

"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.

"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.

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.

(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; or

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.

(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.

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 non-returnable fee of \$1,500. In the case of firms seeking certification to perform both evaluation and abatement work, two fees shall be paid.

(b) Every application for certification shall include the following:

1. The full name and address of the business. In the case of a corporation, the name entered on the application shall be the same as that registered with the Secretary of State. In all cases, the address entered on the application shall be the street number, street name, municipality, the post office serving the property, if different from the municipality, and the zip code, of the location of the primary office of the applicant's business organization. In no case shall the address be only the address of an agent or only a post office box. It shall, in all cases, be the address at which the proprietor, or the designated representative of the business organization who is certified by the Department of Health in accordance with section 3 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-3) and is responsible for compliance with P.L. 1993, c.288 can usually be found;

2. The name and address of an agent upon whom service upon the business organization may be made within the State of New Jersey. The agent shall be either an individual who is a resident of the State of New Jersey or a corporation maintaining an office within the State of New Jersey;

3. The business organization's telephone number;

4. The business organization's Federal Taxpayer Identification Number and New Jersey Unemployment Insurance Number, if any;

5. The name, address and home telephone number, and date of birth of each person having at least a 10 percent ownership interest in the business organization;

6. Information concerning the experience of the applicant, and of the person certified by the Department of Health and designated as being responsible for compliance with P.L. 1993, c.288, in the State of New Jersey, including the number of years in the lead evaluation and/or lead abatement business and the municipalities in which such business has been carried on during the three years immediately preceding the date of application;

7. A list of the employees who will be involved in performing evaluation or abatement tasks, together with their New Jersey Department of Health Certification Number and the discipline(s) in which they are certified;

8. Any criminal convictions against the business or against any person having an interest in the business and the disposition thereof; and

9. Proof of insurance as follows: a minimum of \$1 million in commercial general liability coverage written on an occurrence basis without a sunset clause or provision by an entity admitted or otherwise approved to write policies in New Jersey by the New Jersey Department of Insurance and with an "A" or better rating from A.M. Best. Insurance coverage meeting this requirement shall be in effect during the entire time that a contractor remains certified and cannot be allowed to lapse.

i. For purposes of submitting the application for certification, a copy of the policy cover sheet showing the contractor name, the policy number, the effective dates, the amount of coverage and the name of the entity issuing the policy shall be accepted as proof of insurance.

(c) Each applicant for certification shall disclose in the application any relationship with any other business organization engaged in lead evaluation and/or lead abatement or in the supply of goods, services or materials for lead evaluation or abatement or in any other work for which a permit is required pursuant to the Uniform Construction Code, N.J.A.C. 5:23, and shall further disclose all interests of any officer, partner, director, shareholder or employee in any other business organization engaged in lead evaluation and/or lead abatement or in the supply of goods, services or materials for lead evaluation or abatement or in any other work for which a permit is required pursuant to the Uniform Construction Code, N.J.A.C. 5:23.

5:17-2.4 Issuance of certification

(a) Upon receipt of a completed application, the Department shall either issue the certification or deny it in accordance with these rules within 30 days.

(b) The certification shall remain valid, unless suspended or revoked in accordance with these rules, for a two year period ending with the expiration date indicated thereon. If the business is transferred to another legal entity, the contractor certification issued by the Department shall not be transferable.

1. The Department shall be notified in writing when any employee who is certified by the Department of Health and is designated as having responsibility for ensuring compliance with P.L. 1993, c.288 ceases to be associated with the business organization. In any such case, the certification shall expire and become invalid unless another person certified by the Department of Health is substituted and the Department of Community Affairs is so notified in writing within 10 days of the change.

2. Any other change in the information submitted to the Department with the application for certification shall be reported to the Department in writing within 30 days of the change.

(c) The certification shall specify whether the holder is certified as a lead evaluation contractor, a lead abatement contractor, or both.

(d) A certification may be renewed for additional two year periods. Applications for renewal shall be made upon forms provided by the Commissioner, shall be accompanied by a fee of \$1,500 and shall be subject to the same conditions as an original application.

1. Applications for recertification may be made during the 90 day period before the certification expiration date or the 90 day period after the certification expiration date; except that if a business firm applies after the certification expiration date, the firm shall not perform any services for which certification is required until the certification is renewed. If a certification has expired for more than 90 days, the business firm shall be required to obtain a new certification.

(e) A copy of the certification shall be conspicuously displayed for public review in the office of a firm engaged in the business of abating lead-based paint hazards or conducting lead evaluations. Additionally, the certification number shall be displayed on all business vehicles and at all lead abatement or evaluation jobs in progress.

5:17-2.5 Denial, suspension, imposition of conditions upon or revocation of certification

(a) A certification may be denied, suspended, limited or revoked, depending on the nature and severity of the offense, if the certification holder or applicant, or an officer, partner, director, shareholder or employee of the certification holder or applicant, has at any time:

1. Willfully made a misstatement or omission of material fact in an application for certification or renewal of certification, or in providing other information required by the Department or by a local enforcing agency enforcing the State Uniform Construction Code;

2. Misrepresented qualifications for certification, or fraudulently obtained certification;

3. Willfully committed fraud in the business of lead evaluation or lead abatement or in any other business involving work subject to the Uniform Construction Code, N.J.A.C. 5:23;

4. Engaged in practices during lead abatement work contrary to safe procedures established therefor, or otherwise practiced lead evaluation or lead abatement in a grossly negligent manner;

5. Engaged in the business of lead evaluation and/or lead abatement without having certification from the Department to do so, or employed persons to perform lead evaluation or lead abatement work who were not then certified pursuant to section 3 of P.L. 1993, c.288 (N.J.S.A. 26:2Q-3) to perform such work;

6. Failed to comply with applicable permit and/or certificate requirements, or otherwise violated, or abetted another to violate, or hindered or delayed the Department in the enforcement of, the State Uniform Construction Code Act, as supplemented by sections 14 through 24 of P.L. 1993, c.288, including these rules adopted pursuant thereto; or

7. Refused to make a certification available when directed to do so by the Department, or otherwise violated, or abetted another to violate, any order of the Commissioner issued pursuant to the State Uniform Construction Code Act, as supplemented by sections 14 through 24 of P.L. 1993, c.288.

(b) Whenever the Department shall find cause to deny an application for certification, or to suspend or revoke a certification, it shall notify the applicant or certification holder of the reasons therefor, in writing, and shall provide an opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, when a request for a hearing is filed within 15 days of the date of notice.

(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;
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.

(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.

(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.

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.

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.

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.

(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.

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.