

(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 35 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).

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 35 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).

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.