

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.1995 d.381, effective July 17, 1995.
See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Executive Order No. 66(1978) Expiration Date

Chapter 17, Lead Hazard Evaluation and Abatement Code, expires on July 17, 2000.

Chapter Historical Note

Chapter 17, Retirement Community Full Disclosure Requirements, was filed and became effective June 1, 1970, as R.1970 d.61. See: 2 N.J.R. 38(b), 2 N.J.R. 53(b). An exempt emergency rule was filed and became effective April 22, 1976, as R.1976 d.126. See: 8 N.J.R. 270(b). Pursuant to Executive Order No. 66(1978), Chapter 17 was readopted with amendments, effective June 27, 1984, as R.1984 d.300. (Amendments effective July 16, 1984.) See: 16 N.J.R. 1137(b), 16 N.J.R. 1968(a). Chapter 17 was repealed, effective June 19, 1989, as R.1989 d.317. See: 21 N.J.R. 958(a), 21 N.J.R. 1669(a). Pursuant to the provisions of Executive Order No. 66(1978), Chapter 17 expired, and ceased to be effective, on June 1, 1989. Chapter 17, Lead Hazard Evaluation and Abatement Code, was adopted as New Rules by R.1995 d. 381, effective July 17, 1995. See: Source and Effective Date.

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(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.

"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.

"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.

"ug" means micrograms of lead per.

"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, woodwork-ing, 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.

(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 ug/square foot;
2. Interior window sills—in excess of 500 ug/square foot;
3. Exterior window sills (including the window wells)—in excess of 800 ug/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 ug/square foot; or
2. Window sill wipes in excess of 400 ug/square foot; or
3. Window trough wipes in excess of 1,500 ug/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.

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.

(b) For each of the interior levels specified in subsection (a) above, worksite preparation shall be performed as follows:

1. Interior worksite, preparation Level 1:

i. Typical application: Dust removal and any abatement disturbing no more than two square feet of painted surface per room;

ii. Time limit: One work day;

iii. Resident location: Inside dwelling, but outside work area. Residents shall have secure passage to bathroom facilities and to emergency egress route(s). Alternatively, residents can leave the dwelling during the work;

iv. Barrier system: Single layer of plastic sheeting on floor extending five feet in all directions beyond the perimeter of the surface area to be treated. A low physical barrier, such as furniture or wood planking, shall be provided to prevent inadvertent access by residents. This barrier shall not be mechanically fastened.

v. Warning signs: Required at entry to room, but not on building unless exterior work is also underway;

vi. Ventilation system: Dwelling ventilation system turned off, but vents need not be sealed with plastic sheeting if they are more than five feet away from the surface being treated. Negative pressure zones are not required, unless large supplies of fresh air must be admitted into the work area to control exposures to other hazardous substances, for example, solvent vapors; and

vii. Furniture: Left in place uncovered unless it is within five feet of working surface. If within five feet, furniture shall be sealed with plastic sheeting or moved for paint treatment. No covering is required for dust removal.

2. Interior worksite, preparation level 2:

i. Typical application: Any abatement method disturbing between two and 10 square feet of painted surface per room;

ii. Time limit: One work day;

iii. Resident location: Inside dwelling, but outside work area. Residents shall have secure passage to bathroom facilities and to emergency egress route(s). Alternatively, residents may leave the dwelling during the work;

iv. Barrier system: Two layers of plastic sheeting on entire floor. Plastic sheeting forming a primitive airlock flap shall be placed on all doorways. The primitive air lock shall be constructed using two sheets of plastic. The first one shall be taped to the floor and the two sides of the doorway. A slit approximately six

feet in length shall be cut down the middle of the plastic sheeting. Do not begin the slit at the top and do not cut the slit all the way down to the floor. The second sheet of plastic sheeting shall be taped across the top of the doorway so that it acts as a flap. The flap shall open into the work area. Doors secured from inside the work area need not be sealed;

v. Warning signs: Required at entry to room, but not on building unless exterior work is also underway;

vi. Ventilation system: Turned off and all vents in room sealed with plastic sheeting. Negative pressure zones are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances, for example, solvent vapors; and

vii. Furniture: Removed from work area. Large items can be sealed with taped plastic sheeting and left in work area.

3. Interior worksite, preparation Level 3:

i. Typical application: Any abatement method disturbing between two and 10 square feet of painted surface per room;

ii. Time limit: Five days;

iii. Resident location: Outside the dwelling, but can return in evening after day's work and cleanup are completed. Residents shall have secure passage to bathroom facilities and to emergency egress route(s). Alternatively, residents can leave until all work is completed;

iv. Barrier system: Two layers of plastic sheeting on floors. Plastic sheeting with primitive airlock flap, as described in (b)2iv above, shall be provided on all doorways to work areas. Doors secured from inside the work area need not be sealed. Overnight barrier shall be locked or firmly secured;

v. Warning signs: Posted at main and secondary entryway;

vi. Ventilation system: Turned off and all vents in room sealed with plastic sheeting. Negative pressure zones are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances, for example, solvent vapors; and

vii. Furniture: Removed from work area. Large items can be sealed with taped plastic sheeting and left in work area.

4. Interior worksite, preparation Level 4:

i. Typical application: Any abatement method disturbing more than 10 square feet per room (not including windows);

ii. Time limit: None;

iii. Resident location: Outside the dwelling for duration of project; cannot return until clearance has been achieved;

iv. Barrier system: Two layers of plastic sheeting on floors. If entire unit is being treated, cleaned, and cleared, individual room doorways need not be sealed. If only a few rooms are being treated, all doorways shall be sealed with a primitive airlock flap, described in (b)2iv above, to avoid cleaning entire dwelling. Doors secured from inside the work area need not be sealed;

v. Warning signs: Posted at building exterior near main and secondary entryways;

vi. Ventilation system: Turned off and all vents in room sealed with plastic sheeting. Negative pressure zones are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances, for example, solvent vapors; and

vii. Furniture: Removed from work area. Large items can be sealed with taped plastic sheeting and left in work area.

(c) For each of the exterior levels specified in (a) above, worksite preparation shall be performed as follows:

1. Exterior Worksite, preparation Level 1:

i. Typical applications: Any abatement method disturbing less than 10 square feet of exterior painted surface/dwelling. Not appropriate for window treatment;

ii. Time limit: One day;

iii. Resident location: Inside dwelling for duration of project until cleanup has been completed. Alternatively, can leave until all work has been completed;

iv. Barrier system: For first story, one layer of plastic sheeting on ground shall extend 10 feet out in all directions from all working surfaces. For each additional story to be abated, plastic sheeting shall extend an extra three feet. When the plastic sheeting is punctured to anchor ladders, the plastic sheeting at the feet of the ladder shall be taped so that debris does not fall below the plastic sheeting. When the ladder is moved, any punctures in the plastic sheeting shall be sealed with tape. For all other exterior plastic surfaces, protect plastic sheeting with boards to prevent puncture from falling debris, nails, etc., if necessary. The plastic sheeting shall be secured to the side of the building with tape or other anchoring system so that there are no gaps between the plastic sheeting and the building. The edges of the plastic sheeting shall be anchored in place. All windows in the dwelling shall be kept closed. The contractor shall advise the occupants of all neighboring buildings that windows within 20 feet and that face the work area should be kept closed;

v. Security: Erect temporary fencing or barrier tape at a 20 foot perimeter around entryway of building or less if distance to next building or sidewalk is less than 20 feet. Use a locked dumpster, covered truck, or locked room to store debris before disposal; and

vi. Signs: Post warning signs on the building and at a 20 foot perimeter around building or less if distance to next building or sidewalk is less.

2. Exterior worksite, preparation Level 2:

i. Typical applications: Any abatement method disturbing between 10 and 50 square feet of exterior painted surface/dwelling;

ii. Time limit: None;

iii. Resident location: Relocated from dwelling during workday, but return after daily cleanup has been completed;

iv. Barrier system: For first story, one layer of plastic sheeting on ground shall extend 10 feet out in all directions from all working surfaces. For each additional story to be abated, plastic sheeting shall extend an extra three feet. When the plastic sheeting is punctured to anchor ladders, the plastic sheeting at the feet of the ladder shall be taped so that debris does not fall below the plastic sheeting. When the ladder is moved, any punctures in the plastic sheeting shall be sealed with tape. For all other exterior plastic surfaces, protect plastic sheeting with boards to prevent puncture from falling debris, nails, etc. if necessary. The plastic sheeting shall be secured to the side of the building with tape or other anchoring system so that there are no gaps between the plastic sheeting and the building. The edges of the plastic sheeting shall be anchored in place. All windows in the dwelling shall be kept closed. The contractor shall advise the occupants of all neighboring buildings that windows within 20 feet and that face the work area should be kept closed;

v. Security: Erect temporary fencing or barrier tape at a 20 foot perimeter around entryway of building or less if distance to next building or sidewalk is less than 20 feet. Use a locked dumpster, covered truck, or locked room to store debris before disposal; and

vi. Signs: Post warning signs on the building and at a 20 foot perimeter around building or less if distance to next building or sidewalk is less.

3. Exterior worksite, preparation Level 3:

i. Typical applications: Any abatement method disturbing more than 50 square feet of exterior painted surface per dwelling;

ii. Time limit: None;

iii. Resident location: Relocated from dwelling for duration of project until final clearance is achieved or may return after daily cleanup has been completed;

iv. Barrier system: For first story, one layer of plastic sheeting on ground shall extend 10 feet out in all directions from all working surfaces. For each additional story to be abated, plastic sheeting shall extend an extra three feet. When the plastic sheeting is punctured to anchor ladders, the plastic sheeting at the feet of the ladder shall be taped so that debris does not fall below the plastic sheeting. When the ladder is moved, any punctures in the plastic sheeting shall be sealed with tape. For all other exterior plastic surfaces, protect plastic sheeting with boards to prevent puncture from falling debris, nails, etc. if necessary. The plastic sheeting shall be secured to the side of the building with tape or other anchoring system so that there are no gaps between the plastic sheeting and the building. The edges of the plastic sheeting shall be anchored in place. All windows in the dwelling shall be kept closed. The contractor shall advise the occupants of all neighboring buildings that windows within 20 feet and that face the work area should be kept closed;

v. Security: Erect temporary fencing or barrier tape at a 20 foot perimeter around entryway of building or less if distance to next building or sidewalk is less than 20 feet. Use a locked dumpster, covered truck, or locked room to store debris before disposal; and

vi. Signs: Post warning signs on the building and at a 20 foot perimeter around building or less if distance to next building or sidewalk is less.

(d) Preparation for window treatment or replacement shall be performed as follows:

1. Window replacement from the interior of the building:

i. Appropriate application: Any window treatment or replacement;

ii. Time limit: None;

iii. Resident location: Inside dwelling, but outside work area. Residents shall have secure passage to bathroom facilities and to emergency egress route(s). Alternatively, residents may leave the dwelling during the work:

iv. Barrier system: One layer of plastic sheeting on floor extending five feet out in all directions from window being treated/replaced. Two layers of plastic sheeting shall be taped to the outside wall covering the window opening. Plastic sheeting forming a primitive airlock flap shall be placed on all doorways. The primitive air lock shall be constructed using two sheets of plastic. The first one shall be taped to the floor and the two sides of the doorway. A slit, approximately six feet in length, shall be cut down the middle of the plastic sheeting. The slit shall not extend all the way to the top or all the way to the floor. The second sheet of plastic shall be taped across the top of the doorway so that it acts as a flap. The flap shall open into the work

area. Doors secured from inside the work area need not be sealed;

v. Warning signs: Required at entry to room, but not on building unless exterior work is also underway;

vi. Ventilation system: Turned off and all vents in room sealed with plastic sheeting. Negative pressure zones are not required, unless large supplies of fresh air must be admitted into the work area to control exposure to other hazardous substances, for example, solvent vapors; and

vii. Furniture: Removed from work area. Large items can be sealed with taped plastic sheeting and left in work area.

2. Window replacement from the exterior of the building:

i. Appropriate application: Any window treatment or replacement;

ii. Time limit: None;

iii. Resident location: Remain inside dwelling until project has been completed. Alternatively, residents may leave until all work has been completed;

iv. Barrier system: For windows on the first story, one layer of plastic sheeting on ground extending five feet out in all directions from window being treated/replaced. For windows on upper stories, the plastic sheeting shall be extended an additional three feet per story. Two layers of plastic sheeting shall be taped to the interior wall covering the window opening. When the plastic sheeting is punctured to anchor ladders, the plastic sheeting at the feet of the ladder shall be taped so that debris does not fall below the plastic sheeting. When the ladder is moved, any punctures in the plastic sheeting shall be sealed with tape. For all other exterior plastic surfaces, protect plastic sheeting with boards to prevent puncture from falling debris, nails, etc. if necessary. The plastic sheeting shall be secured to the side of the building with tape or other anchoring system so that there are no gaps between the plastic sheeting and the building. The edges of the plastic sheeting shall be anchored in place. All windows in the dwelling shall be kept closed. The contractor shall advise the occupants of all neighboring buildings that windows within 20 feet and facing the work area should be kept closed;

v. Security: Erect temporary fencing or barrier tape at a 20 foot perimeter around the building or less if distance to next building or sidewalk is less than 20 feet. Use a locked dumpster, covered truck, or locked room to store debris before disposal; and

vi. Signs: Post warning signs on the building and at a 20 foot perimeter around building or less if distance to next building or sidewalk is less.

(e) For all worksites, damaged or torn plastic sheeting or other barriers shall be promptly repaired or replaced.

(f) To establish a baseline soil lead level for all exterior worksites, preabatement composite soil samples, consisting of at least five sub-samples, shall be taken next to the foundation or from the dripline below any exterior surface to be abated, unless this information is available from a current risk assessment. With the owner's consent, analysis of preabatement soil samples may be delayed until postabatement soil samples have been collected, analyzed, and compared to clearance standards.

(g) Porches and other building elements that project into the space between the work area and the ground shall be covered with plastic sheeting.

(h) Exterior abatement shall not be conducted if wind speeds are greater than 20 miles per hour. Work shall stop and clean up shall occur before rain begins.

(i) Where exterior abatement is to be performed, playground equipment shall be removed from the work area and adjacent areas. Large items may be sealed with taped plastic sheeting. All movable items shall be moved to a 20 foot distance from the work area.

5:17-4.4 Air equipment

(a) Negative air, at a rate of 10 air exchanges per hour, shall be required only when dry sanding or abrasive blasting are used. Dry sanding or abrasive blasting shall be allowed only by variation granted pursuant to N.J.A.C. 5:17-5.3.

(b) Windows, doors, chimneys and other vents or openings shall be closed during abatement. If ventilation is required because of the needs of occupants, or because of chemical fumes, HEPA equipment to filter exhaust and supply clean outside air shall be used.

SUBCHAPTER 5. LEAD HAZARD ABATEMENT—GENERAL

5:17-5.1 Duties of the contractor

(a) The certified contractor shall be responsible for ensuring compliance with all applicable provisions of this chapter.

(b) Prior to beginning an abatement job, the contractor shall apply for a permit under the UCC and shall provide the owner and the occupants with a description of the scope of work and information about lead-based paint hazards.

1. Additionally, the contractor shall notify the Department of Community Affairs 10 working days prior to the anticipated start of work. This notification shall include the name and certification number of the contractor, the location where the work is to be performed, and a brief description of the scope of work. The notification shall be sent to the following address: Department of Community Affairs, Bureau of Code Services, CN 816, Trenton, NJ 08625.

(c) Following completion of the abatement job, the contractor shall certify to the owner, in writing, that all lead-based paint hazards that were part of the scope of work have been abated in accordance with the requirements of this chapter. Where the scope of work included encapsulation or enclosure, the contractor shall provide the owner with information regarding ongoing inspection and maintenance requirements and any other precautions necessary to maintain the integrity of the enclosure or encapsulant

1. A copy of this certification shall be filed with the local enforcing agency having jurisdiction under the UCC prior to the issuance of a lead abatement clearance certificate. The local enforcing agency shall also receive a copy of any information provided to the owner regarding enclosure or encapsulation performed and the location(s) of enclosures or encapsulants within the building.

2. In addition to the written certification to the owner, described above, the contractor shall retain a final report on each job which shall include: the start and completion dates of the abatement, the names and addresses of any other abatement firms working at the site including the names of the supervisors, the name, address and signature of each inspector/risk assessor conducting clearance testing, the date(s) and results of clearance testing, the name of each laboratory that conducted the analyses, a detailed written description of the abatement (the scope of work required in (b) above may be used to meet the requirement for a written description of the abatement provided that any deviations from the scope of work are described in the final report). A copy of this report shall be made available to the Department upon request.

(d) The contractor certification number shall be displayed at the job site. All employees involved in lead abatement at the job site shall be certified by the Department of Health and shall carry evidence of such certification.

(e) The contractor shall allow the Department access to the job site at any time while evaluation or abatement are ongoing, including preparation, clean-up, and testing. 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.

(f) The contractor shall ensure that a supervisor certified by the New Jersey Department of Health is on the job site at all times that abatement work is being performed and that all evaluation or abatement tasks are performed only by individuals certified by the Department of Health to perform those tasks.

1. A supervisor is not required to be present at the job site for jobs designated as Interior worksite, preparation level 1 pursuant to N.J.A.C. 5:17-4.3(b)1 or Exterior worksite, preparation level 1 pursuant to N.J.A.C. 5:17-4.3(c)1 if adjacent properties are at least 20 feet from the work area. However, the contractor shall designate a supervisor to be responsible for such jobs and the supervisor shall be available to the workers at all times that the job is ongoing.

5:17-5.2 Permits required

(a) Effective January 1, 1996, a permit under the UCC shall be obtained for any work intended to abate lead hazards. Additionally, a permit under the UCC shall be obtained for any related construction work requiring a permit.

5:17-5.3 Variations

(a) Any variation from the requirements of this chapter shall be requested in writing only from the Department and shall be accompanied by a nonrefundable fee of \$120.00 paid by check or money order, payable to the "Treasurer, State of New Jersey."

(b) The request for variation shall include:

1. A statement of the requirements of the chapter from which a variation is sought;
2. A statement of the manner by which strict compliance with these provisions would result in practical difficulties; and
3. A statement of the alternative proposed which adequately protects the health, safety and welfare of the occupants or intended occupants and the public generally and which adequately prevents contamination of the environment.

(c) The Department shall grant or deny variations in writing within 20 working days of a complete request for variation. When a variation is approved, the owner shall provide a copy of the approval to the local enforcing agency having jurisdiction under the UCC.

5:17-5.4 Occupancy during abatement

(a) Occupancy during abatement shall be allowed only as described in this chapter. Where abatement work will be ongoing for more than one day, and the occupants will be returning at night, cleaning shall be performed as follows at the end of the workday:

1. For interior abatement jobs, HEPA vacuum, wet wash, and HEPA vacuum again treated surfaces and floors extending five feet in all directions from the treated surface. If occupants are to have access to the work area, the top layer of plastic shall be removed from the floor and discarded. For dust removal work alone, a HEPA vacuum and wet wash cycle is adequate. Floors in adjacent area(s) used as a pathway to the work area shall also be HEPA vacuumed and wet washed.

2. For exterior abatement jobs, the entrance to be used by occupants shall be made clear and free of any potential lead hazards or sources of contamination.

3. Lead-contaminated debris shall be stored outside the dwelling unit in a secure, locked area.

SUBCHAPTER 6. PAINT REMOVAL; COMPONENT REPLACEMENT; ENCLOSURE; ENCAPSULATION

5:17-6.1 Lead-based paint removal

(a) The following paint removal methods are prohibited:

1. Open flame burning or torching:
 - i. Using cutting torches to remove fire escapes, railings or other metal components coated with lead-based paint is also prohibited unless the paint is first removed four inches out from the area to be cut.
2. The use of heat guns operating above 1,100 degrees Fahrenheit;
3. Machine sanding or grinding without a HEPA-equipped exhaust tool;
4. Uncontained hydroblasting or high pressure washing;
5. Abrasive blasting or sandblasting without a HEPA vacuum-equipped exhaust tool;
6. The use of methylene chloride chemical paint removers; and
7. The use of dry scraping.
 - i. Exception to (a)7 above: Dry scraping is permitted if the surfaces are near electrical outlets or for scraping accompanying heat gun use. In either case, the area to be dry scraped shall not exceed two square feet.

(b) Heat guns not prohibited by (a)2 above shall not be used for areas exceeding two square feet. In addition to the other worksite preparation requirements of this chapter, the following shall be done prior to heat gun use:

1. A fully-charged ABC 20 pound (minimum) fire extinguisher shall be provided within 100 feet of each work area; and
 2. It shall be verified that the existing electrical supply is adequate for the heat gun(s) or portable generators to power the heat gun(s) shall be provided.
- (c) The applicable steps listed in (c)1 through 7 below shall be followed for the mechanical paint removal method chosen to abate lead hazards:
1. For use of HEPA sanding with a shroud, the shroud shall be in contact with the surface at all times;
 2. For use of a HEPA vacuum power sander, the sandpaper shall be flat on the surface at all times;
 3. For HEPA vacuum blasting, the blast head shall remain in contact with the surface at all times. HEPA vacuum blasting shall be used for metal, brick, concrete or other masonry surfaces only;
 4. For HEPA vacuum needle gun, the shroud shall remain in contact with the surface at all times. HEPA vacuum needle guns shall be used for metal surfaces only.
 5. For wet scraping, all loose and flaking paint shall be removed by working a few square feet at a time. The surface shall be lightly misted, then a paint scraper shall be used to remove loose material which shall be deposited on the plastic sheeting. Scrapers shall be kept razor sharp to minimize abrasion and gouging;
 6. For offsite paint removal, building components shall be misted with water prior to removal. Treated components shall remain offsite or wrapped in plastic until any onsite dust-generating activities are concluded and clean up has taken place. Before reinstallation, treated components shall be cleaned utilizing the standard HEPA vacuum/wet wash/HEPA vacuum cycle to remove any residues. Components shall be completely dry and the pH shall be checked prior to repainting; and
 7. For on-site paint removal, the chemical paint remover shall be applied following manufacturer's instructions:
 - i. Softened paint shall be removed using a scraper, putty knife, or wetted steel wool and the material removed shall be deposited in a water-tight and corrosion-proof container.
 - ii. Alkali neutralization and residue removal shall be performed following manufacturer's instructions or accepted practice;
 - iii. Following neutralization, all surfaces shall be scrubbed with a high phosphate detergent or its functional equivalent to remove visible residues. An original detergent container and/or the data sheet with information on the use of the product shall be available for inspection at the worksite; and

- iv. For wood surfaces or components, the entire neutralization and cleaning process shall take place without allowing the surface to dry.

5:17-6.2 Building component replacement

- (a) The following steps or a similar procedure that minimizes the disturbance of paint and the generation of dust shall be followed for all building component replacement intended to abate lead hazards:
1. Turn off and disconnect all electrical circuits present inside or near the component to be removed;
 2. Lightly mist the component to be removed. Do not apply water to components containing electrical circuits;
 3. Using a utility knife or other sharp instrument, carefully score all affected painted seams;
 4. Remove any screws or other fasteners;
 5. Using a flat pry instrument and a hammer, carefully pry the affected building component away from the surface to which it is attached. The pry bar should be inserted into the seam at the nail or other fastening device at one end of the component and prying pressure applied. This process should be repeated at each subsequent fastening location until the end of the component is reached and the component is freed;
 - i. Use a pry point pad or softener, if necessary, to minimize damage to adjoining substrates;
 6. Carefully remove or bend back all nails (or other fastening devices) and wrap removed components and nails in plastic sheeting and seal with duct tape;
 - i. Exception to (a)6 above: Wrapping components in plastic is not required if the dwelling is vacant and the pathway to the truck or other waste containment site is lined with plastic;
 7. HEPA vacuum any dust that may have accumulated behind the component removed;
 8. New lead-free components shall not be brought into the work area until all dust-generating activity is complete and the dust has been cleaned up by at least one HEPA vacuuming;
 9. If new lead-free components are to be applied to lead painted walls, ceilings, floors or any other lead-painted surface, regardless of whether it has been enclosed, caulk shall be applied to the perimeter of the back side of the replacement component to seal it before installation;
 10. Replacement components shall be installed using standard carpentry practices; and

11. In the case of windows and doors, no friction surfaces coated with lead-based paint shall remain unless these components have been enclosed in accordance with the requirements of this chapter or unless all lead-based paint has been removed from these components in accordance with the requirements of this chapter.

i. Exception to (a)11 above: If it can be determined clearly that hazardous levels of lead on metal doors and frames reside only in the primers, and that the primers were factory-applied and are in sound condition, then the primers themselves need not be abated or removed. Doors shall be operating properly, free from impact or abrasion between moving parts that will damage any surfaces. Any damage to the primer resulting from sample collection shall be repaired immediately in a manner that restores the integrity of the primer coat.

(b) All replacement components installed shall comply with all applicable provisions of the Uniform Construction Code (N.J.A.C. 5:23) except that the size of window and door openings shall not be required to be increased.

5:17-6.3 Enclosure methods

(a) All materials used for enclosure shall comply with all applicable provisions of the Uniform Construction Code (N.J.A.C. 5:23).

(b) Drywall, fiberboard or its functional equivalent may be used for interior wall enclosure. Moisture-resistant greenboard shall be used in damp areas. The following steps shall be followed for interior wall enclosure intended to abate lead hazards.

1. Turn off and disconnect all electrical circuits present in the area to be enclosed;
2. Prior to enclosure, repair all structurally unsound substrates and water leaks that will affect the integrity of the enclosure;
3. Use construction adhesive to glue the drywall in place;
4. Screw the drywall to the studs behind the existing wall. Screws shall be long enough to go through the drywall, the plaster, the wire mesh or lath, and bite an inch into the stud or structure. Furring strips or hat channels may be used as needed;
5. Use extension rings to bring out electrical devices flush with the new drywall and retrofit any HVAC registers;
6. Wherever the drywall meets wood framing or any other component, including electrical devices, pipes and HVAC registers, the seams shall be sealed with a silicon caulk or other sealant that has at least a 10 year warranty;
7. Tape and finish the drywall;

8. Enclosures installed shall not protrude beyond the depth of door or window frames or other trim pieces; and

9. If paneling is used to enclose surfaces painted with lead-based paint, all joints and edges shall be fully supported to prevent flexing that might compromise the seal of the seams.

(c) The following steps shall be followed for interior ceiling enclosure intended to abate lead hazards:

1. Turn off and disconnect all electrical circuits present in the area to be enclosed;
2. Repair all structurally unsound substrates and water leaks prior to enclosure;
3. Screw a metal hat channel or furring channel to the plaster. Screws shall be long enough to penetrate the hat channel, plaster or other substrate and wire mesh holding the plaster and to bite firmly into the joist;
4. Affix the drywall to the hat channel;
5. Use extension rings to bring out electrical devices flush with the new drywall and retrofit any HVAC registers;
6. Wherever the drywall meets wood framing or any other component, including electrical devices, pipes and HVAC registers, the seams shall be sealed with a silicon caulk or other sealant that has at least a 10 year warranty;
7. Tape and finish the drywall;
8. Where there is a cast-in-place concrete ceiling, the certification of an architect or engineer as to whether the existing ceiling will hold the additional weight of the enclosure shall be required; and
9. Acoustical lay-in panels (drop ceilings) shall not be used for lead-based paint enclosures.

(d) The following steps shall be followed for the enclosure of floors intended to abate lead hazards:

1. Remove dirt and loose paint in accordance with the requirements of this chapter;
2. Remove shoe molding, if any, along the baseboard;
3. Cover old flooring using one-half inch or thicker plywood or other equivalent underlayment. All plywood sheets shall be installed flush with each other. Gaps shall be filled with flash patching cement. All nails shall be hammered flush and all dirt HEPA vacuumed thoroughly;
 - i. When the plywood is to be covered by vinyl floor covering, a row of nails or screws shall be run through the old flooring a few inches apart in a straight line over each joist prior to putting down the plywood.
 - ii. When the plywood is to be covered by carpeting, a bead of caulk shall be run at the edge of every sheet of plywood before it is set in place and all gaps shall be filled with flash patching cement.

iii. When the floor to be enclosed is poured slab or cast-in-place concrete, the surface shall be predrilled to accept each screw that anchors the plywood enclosure. A structural engineer shall be consulted for situations other than slab on grade construction; and

4. Joints at vertical surfaces shall be covered by quarter-round or equivalent molding. Metal thresholds shall be placed at all doorways after the vinyl flooring or carpeting is installed.

(e) The following steps shall be followed for the enclosure of stairs intended to abate lead hazards:

1. Remove dirt and loose paint in accordance with the requirements of this chapter; and

2. Completely cover steps with vinyl treads and risers. The vinyl shall be stapled and glued with floor adhesive. Long staples shall be used to reinforce the tread cover and at the end of the vinyl that butts up tight to the wood riser of the next step.

i. Metal bull nosing may be used in place of vinyl at wear points.

ii. Plywood may be used to cover step risers and squared off treads. Plywood may also be used for additional protection, supplementing the vinyl covers.

iii. If the steps to be enclosed are pre-cast concrete, the surface shall be pre-drilled to accept each screw that anchors the enclosure.

(f) The following steps shall be followed for miscellaneous interior building component enclosure intended to abate lead hazards:

1. Turn off and disconnect all electrical circuits present in the area to be enclosed;

2. Pipes shall be enclosed with casting tape which shall be applied so that it overlaps itself or they shall be enclosed with a drywall box following the procedure described in (a) above;

3. Interior or exterior door frames shall be enclosed using preformed metal door buck covers or their equivalent. All seams shall be caulked;

4. Knee walls, painted structural supports and trim such as baseboards and other items shall be enclosed with plywood or its equivalent. All plywood shall be cut to fit tightly, sealed with adhesive and nailed. All seams shall be caulked; and

5. Windows shall be enclosed using snap-in aluminum or vinyl tracks. Track covers shall be pressed into a bead of caulk at each seam.

i. Painted sashes may be planed to remove lead-based paint and reinstalled.

ii. Friction surfaces on windows shall not be painted.

iii. Exterior window sills shall be covered with metal or other material cut to fit and screwed into place. The material shall be pressed into a bead of caulk at the seams.

(g) The following steps shall be followed for exterior wall enclosure intended to abate lead hazards:

1. Turn off and disconnect all electrical circuits present in the area to be enclosed;

2. Repair all structurally unsound substrates and water leaks prior to enclosure;

3. Cover all exterior painted surfaces with rigid or cloth dust barriers.

i. Do not cover vents with cloth or other covering; and

4. Install vinyl or aluminum siding, any board product intended for exterior use, natural or synthetic brick or stone veneers or stucco. All seams shall be caulked and back caulked.

i. Aluminum coil stock may be used on soffits, fascia, barge board, decorative crown moldings, door and window frames, parapets and other moldings. All seams shall be caulked and back caulked.

(h) Other enclosure products may be used provided that they meet the performance requirements of this chapter.

5:17-6.4 Encapsulation

(a) Encapsulation products or systems to be used for lead-based paint hazard abatement shall be warranted by the manufacturer to perform for at least 20 years.

1. Encapsulants shall meet all applicable fire, health and environmental regulations.

2. The material safety data sheet (MSDS) shall be obtained from the manufacturer for all encapsulants tested or applied.

3. Residential paints and canvas-backed vinyl wallpaper shall not be used for encapsulation of lead-based paint unless they meet the performance requirements of this chapter.

(b) Prior to the application of any encapsulant, a determination shall be made as to whether the surface or component is suitable for encapsulation. Encapsulants shall not be applied to friction or impact surfaces, deteriorated components or severely deteriorated paint films.

1. Exception to (b) above: Interior floor and stair surfaces may be encapsulated with a rigid floor covering (for example, vinyl tile) that is adhesively bonded to the surface.

2. The condition of existing paint films shall be assessed by performing a visual evaluation, checking for surface deterioration and determining interfacial and other film integrity properties. Standard ASTM procedures shall be used to rate the degree of these conditions.

(c) Patch tests shall be performed for each surface preparation procedure and encapsulant. A successful patch test of the surface preparation and the encapsulant on the surface to which it will be applied shall be made before an encapsulant is applied to a surface.

1. For liquid-applied systems, the patch size shall be six inches by six inches. The area prepared for the patch test shall be at least two inches larger in each direction than the area to be encapsulated.

i. Three inch by three inch patches may be used for fiber-reinforced wall covering and for areas where the shape of the component makes use of a larger test patch impossible.

2. At least one test patch shall be applied to each type of component in each room where the encapsulant is to be used.

3. A logbook shall be kept documenting the location, application method, wet film thickness, if appropriate, and environmental conditions (temperature and relative humidity) for each patch test.

4. A visual evaluation of each patch test shall be performed and the results recorded in the logbook. The encapsulant coating shall be inspected for wrinkling, blistering, cracking, cratering, or bubbling.

5. An adhesive evaluation of each patch test shall be performed using one of the following three methods and the results recorded in the logbook.

i. "X"-Cut Method:

(1) Using a sharp cutting tool, an "X" shall be inscribed in the center of the patch after the encapsulant system has cured according to the manufacturer's recommendations. Each cut line shall be one and one-half inches to two inches long and shall be made through all layers down to the substrate.

(2) If the cut does not go through the patch to the base substrate, a second "X" cut shall be made in a different location.

(3) The point of the cutting tool shall be placed at the intersection of the two cut lines and used to attempt to peel or lift the patch from the existing topcoat. If more than a one-half inch square portion or section of the patch can be removed from the existing topcoat, then the encapsulant fails the patch test.

ii. Patch edge method:

(1) A cut shall be made adjacent to the edge of the patch, through as thick a layer of the encapsulant as possible, to the base substrate.

(2) If the cut does not go through the patch to the base substrate, a second cut shall be made in a different location.

(3) The point of the knife shall be placed under the encapsulant at the cut, attempting to peel or lift the patch. If more than a one-half inch square portion or section of the patch can be removed from the existing topcoat, then the encapsulant fails the patch test.

iii. Soundness method:

(1) A three-eighths inch by three inch bead of construction adhesive shall be applied to the central portion of the face of an eight inch square piece of gypsum wallboard. The wallboard shall then be pressed onto the six inch by six inch patch. The curing time recommended by the adhesive manufacturer shall be observed.

(2) An attempt shall be made to pull the wallboard square away from the painted surface. If the paper backing of the wallboard remains on the adhesive on the painted surface, the patch passes the test.

(d) In addition to the other worksite preparation requirements of this chapter, surface preparation shall be performed as follows and shall replicate the surface preparation used for the successful patch test:

1. Surfaces to be encapsulated shall be cleaned with non-sudsy degreasers or other appropriate cleaning products. The surface shall be rinsed thoroughly;

2. Smooth, glossy surfaces shall be roughened as allowed by this chapter to improve adhesion as recommended by the encapsulant manufacturer;

3. Loose paint shall be removed by wet scraping;

4. Exposed base substrates shall be cleaned or prepared for encapsulation as needed; and

5. Any leaks or sources of moisture shall be eliminated. Where nonreinforced coatings are to be used, cracks shall be filled with a caulking, patching, or sealing compound compatible with the encapsulant and the substrate to which it is applied.

(e) Coatings shall be applied following the manufacturer's instructions. Encapsulant application shall be performed as it was for the successful patch test.

1. Environmental conditions shall be as specified in the manufacturer's instructions and shall be as close as possible to the conditions that existed during the successful patch test.