dust wipe samples in a limited area undergoing renovation, remodeling, repair or maintenance work. A clearance technician may also be referred to as a “dust wipe technician” or a “sampling technician.”

“Commercial building” means any building or portion thereof used primarily for commercial or industrial activity, which is generally not open to the public, or occupied or visited by children, including, but not limited to, warehouses, factories, storage facilities, aircraft hangars, garages, and wholesale distribution facilities. For purposes of applying these rules, commercial building shall not include offices or other similar spaces within such buildings.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Composite sampling” means an economical, but less specific, method of sampling for lead-based paint hazards by analyzing dust from several surfaces or soil from different locations together.

“Department” means the Department of Community Affairs.

“Encapsulant” means a coating or rigid material that relies on adhesion to a lead-based painted surface and is not mechanically fastened to the substrate.

“Encapsulation” means a process to make lead-based paint inaccessible by providing a barrier between the lead-based paint and the environment, where the primary means of attachment for the encapsulant is bonding of the product used to the surface covered either by the product itself or through the use of an adhesive.

“Enclosure” means the installation of a rigid, durable barrier that is mechanically attached to building components, with all edges and seams sealed with caulk or other sealant and having a design life of at least 20 years.

“HUD Guidelines” means the most recent version of the “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing” prepared for the United States Department of Housing and Urban Development by the National Center for Lead-Safe Housing and available from the National Center, 10227 Wincopin Circle, Suite 205, Columbia, Maryland 21044.

“HEPA” means high efficiency particulate air.

“HEPA sander” means an electric sander equipped with a specially designed shroud or containment system where all exhaust air is passed through a HEPA filter.

“HEPA vacuum blasting” means abrasive blasting with a shroud under the vacuum that is attached to the blast head where all exhaust air is passed through a HEPA filter.

"HEPA vacuum needle gun" means a needle gun that removes paint by the force of metal needles rapidly pounding against the painted surface attached to a vacuum where all exhaust air is passed through a HEPA filter.

"Inspector/risk assessor" means a person certified by the New Jersey Department of Health as such.

"Lead abatement" means a process designed either to mitigate or to eliminate permanently lead-based paint hazards on a premises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and all preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures.

"Lead abatement clearance certificate" means the certificate issued by the construction official pursuant to N.J.A.C. 5:23-2.23(m) at the end of a lead abatement project.

"Lead evaluation" means a surface-by-surface investigation to determine the presence and condition of lead-based paint and the provision of a report explaining the results of the investigation, including, but not limited to, hazards found and recommendations for abatement.

"Lead screening" means an abbreviated lead-based paint hazard evaluation which may be appropriate for buildings constructed before 1978 that are in good condition.

"Lead-based paint" means paint or other surface coating material that contains lead equal to or greater than 1.0 milligrams per centimeter squared or in excess of 0.5 percent by weight.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust or soil or lead-contaminated paint that is deteriorated or present in surfaces that would result in adverse human health effects.

" μg " means micrograms of lead per.

"N.J.A.C." means the New Jersey Administrative Code.

"N.L.L.A.P." means the U.S. Environmental Protection Agency National Lead Laboratory Accreditation Program.

"Owner" means building owner or his agent. In the case of evaluation and testing services, "owner" shall include the client of the evaluation firm if other than the owner.

"Patch test" means a field test procedure in which a small area of the existing lead-based paint film is prepared and the encapsulant product is applied or installed and cured in the manner intended for the large-scale job and then tested to determine adhesion and surface integrity.

"Plastic sheeting" means a minimum of six mil thick polyethylene (plastic) sheeting unless the text specifies otherwise.

"Superstructure" means a large steel or other industrial structure, such as a bridge or water tower, which contains no habitable space. It is synonymous with "industrial steel structure."

"Surface" means an area such as an interior or exterior wall, ceiling, floor, door, door frame, window sill, window frame, porch, stair, handrail and spindle, or other abradable surface, soil, furniture, a carpet, a radiator or a water pipe.

"UCC" means the New Jersey Uniform Construction Code, N.J.A.C. 5:23.

"Window" means the entire window system, including the sash, the stop and parting beads, and the window jambs.

"Window well" means the window trough. It is also synonymous with window stool, defined in ASTM Standards E1605-94 as flat, horizontal molding fitted over the sill, on the window interior, between jambs, that comes in contact with the bottom rail of the (lower) operating sash and the window sill.

"XRF" means x-ray fluorescence, a radiological method of in-place testing for the presence of lead-based paint on surfaces.

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: 29 N.J.R. 2202(a), 29 N.J.R. 3242(b).

Added "Commercial building" and "Superstructure".

Amended by R.2001 d.328, effective September 17, 2001.

See: 33 N.J.R. 1807(a), 33 N.J.R. 3307(a).

Inserted "Child occupied facility" and "Clearance technician".

5:17-1.3 Resource materials

Additional information on evaluating and abating lead hazards may be obtained from the following sources: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; The National Center for Lead-Safe Housing, 10227 Wincopin Circle, Suite 205, Columbia, Maryland 21044, (410) 992-0712; The National Institute of Building Sciences, 1201 L Street, NW, Suite 400, Washington, DC 20005-4024, (202) 289-7800; and the Steel Structures Painting Council, The Crane Building, 40 24th Street, 6th Floor, Pittsburgh, Pennsylvania 15222.

SUBCHAPTER 2. CONTRACTOR CERTIFICATION

5:17-2.1 Certification required

(a) Effective January 1, 1996, no individual, partnership, corporation or other business entity shall engage in either

the business of lead evaluation or the business of lead abatement, unless certified by the Department in accordance with section 15 of P.L. 1993, c.288 (N.J.S.A. 52:27D-428) and these rules.

1. For lead abatement jobs performed on superstructures where public bidding procedures are applicable, projects with an advertisement date that precedes September 24, 1997 may proceed without a certified lead abatement contractor.

(b) Any individual, corporation, partnership or other business entity seeking certification in accordance with these rules shall either be certified or shall employ individuals certified by the Department of Health in accordance with section 3 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-3) (see N.J.A.C. 8:62) and shall designate a person, certified as a lead abatement supervisor by the Department of Health, at each job site to be responsible for ensuring compliance with the requirements of P.L. 1993, c.288 and of these rules.

(c) Contractor certification shall not be required for the following individuals or activities:

1. An owner undertaking work on his or her own premises using his or her own employees, provided that those employees are certified by the Department of Health;

2. A homeowner performing lead abatement work himself or herself on a dwelling unit that he or she owns and occupies as a primary place of residence;

3. Any business firm engaging in painting, woodworking, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, provided that the firm does not hold itself out as certified by the Department or otherwise represent that it has specialized competency to perform lead evaluation or abatement work; or

4. A person with proof that he or she has completed a State-approved or HUD-sponsored training class to be a "clearance technician," when that person is taking a dust wipe sample in the work area following renovation, remodeling, repair or maintenance work; provided, however, that the activities that may be performed without evaluation contractor certification shall be limited to performing dust wipe sampling in the work area and providing a report with the results of the dust wipe analysis. A clearance technician is not qualified to perform evaluation, and is not qualified to perform clearance after a lead abatement, unless the clearance technician is employed by a certified evaluation contractor.

(d) A corporation, partnership or other business entity may be denied certification if any stockholder, director, officer, partner or other person having an economic interest in the organization shall have violated any of the provisions of these rules or been denied certification for cause. This provision shall also apply to any business organization having a parent or subsidiary relationship to any such business organization.

(e) Local health departments or other public agencies performing lead evaluations shall not be required to obtain contractor certification to perform evaluations within their jurisdictions.

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: 29 N.J.R. 2202(a), 29 N.J.R. 3242(b).

Added (a)1.

Amended by R.2001 d.328, effective September 17, 2001.

See: 33 N.J.R. 1807(a), 33 N.J.R. 3307(a).

In (c), added 4.

5:17-2.2 Conflict of interest

(a) No business firm shall be certified to offer lead evaluation or lead abatement services if any person who is a proprietor, general partner, officer, director, employee, or shareholder or limited partner in the firm is employed as an official or inspector by any agency, public or private, enforcing the State Uniform Construction Code Act or, except as otherwise provided in paragraph(a)2 below, is employed by any public health department or agency in the State of New Jersey.

1. This section shall not apply to the ownership of stock or other investment instrument in any corporation listed on any national stock exchange.

2. Any other provision of this subsection to the contrary notwithstanding, a business firm may be certified to offer lead evaluation services only, despite the fact that a person who is a proprietor, general partner, officer, director, employee, or shareholder or limited partner in the firm is employed by a public health department or agency in the State of New Jersey. In any such case, the business firm shall not engage in the business of lead evaluation within the area of jurisdiction of the public health department or agency by which any such person is employed and shall not have any relationship to any individual or business firm performing lead abatement services.

(b) Any relationship between the individuals or business firm performing lead evaluation services and the individuals or business firm performing lead abatement services at a job site shall be disclosed to the owner in writing.

(c) Except as otherwise provided in paragraph (a)2 above, nothing contained in this section shall be deemed to prevent a business firm from offering both evaluation and abatement services provided that the disclosure required in (b) above is made for any job where that firm performs both evaluation and abatement.

5:17-2.3 Application for certification

(a) Every application for certification as either a lead evaluation contractor or a lead abatement contractor, or both, shall be made on the appropriate form prescribed by the Commissioner and shall be accompanied by a nonreturnable fee of \$1,800. In the case of firms seeking certification to perform both evaluation and abatement work, two fees shall be paid.

(c) Denial of, suspension of, imposition of conditions upon, revocation of, or refusal to renew a certification shall not limit the Department from pursuing against the applicant or certificate holder any other lawful remedy available to the Department.

(d) A business firm whose certification has been revoked shall be ineligible to apply for certification for three years from the date of revocation. This ineligibility shall extend to any other business firm having any proprietor, officer, director, general partner, or shareholder or limited partner with at least a 10 percent interest in common with the business firm whose certification was revoked.

(e) Pursuant to Section 24 of P.L. 1993, c.288, the Department of Community Affairs will delegate to the Department of Labor, through a Memorandum of Understanding to be entered into between the Departments, enforcement authority over business firms performing lead hazard abatement in buildings or structures that do not contain dwelling units. Interfering with the Department of Labor in the exercise of its enforcement authority under this agreement or failing to comply with any order issued by the Department of Labor under this agreement shall be deemed to be

grounds for denial, suspension, imposition of conditions upon or revocation of certification as described in (a) above.

5:17-2.6 Civil penalties

(a) No person shall, either knowingly or purposely:

1. Obstruct, hinder, delay or interfere by force or otherwise with the Department in the exercise of any power or the discharge of any function or duty pursuant to the provisions of sections 14 through 24 of P.L. 1993, c.288;

2. Prepare, utter or render any false statement, report, document, plan or specification permitted or required pursuant to sections 14 through 24 of P.L. 1993, c.288; or

3. Refuse or fail to comply with a ruling, action, order or notice of the Commissioner pursuant to sections 14 through 24 of P.L. 1993, c.288.

(b) Any person who shall violate any provision of (a) above shall be subject to a civil penalty not exceeding \$1,000 for the first offense and not exceeding \$5,000 for each subsequent offense. If the violation is of a continuing nature, each day that it continues shall constitute an additional and separate violation.

(c) A person shall be deemed to have violated or caused to be violated the provisions of sections 14 through 24 of P.L. 1993, c.288 if an officer, agent or employee under his or her control has violated or caused to be violated any such provision. If any such person is a corporation, all officers, directors and shareholders having at least a 10 percent interest shall be jointly and individually liable for any violation by the corporation.

(d) Pursuant to Section 24 of P.L. 1993, c.288, the Department of Community Affairs will delegate to the Department of Labor, through a Memorandum of Understanding to be entered into between the Departments, enforcement authority over business firms performing lead hazard abatement in buildings or structures that do not contain dwelling units. Interfering with the Department of Labor in the exercise of its enforcement authority under this agreement shall be deemed to be a violation of (a) above and shall carry the same penalties as described in (b) and (c) above.

SUBCHAPTER 3. EVALUATION AND TESTING

5:17-3.1 Contract documents—testing and evaluation

(a) Prior to testing and evaluation, an inspector/risk assessor shall enter into a contract with the owner or client which explains:

1. The extent of the testing and evaluation, including, but not limited to, the method and number of samples to be taken;
2. Any special responsibilities or precautions which owners or occupants need to be aware of during testing;
3. The estimated duration and cost of the testing and evaluation;
4. Whether the services to be provided include testing for the presence of lead-based paint only or risk assessment. If the services to be provided include risk assessment, the contract shall specify the extent of any recommendations to be made at the completion of the testing/evaluation, including whether additional testing may be recommended. It shall be made clear to the owner that additional testing is not required by Federal law or the UCC.

5. A statement requiring the contractor to inform the owner or client, in the case of lead evaluation performed in connection with a lease or transfer of real estate subject to the Federal Requirements for Disclosure of Known Lead-Based Paint Hazards in Housing (24 C.F.R. Part 38 and 40 C.F.R. Part 745), if the results of the initial testing or screening are negative (no lead-based paint is detected).

(b) Prior to testing and evaluation, an inspector/risk assessor shall inform the owner that all testing and evaluation can be forgone if all painted surfaces are to be abated as if they were covered with lead-based paint.

(c) For residential structures, the inspector/risk assessor shall first determine if the structure pre-dates 1978. For structures built after 1978, no testing/evaluation shall be performed unless the owner acknowledges in writing that he or she has been informed that structures built after 1978 are considered lead-safe and that the owner is requesting testing/evaluation as a special precaution.

(d) If an inspector/risk assessor determines that a residential structure was built before 1978 but no earlier than 1960 or finds that all painted surfaces are in good condition, he or she shall offer to perform a less comprehensive lead screening prior to deciding whether to perform testing/evaluation.

1. The cost of the screenings shall be disclosed.
2. The screening shall include a determination of the exact age of the structure, and research to determine its painting history, and any maintenance or renovation history. Any history of health problems or medical testing or records related to lead exposure of occupants shall be considered if provided voluntarily.
3. The screening shall include a visual inspection for suspected lead hazards such as chips and dust. The inspector/risk assessor shall recommend that the screening include two composite dust samples, one from floors and one from window troughs.
4. At the owner's option, or if otherwise required by law, the screening may include a survey for proximate environmental lead sources and soil, water or air tests for lead. However, if the inspector/risk assessor undertakes these additional tests, a signed statement shall be required from the owner acknowledging that he or she has been informed that these tests, absent other evidence of contamination, are not currently required under Federal law or the UCC.

(e) At the completion of all testing and evaluation, as per this subchapter, an inspector/risk assessor shall provide an owner with a complete report of all testing performed and all results.

1. The report shall include: the date(s) of inspection; the address of the building(s) and unit numbers (if applicable); the date of construction of the building(s); the name, address and telephone number of the owner; the name and signature of each inspector/risk assessor conducting testing (including the New Jersey Department of Health certification number); the name, address and telephone number of the firm employing the inspector/risk assessor(s); the name and address of each laboratory conducting analysis of collected samples; each testing device and/or sampling procedure employed and the serial

number of any XRF device used; the precise locations of all components and surfaces on components tested or sampled; all data collected using onsite testing devices; and the results of all tests performed. A copy of this report shall be made available to the Department upon request.

2. In the case of lead evaluation performed in connection with a lease or transfer of real estate subject to the Federal Requirements for Disclosure of Known Lead-Based Paint Hazards in Housing, if the results of initial testing or screening are negative (no lead-based paint is detected), then no risk assessment or further testing shall be recommended by the contractor performing this evaluation.

i. The contractor shall obtain authorization from the owner or client before proceeding with a risk assessment.

(f) If providing recommendations was part of the contract between the inspector/risk assessor and the owner, the inspector/risk assessor, based on the results, shall outline for the owner options for the maintenance and abatement of any lead hazards or potential lead hazards if any are found.

(g) A copy of the firm's certification and/or qualifications shall be supplied at the owner's request.

Amended by R.1996 d.543, effective December 2, 1996.
See: 28 N.J.R. 3995(a), 28 N.J.R. 5069(a).
Administrative correction.
See: 32 N.J.R. 834(a).

5:17-3.2 Testing/evaluation

(a) The extent of the testing and evaluation to be performed shall be as defined in the contract with the owner as per N.J.A.C. 5:17-3.1(a)1 and shall be performed in accordance with at least one of the three standards listed below, as appropriate. For screening, inspection or risk assessment, these standards shall dictate the method of testing/sample collection. They shall serve as a guide for the number and location of samples to be taken. The actual number and location of samples taken shall be as per the contract with the owner or client. For post-abatement clearance testing, the applicable portions of these standards and N.J.A.C. 5:17-9.1 shall be followed.

1. The HUD Guidelines and (b) through (e) below (for residential structures);

2. The guidelines of the Steel Structures Painting Council referenced in N.J.A.C. 5:17-1.3 (for steel structures); and

3. Rules adopted by the U.S. Environmental Protection Agency pursuant to Title X of the Housing and Community Development Act of 1992.

(b) An inspector/risk assessor shall test and perform an evaluation of a residential structure built prior to 1978, and later structures for which a complete evaluation has been requested, according to this section. All paint surfaces dating from 1978 or before shall be visually examined and rated good/fair/poor as provided in (b)2 and 3 below.

1. An intact paint surface is smooth, continuous and free of surface defect which would result in the release of paint dust or chips.

2. Large surfaces such as walls, floors and ceilings shall be rated as follows:

i. Good or intact condition shall indicate a surface that is entirely intact;

ii. Fair condition shall indicate a surface where less than or equal to two square feet of surface are not intact;

iii. Poor condition shall indicate a surface where more than two square feet of surface are not intact.

3. Components without large surfaces, such as window sills, baseboards, or other small areas, shall be rated as follows:

i. Good or intact condition shall indicate that the surface is entirely intact;

ii. Fair condition shall indicate that less than or equal to 10 percent of the surface is not intact;

iii. Poor condition shall indicate that more than 10 percent of the surface is not intact.

4. Exterior components with large surface areas shall be rated as follows:

i. Good condition shall indicate a surface that is entirely intact;

ii. Fair condition shall indicate that less than or equal to ten square feet of surface are not intact;

iii. Poor condition shall indicate that more than ten square feet of surface are not intact.

(c) Where painted surfaces are not intact, the inspector/risk assessor shall record the problem, including any suspected causes such as moisture build-up, mildew, friction with other building surfaces, or structure problems, such as roof leaks, which affect the surface.

(d) Painted surfaces which show irregularities which are accessible to children because of their height or location in the structure shall also be recorded.

(e) The inspector/risk assessor shall write a sampling plan to test all or representative surfaces in fair or poor condition, using the methods specified in this chapter.

1. An inspector/risk assessor shall follow applicable Federal guidelines to write a sampling plan for Federally-funded housing.

2. A sampling plan for multiple dwellings may employ random or worst-case sampling, provided the methodology used is disclosed to the owner.

3. A sampling plan for more than 10 identical multi-family dwelling units may employ target sampling as per Table 3.1, using random or worst-case sampling.

i. Worst-case sampling requires the sampling of units cited for housing code violations within one year, units the owner identifies as in poor condition, units in which two or more children older than six months but younger than six years reside, units used for day care and vacant units to be reoccupied within three months.

4. When selecting sample sites, where random testing is not the method employed, preferred sample sites are: high traffic areas, sills of operable windows near which children are known to play, the kitchen area, the bedroom of the youngest child over six months old, and the bedroom of the next oldest child.

TABLE 3.1

Minimum Number of Targeted Dwellings to Be
Sampled Among Similar Dwellings
(Random Sampling May Require Additional Units)

Number of Similar Dwellings	Number of Dwellings to Sample*
1-4	All
5-20	4 units or 50% (whichever is greater)**
21-75	10 units or 50% (whichever is greater)**
76-125	17
126-175	19
176-225	20
226-300	21
301-400	22
401-500	23
500 +	24 + 1 dwelling for each additional increment of 50 dwellings or less

* Does not include dwellings with children who have elevated blood lead levels.

** For percentages, round up to determine number of dwellings to be sampled.

SOURCE: PRE-PUBLICATION COPY: Guidelines For The Evaluation And Control Of Lead-Based Paint Hazards in Housing, The National Center for Lead-Safe Housing, February 1995.

5. The inspector/risk assessor shall disclose sample sites to the owner and to any tenants. Owner-occupants or tenants shall be given an opportunity to show the inspector/risk assessor areas which they suspect to be lead hazards. The inspector/risk assessor shall confirm the location and use of rooms with the occupants.

(f) For investigations performed by local health departments involving a child with an elevated blood lead level, Department of Health rules, N.J.A.C. 8:51, shall govern.

Amended by R.1996 d.543, effective December 2, 1996.
See: 28 N.J.R. 3995(a), 28 N.J.R. 5069(a).

5:17-3.3 Certification and standards

(a) All evaluation and testing for lead based paint hazards shall be conducted by inspector/risk assessors trained as per N.J.A.C. 8:62 and certified pursuant to these regulations.

1. For lead hazard abatement performed in response to an evaluation done in connection with a lease or transfer of real estate subject to the Federal Requirements for Disclosure of Known Lead Based Paint and/or Lead Based Paint Hazards in Housing (24 C.F.R. Part 38 and 40 C.F.R. Part 745), the clearance testing shall be performed by the same contractor that performed the initial evaluation or by another evaluation contractor of the buyer's choice.

(b) All laboratories which process or evaluate samples shall be recognized under the USEPA National Lead Laboratory Accreditation Program (NLLAP) or an equivalent independent national accreditation program, to analyze lead in paint, dust and soil samples.

(c) The contractor shall allow the Department access to the job site at any time while evaluation is ongoing. The contractor shall also make available to the Department, upon request, any documentation relevant to the job. The Department of Health and the Department of Labor shall be accorded the same access to job sites and documentation in administering their enforcement responsibilities.

(d) The following USEPA recognized procedures shall be employed for (a) and (b) above.

1. Wipe sampling for settled lead dust shall be performed as per Appendices 13.2 and 14.2 of the HUD Guidelines (draft February 24, 1995), as supplemented and amended;

2. Paint Chip sampling shall be performed as per Appendix 13.3 HUD Guidelines (draft February 24, 1995), as supplemented and amended;

3. When approved analytical laboratory procedures so require, for wipe sampling and field spikes shall be prepared as per Appendix 14.3 of the HUD Guidelines (draft February 24, 1995), as supplemented and amended;

4. Where applicable, NLLAP certified laboratories shall follow the laboratory analytical procedures outlined in Appendix 14.1 of the HUD Guidelines (draft February 24, 1995), as supplemented and amended.

Amended by R.1996 d.543, effective December 2, 1996.
See: 28 N.J.R. 3995(a), 28 N.J.R. 5069(a).
Administrative correction.
See: 32 N.J.R. 834(a).

5:17-3.4 Test methods

(a) Inspector/risk assessors may use the test methods described in (b) through (i) below with the limitations noted unless otherwise provided in rules adopted by the U.S. Environmental Protection Agency pursuant to Title X of the Housing and Community Development Act of 1992.

(b) XRF testing shall be performed in compliance with N.J.A.C. 7:28-4 using accepted manufacturers' recommended calibration techniques and substrate corrections.

1. An XRF reading may be taken only on paint surfaces with intact areas measuring at least three inches by three inches or where the entire probe faceplate of the XRF can lie flush with the surface.

2. To ensure accuracy, XRF measurements shall not be obtained from severely chipped or worn surfaces.

(c) Dust wipe sampling shall be done as per the HUD Guidelines, referenced in N.J.A.C. 5:17-3.3(d).

1. Wipe samples shall be submitted for laboratory analysis with field spike control samples, as per N.J.A.C. 5:17-3.3(d).

2. Before submitting wipe samples to an NLLAP laboratory, an inspector/risk assessor shall ensure that the wipes chosen are acceptable to the laboratory and that the wipes are appropriately containerized in secure rinsable containers acceptable to the laboratory.

(d) Sampling in individual residential units shall be performed as follows:

1. Single samples for one residential unit shall be taken from: an entry way/porch, the room in which children, if present, most frequently play, children's bedroom(s), kitchen and bathroom(s).

2. Samples in selected areas shall be taken at: areas on floors near friction or impact areas, on interior or exterior window sills of often opened windows and near cabinets in bathrooms or near kitchen utensils.

3. Composite samples may be used provided that the inspector/risk assessor follows the most recent HUD Guidelines and this methodology is disclosed, in writing, to the owner and to occupants. Composite samples shall be sent to an NLLAP laboratory or an equivalent independent national accreditation program. The laboratory shall be notified and results shall be properly recorded and identified as from composite samples. In composite sampling, each surface area sampled shall be approximately the same size. Wipes shall not be re-used. Composite samples shall not combine: interior and exterior samples, samples from carpeting and hard flooring, samples from different components, or samples from different residential units.

4. Composite samples for one residential unit shall be taken at three or four locations (as applicable), representing: interior window sills, exterior window sills, hard flooring and carpeting, if present.

(e) Sampling in multi-family dwellings shall be performed as follows:

1. In addition to the samples listed in (d) above, for multi-family residences, where there are common areas, two dust samples from high traffic floor areas and two window sill (exterior, if possible) samples from common areas shall be taken. In rooms or areas in excess of 2,000 square feet, an additional window sill sample, if possible, and an additional floor sample shall be taken. For every additional 2,000 square feet, there shall be one more window sill sample and one more floor sample.

2. In multi-family residences less than four stories, one entry area floor sample and one sample from a first floor common area and from the sill of an operable window shall be taken. If there are more than four stories, on every fourth floor, two floor dust samples, a window sill sample and samples from every fourth set of stair treads and every fourth stair landing shall be collected.

(f) Paint chip analysis shall be performed by an inspector/risk assessor according to the HUD Guidelines referenced in N.J.A.C. 5:17-3.3(d) above.

1. Because paint chip sampling can itself release dust, sampling time and location shall be specifically disclosed to the owner and to any occupants.

2. Occupants shall not be present at the site of chip sampling.

3. Samples shall consist of all layers of paint without any substrate included.

- i. Exception to (d)3 above: Some substrate may be included if the results are reported in micrograms per square centimeter.

4. Paint samples should not be removed from surfaces which show fresh evidence of chewing or from surfaces which are accessible to children. An inspector/risk assessor shall devise a method to test these surfaces in a non-destructive way, either from an existing chip or from a similar inaccessible location on the surface to be tested. An XRF test may be used if there is sufficient surface area intact.

(g) An inspector/risk assessor or an owner or occupant may use chemical spot tests for initial pre-tests; however, chemical spot tests shall not form the basis of any screening, testing or evaluation or abatement activity performed under this chapter.

(h) Anodic stripping voltammetry (ASV) may be used to test surfaces in accordance with manufacturer's recommendations and any applicable Federal protocols that may be developed.

(i) Any other test methods may be used if documentation is first submitted to the Department, and the Department, based on test data or acceptance by a Federal authority, approves the method for use.

5:17-3.5 Lead hazards

(a) The following lead dust levels indicate lead hazards for which the inspector/risk assessor shall recommend abatement and maintenance options:

1. Floors—in excess of 100 $\mu\text{g}/\text{square foot}$;
2. Interior window sills—in excess of 500 $\mu\text{g}/\text{square foot}$;
3. Exterior window sills (including the window wells)—in excess of 800 $\mu\text{g}/\text{square foot}$.

(b) The following lead dust levels resulting from a lead screening shall indicate that a full evaluation shall be recommended in the report produced by the inspector/risk assessor:

1. Floor wipes in excess of 50 $\mu\text{g}/\text{square foot}$; or
2. Window sill wipes in excess of 400 $\mu\text{g}/\text{square foot}$; or
3. Window trough wipes in excess of 1,500 $\mu\text{g}/\text{square foot}$.

(c) In addition, the inspector/risk assessor may recommend other maintenance, soil, water or air testing and remediation methods to abate soil, water, or other sources of contamination; testing, cleaning or removing furniture or other contents of structures where contamination is suspected; further or later testing and re-evaluation of certain areas. The inspector/risk assessor may identify some areas as safe from lead hazards only for a limited time or only if certain scheduled maintenance activities are timely performed.

(d) The following lead dust levels in residential buildings and child occupied facilities shall indicate lead hazards for which the inspector/risk assessor shall recommend abatement, standard treatment and/or essential maintenance practice options:

1. Floors—equal to or greater than 40 $\mu\text{g}/\text{square foot}$;
2. Interior window sills—equal to or greater than 250 $\mu\text{g}/\text{square foot}$;
3. Window wells—equal to or greater than 400 $\mu\text{g}/\text{square foot}$.

(e) The following lead dust levels resulting from a lead screening, at the site of a residential building or other child

occupied facilities, shall indicate that a full evaluation shall be recommended in the report produced by the inspector/risk assessor:

1. The weighted arithmetic mean lead loading for all single surface or composite floor wipes equals or exceeds 40 $\mu\text{g}/\text{square foot}$; or
2. The weighted arithmetic mean lead loading for all single surface or composite window sill wipes equals or exceeds 250 $\mu\text{g}/\text{square foot}$.

Amended by R.2001 d.328, effective September 17, 2001.

See: 33 N.J.R. 1807(a), 33 N.J.R. 3307(a).

Added (d) and (e).

SUBCHAPTER 4. PRE-ABATEMENT PREPARATION AND OCCUPANT PROTECTION

5:17-4.1 Specification and drawing

(a) Prior to the commencement of any lead abatement project, the owner shall consent in writing to the scope of the project and to the methods to be employed during the abatement.

(b) A sketch plan of the abatement site shall be prepared and made available to the owner and to any occupants who shall remain in the structure during abatement. The sketch plan shall clearly show:

1. Work areas, labeled to show all surfaces to be abated, which shall not be accessible to occupants;
2. Barriers, if any, which separate the work area from occupied areas;
3. Occupied areas, including bathroom facilities with a route of access to these facilities, and emergency egress route(s), if occupants are to be present during abatement;
4. Workers' changing, handwashing and/or shower, toileting and eating areas;
5. Waste disposal route;
6. Waste storage area or dumpster if abatement will require more than one day;
7. Location of any special equipment; and
8. Any other information which occupants or the contractor would need to know to ensure safe and responsible activity during the abatement.

(c) Prior to any abatement, the occupants shall be relocated, if required, and they shall be supplied with information about lead hazards and about the abatement work being performed.

1. For limited abatements, during which occupants' safe access to bathroom facilities and emergency egress routes remains uninterrupted, occupants shall be given lead hazard information.

2. For all abatements, occupants shall be instructed how to remove, wrap, and secure personal belongings including furniture, appliances, carpeting, draperies and other items which require relocation or protection during the abatement.

(d) Prior to an abatement, the owner shall correct all structural deficiencies affecting the work area.

(e) The entire work area shall be HEPA vacuumed to remove existing dust, paint chips and debris.

(f) When waste shall be left at a site overnight, a secure area such as a plastic-lined room or area or a locked dumpster shall be set aside for this purpose.

5:17-4.2 Abatement classification

(a) An abatement shall be classified as an interior or exterior worksite.

(b) Interior worksites shall be classified as Level 1, 2, 3 or 4, as described in N.J.A.C. 5:17-4.3(c), based on typical applications, time limit for the abatement, resident location, barrier system, warning signs, ventilation systems, furniture, clean up requirements and dust sampling.

(c) Exterior worksites shall be classified as Level 1, 2 or 3, as described in N.J.A.C. 5:17-4.3(c), based on typical applications, time limit for the abatement, resident location, barrier systems, playground considerations, security, signs, weather, clean up and porches.

(d) Contractors shall follow the procedures specified in N.J.A.C. 5:17-4.3(c).

5:17-4.3 Worksite levels

(a) Each lead abatement shall be designated as one or more of the following:

1. Interior worksite, preparation Level 1, 2, 3 or 4;
2. Exterior worksite, preparation Level 1, 2 or 3; or
3. Window treatment or replacement preparation.