

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Lead-Based Paint Inspections in Rental Dwellings

Adopted New Rules: N.J.A.C. 5:28A

Proposed: July 18, 2022, at 54 N.J.R. 1355(a).

Adopted: December 5, 2022, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: April 5, 2023, as R.2023 d.057, **without change**.

Authority: N.J.S.A. 52:27D-437.20a and 52:27D-437.17b; and P.L. 2021, c. 182.

Effective Date: May 1, 2023.

Expiration Date: May 1, 2030.

Summary of Public Comments and Agency Responses:

Comments were received from the Honorable Dayl R. Baile, Mayor of Gloucester City; Jerrod C. Grasso, CEO of New Jersey Realtors; Nicholas Kikis, Vice President of Legislative & Regulatory Affairs, New Jersey Apartment Association; Steve Janett, COO of Berkshire Hathaway Homeservices NJ Properties; Ryan Campbell, Bay Hill Environmental; Conor Tarleton, Hillman Consulting; Linda Babecki, Legal Services of New Jersey; Ben Haygood, Isles; Kelsey McClain, Lead-Free New Jersey; Derrick Webb, Mt. Olive Health Department; Lead Inspector/Risk Assessor Dominick Astino; Cristin Cooney, Safeway Home Inspections; Attorney Nicholas DelGaudio; Mike Kogut; Andrew Applegate; and Glenn Treier.

Comments Received from the Honorable Dayl R. Baile, Mayor of Gloucester City

1. COMMENT: The commenter states that a contradiction exists in the exemption concerning multiple dwelling and hotels that have been registered with the Department of Community Affairs (Department) for at least 10 years. The commenter notes that multiple dwellings and hotels are exempted from inspection requirements if they have been registered with the Department for at least 10 years because those properties receive cyclical inspections that cite paint violations. The commenter believes this contradicts the requirement for municipalities that are required to perform dust wipe sampling as those properties do not have dust wipe samples taken during their cyclical inspections. The commenter states that if this exemption is permitted, they would like a listing of dwellings exempt from N.J.A.C. 5:28A for Gloucester City.

RESPONSE: The Department respectfully disagrees. These properties are exempted pursuant to P.L. 2021, c.182 (the Act), based on the determination that lead-based paint is a significant hazard if it is damaged or deteriorated. As these properties have had recurring inspections for at least 10 years that involve checking paint for these violations, the exemption is appropriate. The Department does not have a list of dwellings exempt from the inspection requirements pursuant to N.J.A.C. 5:28A. Municipal records or property owners may be a resource in determining exemption status.

2. COMMENT: The commenter notes that the available pool of third-party inspectors will not be enough, and that the fall training session was booked. The commenter questions how they will appoint appropriate staff to conduct inspections and if the Lead Inspector/Risk Assessor training offered by Rutgers School of Public Health is acceptable for the training and certification of municipal employees to collect dust wipe samples.

RESPONSE: Municipal inspectors in permanent agencies do not require Lead Inspector/Risk Assessor (LI/RA) certification to perform inspections; rather, they must undertake either United States Department of Housing and Urban Development (HUD) visual assessment training, which is available at no cost online, or HUD/United States Environmental Protection Agency (EPA) dust wipe technician certification training, which occurs throughout the State, depending on the inspection needed in the municipality. However, it is recommended to have at least one LI/RA on staff and the Department notes that while the currently scheduled training is fully booked, future classes will be made available. If someone has a LI/RA certification, regardless of the entity offering the course, that person would be able to perform inspections pursuant to the Act.

3. COMMENT: The commenter questions when the \$20.00 fee per unit deposited into the Lead Hazard Control Assistance Fund is due to be paid. Additionally, they ask if it is a one-time payment or recurring, and if the Department could send a list of properties in Gloucester City exempt from this fee.

RESPONSE: This fee will be recurring, based upon when the unit is inspected. The Division of Housing and Community Resources has advised that these are to be remitted monthly. Checks must be addressed to the Treasurer, State of New Jersey and can be mailed to Department of Community Affairs, Lead Hazard Control Fund, PO Box 811, Trenton, NJ 08625. This payment should be mailed to the attention of the Division of Housing and Community Resources.

Regarding the requested list, please see the Response to Comment 1.

4. COMMENT: The commenter states that 2019 data from the New Jersey Department of Health (NJDOH) shows that Gloucester City should have a visual lead-based paint inspection requirement, rather than a dust wipe requirement, and questions the determination made by the Department.

RESPONSE: The Department based their determinations on the most recent data received from the NJDOH, which was for 2022.

5. COMMENT: The commenter states that N.J.A.C. 5:28A-3.1 only addresses the owner's responsibility to tenants and the Department. The commenter questions if municipalities are to incorporate owner's responsibility to the municipality in their own ordinances as they are responsible to manage all of the data and are subject to fines if they fail to do so. The commenter notes that time has not been allotted for the development of such ordinances.

RESPONSE: The effective date of these requirements was established pursuant to the Act and began on July 22, 2022. Municipalities have the authority to adopt a local ordinance if they so choose to address responsibilities to the municipality.

6. COMMENT: The commenter notes that in order to maintain the required records, the municipality is dependent upon the Department for a list of properties that are exempt from this rule and the many certified lead evaluation contractors to submit lead-safe and lead-free certificates. The commenter questions what mechanics are to be employed by the municipality to ascertain this information.

RESPONSE: This is outside the scope of the rulemaking, as the Act does not require the Department to compile such information. A list of all certified lead evaluation contractors is

available online at https://www.nj.gov/dca/divisions/codes/offices/leadhazard_abatement.html.

In addition, municipalities may utilize a multitude of resources to confirm whether properties are exempt; this includes tax records and filing with the municipal clerk pursuant to N.J.A.C. 5:10 for certificates of registration for multiple dwellings and N.J.A.C. 5:29 for registrations of rental one- and two-family dwellings.

7. COMMENT: The commenter states that Gloucester City has 2,791 residential rental units subject to this new rule and the municipality is doing their best to get ahead and comply with the new requirements, but they feel they are being set up for failure. The commenter notes that little information was provided prior to the Governor's signature of the Act and that they do not foresee having any certified Lead Inspectors/Risk Assessors employees due to the backlog and timeframe of training courses. The commenter is also concerned due to the availability of third-party inspection agencies, as they will not be able to fully satisfy the inspection requirements of the entire municipality in time.

RESPONSE: Please see the Response to Comment 2.

Comments Received from Jerrod C. Grasso, CEO of New Jersey Realtors

8. COMMENT: The commenter seeks an amendment to proposed new N.J.A.C. 5:28A-2.1(d)1 and 2. The commenter states that as currently written, it indicates that a municipality can still require a local government inspection conducted by their own enforcing agency or contracted company even if a homeowner hires their own inspector and also prohibits a homeowner from hiring their own inspector if the municipality determines there is a conflict of interest or there is

a failure for the private company to complete the inspection. The commenter requests that the Department amend the proposed rules to state that if a municipality decides to conduct its own inspection or investigation of landlords or owners that directly hire lead evaluation contractors, the municipality shall be responsible for bearing the full cost of any such inspection or investigation.

Additionally, the commenter requests amendments indicating that if a municipality decides to prohibit the landlord or homeowner from hiring their own lead evaluation contractor, the municipality shall provide the landlord or owner with at least a 60-day notice of this prohibition. This amendment should state that if the municipality does not provide the landlord or owner with the 60-day notice and the landlord or owner has already hired and paid for their own inspector, the municipality shall be responsible for any costs incurred, including if the municipality orders a follow-up inspection in the timeframe outside of those set forth above given that the landlord or owner already paid for the initial periodic inspection within the required timeframe. The commenter believes these requested amendments are critical given that there is nothing listed in the statute indicating a municipality can require a second periodic inspection done by their own agency or contracted inspector.

Lastly, the commenter requests an amendment to provide a clear definition of conflict of interest, so that a property owner is aware if there is a conflict before they hire an inspector. The commenter states that if there is a conflict of interest, the property owner shall be permitted to select another inspector of their choosing and that a timeline be added for failure to complete an inspection to ensure a clear procedure is in place.

RESPONSE: The Department declines to make the requested changes. Initially, the Department notes that a municipality may only prohibit an owner from directly hiring a lead evaluation

contractor under limited circumstances directly related to the municipality's ability to trust the accuracy and completeness of the inspection. Municipalities incur costs for these inspections that ensure residential safety, and the enabling act allows municipalities to recoup the costs of administering the program by charging for these inspections. Regarding the 60-day notice, the Department respectfully disagrees that these are needed because inspection timeframes dictate inspections on tenant turnover or three-year periodic inspections; for either of these cases, municipalities would establish the protocols for notification. Finally, the Department believes the concept of conflict of interest is well understood and is defined at N.J.A.C. 5:17-2.2, which regulates lead evaluation contractors.

9. COMMENT: The commenter requests that proposed N.J.A.C. 5:28A-2.3(b)2 be amended to state that a visual inspection can occur but not be required when dust wipe sampling is also occurring given the costs of both tests and the fact that this is not mentioned in the enabling statute.

RESPONSE: The rulemaking states that a visual inspection may be performed during a dust wipe inspection, but it is not required. The Department does not anticipate that there would be an onerous cost addition should a municipality choose to perform a concurrent visual assessment.

10. COMMENT: The commenter is concerned that proposed N.J.A.C. 5:28A-2.4(a)1I can lead to additional costly inspections for those renting out their homes that have already received a valid lead-safe certificate. The commenter requests an amendment to this section stating that if additional inspections are required during the time period that a valid lead-safe certificate is in effect, there will be no additional cost to the property owner and that financial resources from the

State shall be made available to them since inspections previously occurred and work was done to make the property lead-safe.

RESPONSE: The Department respectfully disagrees. Pursuant to the Act, municipalities are permitted to recoup the cost of administering this program through inspection fees. Additionally, the lead-safe determination is inherently a temporary determination due to the nature of lead-based paints and paint damage/deterioration. Owners are responsible for ensuring the dwelling is lead-safe for their tenants and if an inspection determines the presence of lead, then remediation is required to be undertaken at the cost of the owner. Property owners also have the option to undergo abatement to obtain a lead-free certification, which would exempt them from further inspections pursuant to this new chapter.

11. COMMENT: The commenter requests amendments at N.J.A.C. 5:28A-2.4(b)1 to indicate that this paragraph does not go into effect until July 22, 2024, as there is nothing in the enabling statute requiring other units in a building to be inspected if lead paint has been found in one unit between now and July 2024. The commenter states that if the Department does go forward with this paragraph as is, homeowners should be given additional time, at least 60 days, to conduct these inspections so as to not overburden local inspectors or private companies, given the limited number of companies certified to conduct these inspections and the limited number of municipalities with procedures in place to implement this Act.

RESPONSE: The Department respectfully disagrees. The July 22, 2024 date is the deadline for the initial inspection to occur, rather than the starting date. As a timeframe is not stated in this paragraph, the inspection timeframe would be equivalent to any other dwelling. The section merely states that the other units are required to be inspected in accordance with the Act.

Additionally, the Department does not believe additional time is necessary as the timeframe between inspections, whether it is upon tenant turnover or every three years, gives ample amount of time for inspections to be completed.

12. COMMENT: The commenter requests, in reference to N.J.A.C. 5:28A-2.5(d), that should tenants need to be relocated due to lead paint remediation, the Department should allocate funds to landlord to cover the costs of relocating a tenant. The commenter states that given the cost of temporary housing in New Jersey, it is only fair to provide landlords with financial resources to cover the costs of relocating a tenant if lead paint abatement will be ongoing at their property.

RESPONSE: The Division of Codes and Standards is not responsible for the allocation of funds for this purpose as it outside the scope of their jurisdiction.

13. COMMENT: The commenter states that proposed N.J.A.C. 5:28A-3.I) should be amended to apply only to real estate transactions where properties are being rented or have a tenant at the time of closing. Additionally, the commenter states that property owners who sold homes prior to the chapter becoming effective should not be penalized and that the subsection should only apply to future transactions once the chapter becomes effective. The commenter believes that this change will bring the proposed rules in accordance with the enabling statute.

RESPONSE: The Department would like to note that this section only refers to transactions that occur after the date the Act goes into effect. Additionally, pursuant to the Act, the requirements in this section are required on all real estate transactions for dwellings built prior to 1978. The provision to provide a lead-safe certification is only applicable in the event that the property has been inspected pursuant to this chapter prior to the transaction.

14. COMMENT: The commenter requests an amendment to proposed N.J.A.C. 5:28A-4.1(a)1 and 2 to ensure that if an inspection is scheduled or if a remediation company is contracted, a property owner would be in compliance and not subject to the proposed financial penalties. The commenter notes that because there are a limited number of inspection and remediation companies, as well as municipalities with necessary procedures in place, it is a necessary change. The commenter also requests an amendment that any notifications for required inspections and/or remediation be sent to a property owner to all addresses on file with a municipality by both regular and certified mail.

RESPONSE: The Department agrees; owners who are in the process of getting an inspection or necessary remediation work are considered to be in compliance with this chapter. It is the owner's responsibility to show that these efforts are being made. Additionally, the rules provide for notice to property owners. At this time, the Department has deemed this rulemaking appropriate. Should there be a need to incorporate further notice measures, including certified mail, those changes may be considered.

Comments Received from Nicholas Kikis, VP of Legislative & Regulatory Affairs, New Jersey Apartment Association

15. COMMENT: The commenter refers to N.J.A.C. 5:28A-1.3 and acknowledges it gives a pathway for exemption for multiple dwellings receiving Bureau of Housing Inspections (BHI) cyclical inspections and notes that the proposed rule includes language referring to multiple dwellings with no outstanding paint violations and does not mention lead-paint violations. The

commenter believes it would be consistent with the statutory language to allow multiple dwelling owners to test painted surfaces subject to paint violations to determine that they do not contain lead, as a pathway for compliance. The commenter states that mandating a lead-inspection due to an identified defect in paint that has been determined to be lead-free would make little sense. The commenter further states that this amendment would be consistent with the legislative language exempting properties, is important as delays in the reinspection process could frustrate owners' efforts to close out outstanding violations and would further the regulatory goal of encouraging property owners to test painted surfaces for lead-based paint.

RESPONSE: Any dwelling that has been certified to be free of lead-based paint is not subject to inspection to this chapter, pursuant to N.J.A.C. 5:28A-1.3(b)4. Property owners have the ability to contract a lead abatement contractor to remediate their property, and if it is determined that there is not any lead present then or after necessary remediation, then they can receive a lead-free certificate that will exempt the property from the requirements for future inspections.

16. COMMENT: The commenter refers to N.J.A.C. 5:28A-2.1(a) and suggests a provision be added that addresses units in multiple dwellings that were exempt pursuant to N.J.A.C. 5:28A-1.3, but subsequently lose that exemption due to the issuance of a paint violation. The commenter suggests that unoccupied units would need the lead-safe certificate prior to, or upon, tenant turnover; however, occupied units should be afforded a 90-day grace period before a lead-safe certification would be required.

RESPONSE: The Department respectfully disagrees as the timeframe for inspection of the units is mandated by law and cannot be changed by the Department.

17. COMMENT: The commenter refers to N.J.A.C. 5:28A-2.1(b)1 and the language stating that the qualifications of a municipal employee “shall be determined in accordance with applicable state laws or rules.” The commenter states that as this is a new inspection, they are not aware of any State laws or rules that govern the qualifications of a lead-paint inspector for the purposes of the lead-safe certification pursuant to this chapter. The commenter suggests that successfully completing coursework on HUD’s protocols for visual assessment for lead-based paint hazards and, if performing dust wipe inspection, completion of the Department’s curriculum for Dust Wipe Sampling Technicians would be appropriate training and should be included in the rule upon adoption.

RESPONSE: The Department respectfully disagrees that these courses need to be included within the rules. Both courses cited by the commenter are referenced in the Department’s Guidance, *Lead-Based Paint in Rental Dwellings*. Interested parties can consult this resource to determine the appropriate certification necessary in a municipality. The Department will continue to assess any other avenues for training and may update the Guidance, accordingly.

18. COMMENT: The commenter refers to N.J.A.C. 5:28A-2.1(c)1 and states that the authority of the municipality to inspect after a periodic lead-based paint inspection by a contractor hired by a landlord or owner directly undermines the right of landlords or owners to hire their own contractor. The commenter notes that landlords or owners may be faced with choosing between a municipal inspection or two inspections, one by a hired contractor and another by the municipality confirming if it was done correctly. Additionally, the commenter states that any investigation should be about the conduct of a lead evaluation contractor, which is regulated by the Department, not the municipalities and suggests this paragraph be deleted in its entirety.

RESPONSE: Initially, the Department notes that a municipality may only prohibit an owner from directly hiring a lead evaluation contractor under limited circumstances directly related to the municipality's ability to trust the accuracy and completeness of the inspection. The Department respectfully disagrees with the commenter as the ability to determine if a contractor is not adhering to rules is reliant on the ability for the municipality to oversee their work. Additionally, the Department should be informed of any issues discovered by the municipal inspectors concerning the ability of lead evaluation contractors following an investigation.

19. COMMENT: The commenter refers to N.J.A.C. 5:28A-2.1(c)2 and is concerned that the paragraph undermines the statutory option given to property owners to either have the inspection provided by the municipality or hire their own lead evaluation contractor as it allows to the municipality to unilaterally prohibit property owners from directly hiring if the owner failed to have an inspection completed or if the municipality determines there is a conflict of interest between the owner and lead-evaluation contractor. The commenter notes that there is no clear standard a municipality would use to determine whether a conflict of interest exists and no remedy to dispute this determination, as such, this paragraph could be used as legal basis to arbitrarily deny an owner of their right to directly hire a lead evaluation contractor. The commenter also notes that it is unclear what it means for an owner to hire a lead evaluation contractor, yet somehow fail to have the inspection completed. The commenter suggests this paragraph be deleted upon adoption and the Department update the standards for lead evaluation contractors, pursuant to N.J.A.C. 5:17, including standards for issuing lead-safe certifications established by this rulemaking and, if necessary, rules to safeguard against improper conflicts of interest.

RESPONSE: The Department respectfully disagrees as the rule applies when the owner has opted to use a contractor but ultimately an inspection never took place, whether by design or by circumstances outside their control and, thus, the municipality is allowed to determine if there is reason to intervene to ensure that the inspection is completed fully and accurately. Additionally, N.J.A.C. 5:17-2.2, which regulates lead evaluation contractors, sets forth the standards to determine the existence of a conflict of interest.

20. COMMENT: The commenter notes that the housing affordability impact analysis in the proposed rule is inadequate and does not provide a required assessment into the impact of the proposed rule on the affordability of rental housing in the State of New Jersey. The commenter provides their own price assessment and concludes that some rental units in New Jersey could face a \$895.00 to \$2,170 cost every two to three years pursuant to this proposed rule. The commenter notes that given the median rent in New Jersey is \$1,368, this would equate to 1.8 percent to 6.6 percent rent increase if the costs were added to rent. Additionally, the commenter states the rulemaking tries to sidestep the housing affordability analysis by arguing that should a landlord try to charge tenants increased rents, courts “have been reluctant to find that costs attributable to lead remediation can be passed on to tenants.” The commenter asks the Department to provide, upon adoption, details regarding how many units the Department anticipates being subject to the rule, the distribution of those units across the State, the Department’s estimate of the cost of compliance, and what the Department believes the total cost to property owners will be.

RESPONSE: Pursuant to N.J.A.C. 1:30-5.1(c)8i, an agency is not required to estimate the detailed information requested by the commenter if the agency finds that the rulemaking would

impose an insignificant impact on housing affordability. As stated in the notice of proposal analysis, this rulemaking is related to inspections for lead-based paint and does not pertain to housing affordability. As the notice of proposal analysis notes, the Department does not expect any significant impact on housing affordability and indicated the bases for its findings, among them being that courts of competent jurisdiction have been reluctant to find that costs attributable to lead remediation can be passed on to tenants.

Further, the Act dictates the inspections and requires remediation. Therefore, any attendant costs are attributable to the statutory requirements. Pursuant to subsection (b), municipalities are statutorily required to conduct inspections to evaluate lead-based paint hazards. The Act sets forth the requirements as to what type of inspections are to be conducted, when those inspections must be undertaken, and what remediation must occur if a lead-based paint hazard is found. The rules implement these statutory provisions, and any costs associated with the inspections and remediation are attributable to the Act's requirements.

21. COMMENT: The commenter states that the Department should issue guidance or undertake additional rulemaking to amend the Lead Hazard Evaluation and Abatement Code, N.J.A.C. 5:17, to permit lead evaluation contractors to hire and train staff to complete the required visual assessments and/or dust wipe sampling without requiring these workers to be certified lead inspectors/risk assessors. The commenter notes that lead inspectors/risk assessors require a much higher level of expertise than is required for a routine visual assessment or dust wipe sample. The commenter believes requiring lead evaluation contractors to employ workers with this level of expertise would increase costs of hiring lead evaluation contractors and limit the available workforce.

RESPONSE: This comment is outside the scope of this rulemaking and is not addressed at this time. Lead evaluation contractors can train employees how they see fit outside of the scope of the requirements for dust wipe and visual inspection training; however, all lead evaluation contractors must employ at least one LI/RA.

Comment Received from Steve Janett, COO of Berkshire Hathaway Homeservices NJ Properties

22. COMMENT: The commenter states that they have contacted many communities in their market area and most of them either do not know about the Act or have not scheduled inspections or have the personnel to perform them. They question how they will continue to rent properties built prior to 1978 without the ability to get properties inspected by local communities. They suggest the Department postpone the effective date to give more time for towns to inspect.

RESPONSE: The Act allows two years for the first inspection to take place or upon tenant turnover, which was established pursuant to the Act. Additionally, the Act includes provisions for landlords/owners to hire lead evaluation contractors to perform inspections.

Comments Received from Ryan Campbell, Bay Hill Environmental

23. COMMENT: The commenter notes that visual inspections on the exterior of a rental dwelling is a necessary procedure in ensuring that any non-exempt rental property is safe for the children who may inhabit it. The commenter states that children are not bound to the inside of their homes and hazards present on the exterior nullifies the results of a hazard free interior, specifically, deteriorated wooden porches, as they are a major lead-paint hazard.

RESPONSE: The Department recognizes the dangers of lead that can be present on the exteriors of dwellings; however, based on the definition of dwelling unit within the rulemaking, which mirrors the definition of dwelling unit pursuant to the Hotel and Multiple Dwelling Act, N.J.S.A. 55:13A-1 et seq., only interior spaces are addressed within this rulemaking.

24. COMMENT: The commenter, in reference to N.J.A.C. 5:28A-2.3(b), states that dust wipe sampling should be a priority as lead dust poses the greatest lead hazard to children. The commenter notes that while a visual inspection may be able to conclude there are no glaring hazardous components, there is still no way to determine whether lead dust is present without collecting dust wipe samples.

RESPONSE: The Act allows for visual assessments in certain situations. However, dust wipe sampling is allowed in any municipality as a form of inspection pursuant to this rulemaking. The Department encourages the use of dust wipe sampling.

Comment Received from Conor Tarleton, Hillman Consulting

25. COMMENT: The commenter finds the proposed legislation ambiguous and in conflict with EPA regulations and HUD guidelines for the performance of lead activities. They state that the overall proposed legislation falls short in defining the term “inspection” or “lead-based paint evaluation.” They note that the legislation defines a visual inspection, which should only be used to determine paint condition, not lead risks, lead hazards, or lead content. Additionally, the commenter mentions that the definition for lead-based paint hazard relies on the inspector to know if a painted friction surface has lead-based paint. They note that such a determination can only be made through scientific means, for example XRF scan or paint chip sampling during an

inspection. Lastly, the commenter believes it is in the public interest for the limitations of a visual inspection to be made clear in the rule and on the published “Lead-Safe” Certificate.

RESPONSE: The Act established a form of inspection that is different from the evaluation noted by the commenter, including the use of visual assessments, thus the Department is unable to make the requested changes. Additionally, due to the prevalence of lead-based paint in pre-1978 buildings, it is a reasonable and precautionary assumption that damaged or deteriorated painted surfaces are a lead hazard and require remediation.

Comments Received from Linda Babecki, Legal Services of New Jersey

26. COMMENT: The commenter suggests in order to ensure that tenants' rights remain protected during a remediation process, the following additional language at N.J.A.C. 5:28A-2.5(d) is required (addition in underline):

(d) Any relocation of tenants required pursuant to a remediation shall be undertaken, in accordance with applicable laws, including but not limited to, N.J.S.A. 52:27D-437.9 "Emergency Lead Poisoning Relocation Fund," N.J.S.A. 2A:18-61.1 et seq., The Anti Eviction Act, The Relocation Assistance Law N.J.S.A. 52:31B-1 et seq., along with corresponding regulations at N.J.A.C. 5:11.

The commenter notes that N.J.A.C. 5:17, Lead Hazard Evaluation and Abatement Code, addresses when occupants need to move in order to complete an abatement, it is important that anyone reading the rule, landlord or tenant, be clear on the associated obligations and rights. The commenter states that the proposed language emphasizes the appropriate statutes and rules, thereby helping to guarantee that the affected tenant receives the proper protections and avoiding the risk of an illegal eviction.

RESPONSE: The Department respectfully disagrees that further amendments are needed. Utilizing the term “applicable laws” ensures that all laws that concern tenant rights are incorporated.

27. COMMENT: The commenter states that clarification should be added to proposed N.J.A.C. 5:28A-2.1(b)1, which refers to staff who may conduct periodic lead-based paint inspections. That paragraph states that the qualifications for such individuals "shall be determined in accordance with applicable State laws or rules." The commenter notes that given the specific certification/permitting procedures for lead inspectors/risk assessors, they propose adding “including but not limited to N.J.A.C. 8:62, Standards for Lead Certification.” Additionally, the commenter states that N.J.S.A. 52:270-437.17 requires the Department to provide ongoing and multifaceted education to tenants and property owners about lead based paint hazards and the legal requirements. Specifically, they state it is incumbent upon the Department to "solicit requests to enter into ongoing, funded partnerships to provide specific counseling information services to tenants and affected parties on their rights and responsibilities with regard to lead-based paint hazards and lead poisoning." The commenter would like to suggest that the Legal Services of New Jersey is available and willing to coordinate with the Department in the development and dissemination of information.

RESPONSE: The Department disagrees that further clarity is needed for statutory citations, as noted in the Response to Comment 26. The remained of this comment is outside the scope of this rulemaking.

Comments Received from Ben Haygood, Isles

28. COMMENT: The commenter states that Department of Health and Department of Community Affairs must coordinate efforts of information sharing with the public and their respective staffs. The commenter believes the current Department Lead Assistance Programs were greatly hampered by non-communication between these two agencies and, in addition, municipalities and community-based agencies must be brought into the methods and messaging of the State agencies around the lead certificate law.

RESPONSE: The Department has made significant and effective efforts to provide information regarding this new Act to interested parties, the public, and municipalities.

29. COMMENT: The commenter notes that there is ambiguity around the choice of who “may or shall” conduct the lead inspection. They note the intent of the Act when written, was that municipalities with the capacity could do the inspections or the owner could hire a certified third-party inspector. The commenter’s understanding is that since a large number of inspections will be required, it will provide an opportunity for workforce development and economic activity. They state that this was an expectation of both the Legislature when drafting the bill and the Governor’s Office. Because of this, the commenter believes there is no need to create an expanded inspection program infrastructure within municipalities when the private market can provide those same services.

RESPONSE: The Department respectfully disagrees that the use of these words presents any ambiguity. The Act utilizes the terms may and shall, which have a clear meaning and must be followed as such.

30. COMMENT: The commenter believes the available workforce should be allowed to contract, when necessary, with municipalities, and the State should utilize the \$2 million from the Workforce Development Initiative previously submitted to scale up the needed workers.

RESPONSE: This comment is outside the scope of this rulemaking. The Division of Codes and Standards is not responsible for the allocation of those funds for this purpose; this is under the purview of the Department of Labor and Workforce Development.

31. COMMENT: The commenter notes that they have experienced municipalities utilizing GovPilot to track one- and two-unit buildings that are not tracked at the State level or inspected pursuant to the Department's cyclical inspection process. They further add that some municipalities are not using GovPilot or similar software to track and identify and that the Department should support municipalities through funding or infrastructure to assist in creating an accurate database system to track lead-safe certificate compliance.

RESPONSE: Implementation of such a database is outside of the scope of this rulemaking. This Act is being enforced on the municipal level, and municipalities may implement any tools for tracking that they see fit.

32. COMMENT: The commenter notes that public education and communication is key to the success of this Act. They suggest the implementation of Lead Resource Centers to communicate with the community about the Act, healthy housing, and training in various locations throughout the State. The commenter believes these centers can be funded with American Rescue Plan Act funds and grant programs.

RESPONSE: Education efforts and appurtenant funding are outside the scope of this rulemaking. The Department notes, however, that it has been providing education and outreach opportunities since the Act has taken effect. This includes 11 presentations for multiple interested parties, including municipal officials, local health officials, and realtors. This presentation is posted on the Department's website for public viewing, as well.

33. COMMENT: The commenter believes traditional outreach and messaging from the State is outdated and does not reach the intended audience effectively. They recommend that with the \$3.9 million grant for implementation of the Act, procurement of a professional marketing and communications agency rather than the internal State government communications staff is necessary, along with a toll-free line of support, and public information sessions.

RESPONSE: The use of allocated funds is outside of the scope of this rulemaking.

34. COMMENT: The commenter believes it is necessary for the Department to hire key staff to work on all components of the implementation of this bill, including the development of the on-going educational program. Additionally, the commenter requests the Department to clarify issues around workforce development, municipality liaison, and the coordination of the municipality list to alleviate confusion concerning borderline cases.

RESPONSE: Comments on staffing are outside of the scope of this rulemaking. There is currently a public list of the inspection method to be utilized in each town available on the Department's website,

https://www.nj.gov/dca/divisions/codes/resources/pdfs/doh_lead_data_insp.pdf.

35. COMMENT: The commenter recommends financial disbursement of the \$3.9 million allocated for implementation to cover staffing, software, local outreach, and administrative oversight. The commenter also recommends utilizing the \$170 million in American Rescue Plan Act (ARPA) funds for lead paint remediation in support of municipal operations with resources that best serve the agency up to but not limited to remediation, abatement, XRF guns, and other similar lead paint testing and inspection tools. The commenter suggests that planning needs to occur to consider how the increase in dust wipe sampling will potentially harm the capacity of lead labs in the State and surrounding locations.

RESPONSE: The use of allocated funds is outside the scope of this rulemaking.

Comments Received from Kelsey McClain, Lead-Free New Jersey

36. COMMENT: The commenter, referencing N.J.A.C. 5:28A-2.1(b), (c), and (d), states the proposed rules leave ambiguity around what local agency will be responsible for lead inspections, as some cases the description could apply to local health departments or local housing departments. The commenter notes that while the Lead-Free New Jersey supports the flexibility it allows municipalities to implement the Act in the best way they see fit, they are concerned about the lack of accountability that this may create. The commenter proposes that the rules name a specific entity within a locality that is responsible for conducting lead inspections.

RESPONSE: The Department respectfully disagrees that this may cause a lack of accountability. The municipalities have the discretion to use the local agency that best suits implementation and the responsibility of such will rest on that agency.

37. COMMENT: The commenter recommends that the Department maintain a Statewide database of which units are required to come into compliance with the rule, which units have lead investigation, and which units are not in compliance. They also recommend the Department track which units and owners have a history of lead violations, numbers of lead assessments completed, and the numbers of lead-safe and lead-free certificates that are issued. The commenters believe that a Statewide database is essential to successful measurement and enforcement of this new rule. They further state that the Department is responsible for ensuring municipalities adhere to the requirements of the Act and the information a database can provide would be important.

RESPONSE: The Department respectfully disagrees and will not be implementing a Statewide database of applicable units, owners, violations, certificates, and assessments. The municipalities who have authority in the enforcement of the provisions of the Act are not restricted in creating and maintaining a database for their programs.

Comments Received from Derrick Webb, Mt. Olive Health Department

38. COMMENT: The commenter believes the licensing and training requirements are not clearly defined. They state that effort needs to be made to definitely clarify the licensure and training requirements of inspectors within the proposed rule.

RESPONSE: The Department respectfully disagrees; the Act and this rulemaking set forth the requirements for municipal inspectors. Lead evaluation contractors are licensed pursuant to N.J.A.C. 5:17.

39. COMMENT: The commenter states that, in accordance with the proposed rulemaking, the training is intended for those with experience inspecting housing units. The commenter questions if there will be separate training requirements for individuals lacking the previously indicated professional experience.

RESPONSE: The Department believes these requirements ensure the quality of these inspections and has no intention to amend the requirements to allow individuals with minimal professional experience. The Act requires the inspection to be performed by a permanent local agency for the purposes of inspecting buildings; thus, it is anticipated that the municipal inspectors will have experience inspecting housing units.

40. COMMENT: The commenter recommends that the Department develop a model ordinance to ensure the provisions and procedures are standardized across jurisdictions. They also recommend the development of standardized inspection forms for visual assessment. The commenters would like for these recommendations to be developed with subject matter experts within the State, involving individuals in local and State government, as well as private sector contractors and stakeholders. Additionally, the commenter requests better efforts of communication between NJDOH and the Department are needed.

RESPONSE: The drafting of a model ordinance and any other forms is outside of the scope of this rulemaking. The Department continues to communicate and engage with the New Jersey Department of Health regarding this Act and rulemaking.

Comment Received from Lead Inspector/Risk Assessor Dominick Astino

41. COMMENT: The commenter states that they are currently employed by a health department in New Jersey, and they wish to use their Lead Inspector/Risk Assessor license to work in a municipality interested in their evaluation services. The commenter explains that because of conflict of interest provisions at N.J.A.C. 5:17, they cannot be hired, and suggests that the Department makes exceptions in the rule to allow individuals in similar situations the ability to work for municipalities as a contractor in their own time.

RESPONSE: Pursuant to N.J.A.C. 5:17-2.2(a)2, an employee of a lead evaluation contractor may offer lead evaluation services to any municipality, except for one in the jurisdiction in which they are employed.

Comments Received from Cristin Cooney of Safeway Home Inspections

42. COMMENT: The commenter notes they work for a home inspection company and would like to become a lead evaluation contractor and employ Lead Inspector/Risk Assessors. The commenter questions if after obtaining the appropriate insurance and submitting the application to the Department, there would be any other requirements for the company to complete, other than the application and fee.

RESPONSE: Lead evaluation contractor certification is outside the scope of this rulemaking. To become a lead evaluation contractor, one needs to obtain the proper insurance, submit an application, pay the associated fee, and at time of application, must have a certified Lead Inspector/Risk Assessor on staff, pursuant to N.J.A.C. 5:17.

43. COMMENT: The commenter asks if the inspector has to be certified in both dust wipe and visual inspections in order to meet the requirements of the State to be certified by the New Jersey Department of Health.

RESPONSE: Licensure as a LI/RA is outside of the scope of this rulemaking. In order to be certified by the NJDOH, any applicant would have to comply with requirements for licensure set forth by NJDOH.

44. COMMENT: The commenter notes that each lead evaluation contractor inspector needs to complete an NJDOH-approved course to be certified, and they question if only the courses listed on the NJDOH Certified Lead Training Providers list can be taken to satisfy this requirement. Additionally, the commenter asks if an EPA dust sampling course also meets the requirements to be certified by the NJDOH. The commenter notes that sending their employees to a five-day, \$800.00 training course would be a hardship on a small business.

RESPONSE: Please see the Responses to Comments 42 and 43. A lead evaluation contractor needs at least one LI/RA certified by NJDOH on staff; however, not every employee must have LI/RA certification.

Comments Received from Mike Kogut of INGT Lead Swipe

45. COMMENT: The commenter is unsure of the references regarding two- and three-year testing intervals and would like clarification on the matter of when each applies. The commenter suggests the removal of the three-year reference or more clearly defining the requirements of testing intervals.

RESPONSE: These are the timeframes established pursuant to the Act. The initial inspection is required either two years after the effective date of the Act, or upon tenant turnover, whichever occurs first. Following the initial inspection, the inspection requirement shall be every three years. It should be noted that the lead-safe certification, which is issued after an inspection, expires after two years. If there is not a change in tenancy, then an inspection is not required until the three-year date. However, if tenant turnover occurs following certification expiration, then an inspection is required. The Department refers property owners and tenants to the guidance documents as it provides the necessary information.

46. COMMENT: The commenter explains that the levels of lead contamination should be clearly stated and provides an example of Philadelphia's requirements referencing floors not having in excess of 40 micrograms (μg) of lead per square foot and windows not having more than 250 μg of lead per square foot. The commenter suggests that the State should choose specific levels of contamination to base their requirements.

RESPONSE: The Legislature has determined that municipal data gathered by the Department of Health is an appropriate measure of the type of inspection needed for each municipality. Therefore, the Department is unable to make the requested change.

47. COMMENT: The commenter states there should more guidance regarding liability and the exact steps for conducting visual inspections. The commenter further explains that the limitations of visual inspection should be clearly defined, as well as the necessary steps if chipped and/or peeling paint is found.

RESPONSE: This comment is outside the scope of this rulemaking. Visual inspections were determined to be a valid method of inspection pursuant to the Act. The Department has a guidance document published related to the Act available online at <https://www.nj.gov/dca/divisions/codes/resources/leadpaint.html>.

48. COMMENT: The commenter states that they consider it necessary to include the references to required education/experience needed to conduct visual and lead swipe inspections. The commenter notes that in Philadelphia, the requirement is zero hours of related experience and an eight-hour lead dust technician class. They further note that in their understanding for New Jersey, they need to complete a lead inspector/risk assessor course, pass a State examination, and possess a college education plus two years related experience or three years related experience without college. The commenter states that they would like confirmation on the education and experience requirements.

RESPONSE: The reference to requirements needed for a lead evaluation contractor and lead inspector/risk assessor certification are located at N.J.A.C. 5:17 and can be found at N.J.A.C. 8:62, respectively. Municipal employees who will be undertaking inspections must either receive visual assessment certification through HUD or dust wipe sampling technician certification through EPA/HUD. This information is provided in the Department's guidance and is not needed within the rulemaking, as training courses are subject to change.

Comment Received from Attorney Nicholas DelGaudio

49. COMMENT: The commenter questions if regional health commissions are permitted to perform the required Chapter 128 inspections as a "permanent local agency" and if municipalities would be able to hire regional health commissions to perform this work. The

commenter notes that regional health commissions are waived from this requirement as N.J.A.C. 5:17-2.1(e) provides that, “local health departments or other public agencies performing lead evaluations shall not be required to obtain contractor certification to perform evaluations within their jurisdictions.”

RESPONSE: County and other public health agencies are able to undertake inspections pursuant to this rulemaking. N.J.A.C. 5:28A-1.2, definitions, defines “permanent local agency” to mean “local, municipal agency maintained for the purpose of conducting inspections and enforcing laws, ordinances, and regulations concerning buildings and structures within its jurisdiction. This may include local building agencies, health agencies, and housing agencies.” As county and other public health agencies may have jurisdiction to inspect homes throughout towns in the county, this can be considered a permanent local agency.

Comment Received from Andrew Applegate

50. COMMENT: The commenter states as a duplex owner they support the intent of the new Act, however, they believe the analysis of community and economic impacts caused by the Act are inadequate. The commenter states that the new Act and associated rules will increase the cost of renting, particularly harming lower income households and people of color the most. The commenter further explains that the remediation costs and associated fees will not be a burden on the landlord but rather on the tenant, as profit margins of residential property rental are slim and if profits become too low, the property will be sold to be used as an owner occupied nonrental property, thus depleting the available rental housing stock.

Additionally, the commenter states that as a landlord, if the cost of maintaining their property increases, they will certainly seek an increase in rent and will justify this increase in court, if necessary. The commenter urges the Department to withdraw the new rule and conduct

a formal analysis, and possibly provide a State support for landlords with property subject to lead-based paint inspection and remediation.

RESPONSE: The Department understands that there is an attendant cost to this rulemaking. This is a legislative initiative to address a longstanding environmental hazard. The potential cost of remediation ensures the health and safety of the community. Further, as stated in the Response to Comment 20, the Act dictates the inspections and requires remediation. Therefore, any attendant costs are attributable to the statutory requirements. Pursuant to subsection (b), municipalities are statutorily required to conduct inspections to evaluate lead-based paint hazards. The Act sets forth the requirements as to what type of inspections are to be conducted, when those inspections must be undertaken, and what remediation must occur if a lead-based paint hazard is found. The rules implement these statutory provisions, and any costs associated with the inspections and remediation are attributable to the Act's requirements. As this rulemaking implements the requirements at P.L. 2021, c. 182, there is no basis to withdraw the rulemaking.

Comment Received from Glenn Treier

51. COMMENT: The commenter states that the Act does not make sense and that inspecting all rental units within the State is an impossible task. The commenter explains that the State should inspect rental units once and if peeling or chipped paint is found, then they should continue to inspect that unit in the future. Additionally, the commenter questions why the Act does not apply to outside the unit in public spaces and the provisions regarding scraping and repainting the wall five feet and below does not protect children as deteriorated paint can fall on to the floor from the higher portions of the wall. The commenter suggests the Department rewrite the Act.

RESPONSE: The Legislature has determined that this inspection process is appropriate to address lead-based paint hazards in rental dwellings in the State, and the Department recognizes the importance of protecting New Jersey resident from lead exposure. Even if the Department agreed with the commenter, the Department is unable to change a statute.

Federal Standards Statement

A Federal standards analysis is not required because the new rules are not being adopted pursuant to the authority of, or in order to implement, comply with, or participate in, any program established pursuant to Federal law or any State statute that incorporates to any Federal law, standards, or requirements. The new rules do refer to requirements of the Department of Housing and Urban Development (HUD) and certifications and requirements of the Environmental Protection Agency (EPA) for compliance with Federal standards, where applicable.

Full text of the adopted new rules follows:

TEXT