

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Lead-Based Paint Inspections in Rental Dwellings

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

Authorized By: Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-095.

Submit written comments by September 16, 2022, to:

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The agency's proposal follows:

Summary

On July 22, 2021, Governor Murphy signed P.L. 2021, c. 182 (the Act). The Act requires periodic inspections for certain rental dwellings that were constructed prior to 1978 for the purpose of identifying lead-based paint hazards, one of the biggest sources of lead exposure for children. The Department of Community Affairs (Department) is proposing a new chapter,

N.J.A.C. 5:28A, Lead-Based Paint Inspections in Rental Dwellings, to incorporate the provisions of the Act.

A section-by-section summary of the new rule follows.

Subchapter 1. General Provisions

1. At N.J.A.C. 5:28A-1.1 and 1.2, the Department is incorporating the heading of the new chapter and defining words, terms, and phrases necessary for the use and enforcement of the new rules.

2. At N.J.A.C. 5:28A-1.3, Applicability and exemptions, the new rule specifies the applicability of these requirements. The rules apply to all rental single-family, two-family, and multiple dwellings units, with the exemption of the following:

- Dwelling units that were constructed during, or after, 1978;
- Single- and two-family seasonal rental dwelling units that are rented for less than six months duration each year by tenants that do not have consecutive lease renewals.
- Dwelling units that have been certified to be free of lead-based paint pursuant to N.J.A.C. 5:17.
 - Multiple rental dwelling units that have been registered with the Department for at least 10 years and have no outstanding lead violations from the most recent cyclical inspection performed on the multiple dwelling under the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq. This means that all multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years and that have a current certificate of inspection issued by the Department of Community Affairs, Bureau of Housing Inspection, shall be exempt from this chapter, and all multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years with open inspections that have no

violations for paint shall also be exempt from this chapter. This is because, during cyclical inspections, the Department cites paint violations rather than lead violations. In order to ensure periodic lead-based paint inspections occur, where needed, and consistent with P.L. 2021, c. 182, any open paint violations in a dwelling unit will necessitate compliance with this chapter.

- Dwellings with a valid lead-safe certification issued pursuant to this chapter.

Lead-safe certifications are valid for two years from the date of issuance.

Subchapter 2. Periodic Lead-Based Paint Inspections

3. At N.J.A.C. 5:28A-2.1(a), the proposed new rule establishes the timeframe for carrying out periodic lead-based paint inspections. In accordance with P.L. 2021, c. 182, the initial inspection for units subject to this chapter must be upon tenant turnover or within two years of the effective date of the law (July 22, 2022), whichever is sooner. As defined in the previous subchapter, “tenant turnover” means the time at which all existing occupants vacate a dwelling unit, and all new tenants move into the dwelling unit or the time at which a new tenant enters a vacant dwelling unit. Thereafter, all such dwelling units shall be inspected for lead-based paint hazards at the earlier of every three years or upon tenant turnover, except that an inspection shall not be required at tenant turnover if the dwelling unit owner has a valid lead-safe certification for the dwelling unit. The rule further specifies that the periodic lead-based paint inspection should be scheduled from the most recent periodic lead-based paint inspection, that resulted in a valid lead-safe certification.

4. At N.J.A.C. 5:28A-2.1(b), (c), and (d), the proposed new rules establish the responsibilities for performing periodic inspections. In accordance with the law, a municipality that maintains a permanent local agency for the purpose of conducting inspections for compliance with laws, regulations, and ordinances concerning buildings and structures shall be

responsible for inspecting every dwelling unit subject to this chapter for lead-based paint hazards. The municipality may appoint the appropriate staff member to conduct periodic lead-based paint inspections. If a municipality does not maintain a permanent local agency, the municipality must hire a lead evaluation contractor to perform periodic lead-based paint inspections. In addition, if the owner or landlord so chooses, municipalities must allow dwelling unit owners or landlords to directly hire a lead evaluation contractor to perform periodic lead-based paint inspections.

5. At N.J.A.C. 5:28A-2.2, the proposed new rule establishes fees for inspection by allowing the municipality to charge the dwelling owner or landlord a fee sufficient to cover the cost of the periodic lead-based paint inspection, including the cost of hiring a lead evaluation contractor, where applicable. These fees shall be solely dedicated to meeting the costs of implementing and enforcing this chapter and shall not be used for any other purpose. In addition to these fees, each municipality must assess an additional fee of \$20.00 per unit to be deposited into the Lead Hazard Control Assistance Fund. This additional fee does not apply to any dwelling unit where the Department has already assessed such fee. Lastly, this section specifies that any inspection fee charged for a dwelling unit in a common interest community is the responsibility of the unit owner, not the homeowner's association, unless the association is the owner of the unit.

6. At N.J.A.C. 5:28A-2.3(a), the proposed new rule requires that, for municipalities in which less than three percent of children tested, six years of age or younger, have a blood lead level greater than or equal to five $\mu\text{g}/\text{dL}$ according to the central lead screening database maintained by the New Jersey Department of Health, or other data deemed appropriate by the

Department, the periodic lead-based paint inspection may be performed through a visual assessment. The requirements, then, specify what constitutes as a visual inspection.

7. At N.J.A.C. 5:28A-2.3(b), the proposed new rule requires that, for municipalities in which at least three percent of children tested, six years of age or younger, have a blood lead level greater than or equal to five µg/dL according to the central lead screening database maintained by the New Jersey Department of Health, or other data deemed appropriate by the Department, the inspection shall be performed through dust wipe sampling. The requirements then specify the applicable requirements for dust wipes pursuant to the United States Department of Housing and Urban Development (HUD) and note that a visual assessment may also be undertaken at the time of the dust wipe sampling.

8. At N.J.A.C. 5:28A-2.4(a), the proposed new rule sets forth the requirements when a periodic lead-based paint inspection is performed, and no lead-based paint hazards exist. In those instances, a lead-safe certification is issued and remains valid for a period of two years. If the periodic lead-based paint inspection is performed by a lead evaluation contractor, a copy of this certificate must be provided to the owner and the municipality by the lead evaluation contractor who performed the inspection. The only time the lead-safe certification may be deemed invalid is if, during the two-year certification period, a lead inspector/risk assessor conducts an independent inspection or risk assessment and determines that there is a lead-based paint hazard.

9. At N.J.A.C. 5:28A-2.4(b), the proposed new rule sets forth the requirements when a periodic lead-based paint inspection is performed and there are lead-based paint hazards present in the dwelling unit. In those instances, remediation must occur, in accordance with N.J.A.C. 5:28A-2.5. Additionally, if a lead-based paint hazard is identified in an inspection of one dwelling unit in a building consisting of two or three dwelling units, then the lead evaluation

contractor or permanent local agency shall inspect the remainder of the building's dwelling units, except for those that have been certified to be free of lead-based paint or which have a valid lead-safe certification.

10. At N.J.A.C. 5:28A-2.5(a), (b), (c), and (d), the proposed new rules state that, where a lead-based paint hazard exists, the owner shall remediate the hazard by using either abatement or interim controls. The proposed new rules further reference the relevant State and Federal requirements for remediation work and any relocation of tenants made necessary by the scope of the remediation work.

11. At N.J.A.C. 5:28A-2.5(e), the proposed new rule establishes the requirements effective upon conclusion of remediation work required by the full section. When the owner has utilized interim controls, the lead evaluation contractor or permanent local agency must perform an additional inspection using a dust wipe sampling. If the additional inspection shows that the hazard no longer exists, the lead evaluation contractor or permanent local agency must certify the unit as lead-safe pursuant to the lead-safe certification requirements at N.J.A.C. 5:28A-2.4. If the owner utilized abatement, and a lead abatement clearance certificate has been issued by the local enforcing agency, in accordance with N.J.A.C. 5:17, then the lead-free certificate issued at the final clearance inspection shall exempt the dwelling from future periodic lead-based paint inspections.

12. At N.J.A.C. 5:28A-2.6, the proposed new rule allows a permanent local agency or lead evaluation contractor to consult with the Department, local health board, or New Jersey Department of Health concerning the criteria for the inspection and identification of areas and conditions involving a high risk of lead poisoning in such dwellings, methods of detection of lead in such dwellings, and standards for the repair of such dwellings containing lead paint.

Subchapter 3. Recordkeeping Requirements

13. At N.J.A.C. 5:28A-3.1, the proposed new rule establishes the owner's responsibilities. Specifically, the proposed new rule requires the owner to provide to the tenant evidence of a valid lead-safe certification at the time of tenant turnover; affix a copy of the certification to the tenant's lease; provide evidence of a valid lead-safe certification at the time of any cyclical inspection carried out pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:12A-1 et seq. unless the unit is exempt from the requirements at P.L. 2021, c. 182; maintain a record of the lead-safe certification, including the name or names of a unit's tenants, if the inspection was conducted during a period of tenancy; inform the municipality of all tenant turnover activity; and provide a copy of this chapter and the Lead-Based Paint in Rental Dwellings Guidance available at

<https://www.nj.gov/dca/divisions/codes/resources/leadpaint.html> to any prospective owners of the dwelling during the real estate transaction, settlement, or closing.

14. At N.J.A.C. 5:28A-3.2, the proposed new rule establishes the municipal and lead evaluation contractor responsibilities. Specifically, the proposed new rules require the municipality to maintain a record of all dwellings subject to this chapter, which shall include up-to-date information on inspection schedules, inspection results, and tenant turnover. The municipality must also maintain a record of all lead-safe certifications issued pursuant to this chapter; any time a lead evaluation contractor performs the inspection, the lead evaluation contractor must provide to the municipality, a copy of any lead-safe certifications issued. Finally, the municipality must maintain a record of all lead-free certifications issued pursuant to N.J.A.C. 5:17.

Subchapter 4. Investigations and Enforcement

15. At N.J.A.C. 5:28A-4.1(a), the proposed new rule establishes that a municipality is authorized to conduct investigations and issue penalties in order to enforce a property owners' failure to comply with this chapter. This section further requires the municipality to give the owner of the dwelling 30 days to cure any violation by conducting the required inspection or initiating any required remediation efforts; remediation efforts are considered initiated when the dwelling owner has hired a lead abatement contractor or other qualified party to perform lead-hazard control methods. If the dwelling owner has not cured the violation or initiated remediation efforts in that time, they shall be subject to a penalty not to exceed \$1,000 per week until the required inspection has been conducted or the remediation efforts have been initiated.

16. At N.J.A.C. 5:28A-4.1(b), the proposed new rule establishes that, upon the filing of a complaint with the Department or on the Department's initiative, it is authorized to conduct investigations and issue penalties against a municipality for its failure to comply with this chapter. The municipality shall be given a period of 30 days to undertake necessary inspections of dwellings and provide proof of inspection to the Department in the form of lead-safe certifications or a notification that a lead-based paint hazard exists in a dwelling. If the municipality has not cured the violation within that time period, it shall be subject to a penalty not to exceed \$1,000 per week until the necessary action has been taken.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

It is expected that the proposed new rules will have a positive social impact. This rulemaking would incorporate the provisions at P.L. 2021, c. 182, into the New Jersey Administrative Code. This would ensure that rental dwellings throughout the State are inspected

regularly for the presence of lead-based paint hazards, one of the biggest sources of lead exposure for children. This rulemaking protects the residents of the State, especially children under the age of six, from the many dangers associated with exposure to lead in the environment, which can lead to harmful impacts on physiological and behavioral health. Further, the remediation of lead-based paint hazards, when identified, will create safer rental housing for tenants throughout the State.

Economic Impact

The proposed new rules will lead to the establishment of fees for inspection. These fees will be established by the municipality to determine the appropriate amount for covering the cost of the inspection, and the fees cannot be used for any other purpose. This will offset the cost of implementing these requirements in municipalities but will pose an additional cost to owners and landlords throughout the State. The new rules also establishes an additional fee of \$20.00 per dwelling unit to be deposited into the Lead Hazard Control Assistance Fund. In addition, should remediation of lead-based paint hazards be necessary, the cost of remediation will be the responsibility of the owner of the dwelling unit. Finally, the new rules impose penalties of not more than \$1,000 per week for owners or municipalities that are not complying with the rules.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules are not being proposed under 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.

Jobs Impact

The proposed new rules may lead to the creation of new job opportunities in the workforce, as municipalities and dwelling owners may need to hire lead evaluators, or lead inspector/risk assessors, and abatement contractors as a result of this rulemaking.

Agriculture Industry Impact

The Department does not anticipate that the proposed new rules would impact the agriculture industry.

Regulatory Flexibility Statement

The proposed new rules, which incorporate the requirements at P.L. 2021, c. 182, impose new inspection, enforcement, and recordkeeping requirements for the State's municipalities. However, the new rules may also impose new compliance and recordkeeping requirements on lead evaluation contractors, many of which are small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements are necessitated by, and necessary for, the implementation of P.L. 2021, c. 182 and are not expected to pose an undue burden on small businesses. Thus, no regulatory flexibility analysis is required.

Housing Affordability Impact Analysis

It is not expected that the proposed new rules will have an impact on the affordability of housing, or the average costs associated with housing because the new rules implement lead-based paint inspection requirements for certain rental dwellings built prior to 1978. Please note that a landlord for rental dwellings built prior to 1978 may seek to pass along the costs of any associated fees or remediation for lead based paint hazards to the tenant, but in the event a tenant

files a challenge to a rent increase, historically, courts of competent jurisdiction have been reluctant to find that costs attributable to lead remediation can be passed on to tenants.

Smart Growth Development Impact Analysis

It is not expected that the proposed new rules, which implement lead-based paint inspection requirements in certain rental dwellings built prior to 1978, will have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 28A LEAD-BASED PAINT INSPECTIONS IN RENTAL DWELLINGS

SUBCHAPTER 1. GENERAL PROVISIONS

5:28A-1.1 Title

This chapter is promulgated pursuant to the authority at N.J.S.A. 52:27D-437.20a and 52:27D-437.17b and may be cited as “regulations for lead-based paint inspections in rental dwellings”

5:28A-1.2 Definitions

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

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

“Department” means the Department of Community Affairs.

“Dust wipe sampling” means a sample collected by wiping a representative surface and tested, in accordance with a method approved by the United States Department of Housing and Urban Development (HUD) and as conducted pursuant to N.J.A.C. 5:28A-2.3.

“Dwelling” means a building containing a room or rooms, or suite, apartment, unit, or space, that is rented and occupied, or intended to be rented and occupied, for sleeping and dwelling purposes by one or more persons.

“Dwelling unit” means a unit within a building that is rented and occupied, or intended to be rented and occupied, for sleeping and dwelling purposes by one or more persons.

“Interim controls” means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs, or the term as it is defined pursuant to 42 U.S.C. § 4851b and the regulations adopted pursuant thereto.

“Lead abatement” means a set of measures designed to permanently eliminate lead-based paint hazards, in accordance with standards established by the Commissioner at N.J.A.C. 5:17.

“Lead abatement contractor” means a firm certified by the Department to perform remediation through lead abatement or interim control work pursuant to N.J.A.C. 5:17.

“Lead abatement worker” means an individual certified by the New Jersey Department of Health to perform lead abatement or interim control work pursuant to N.J.A.C. 8:62.

“Lead-based hazard control methods” means interim controls, as defined above.

“Lead-based paint” means paint or other surface coating material that contains lead in excess of 1.0 milligrams per centimeter squared or in excess of 0.5 percent by weight, or such other level, as may be established by Federal law.

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

“Lead evaluation contractor” means a firm certified by the Department to perform lead inspection and risk assessment work pursuant to N.J.A.C. 5:17. This includes the ability to perform dust wipe sampling.

“Lead inspector/risk assessor” means an individual certified by the New Jersey Department of Health to perform lead inspection and risk assessment work pursuant to N.J.A.C. 8:62. This includes the ability to perform dust wipe sampling.

“Lead-free certification” means the certificate issued, in accordance with N.J.A.C. 5:17, which states that there is no lead-based paint, or that the dwelling has undergone lead abatement, in accordance with N.J.A.C. 5:17.

“Lead-safe certification” means the certification issued pursuant to this chapter, which confirms that a periodic lead-based paint inspection was performed, and no lead-based paint hazards were found. This certification is valid for two years from the date of issuance, in accordance with N.J.A.C. 5:28A-2.4.

“Lead free” means that a dwelling has been certified to have no lead-based paint or has undergone lead abatement, in accordance with N.J.A.C. 5:17.

“Lead safe” means that a dwelling has been found to have no outstanding lead-based paint hazards. It does not mean that the dwelling is certified to be lead free.

"Multiple dwelling" means any building or structure and any land appurtenant thereto, and any portion thereof, in which three or more dwelling units are occupied or intended to be occupied by three or more persons living independently of each other. "Multiple dwelling" also means any group of 10 or more buildings on a single parcel of land or on contiguous parcels under common ownership, in each of which two dwelling units are occupied, or intended to be occupied, by two persons or households living independently of each other, and any land appurtenant thereto, and any portion thereof. "Multiple dwelling" does not include those buildings and structures that are excluded pursuant to N.J.S.A. 55:13A-3(k).

"Periodic lead-based paint inspection" means the initial inspection of all applicable dwelling units at the earlier of two years from the effective date of P.L. 2021, c. 182, July 22, 2022, or tenant turnover, and thereafter the earlier of three years or upon tenant turnover, consistent with N.J.A.C. 5:28A-2.1, for the purposes of identifying lead-based paint hazards in dwellings subject to this chapter.

"Permanent local agency" means a 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.

"Remediation" means interim controls or lead abatement work undertaken in conformance with this chapter to address lead-based paint hazards.

"Tenant turnover" means the time at which all existing occupants vacate a dwelling unit, and all new tenants move into the dwelling unit or the time at which a new tenant enters a vacant dwelling unit.

“Visual assessment” means a visual examination for deteriorated paint or visible surface dust, debris, or residue, and as conducted pursuant to N.J.A.C. 5:28A-2.3.

5:28A-1.3 Applicability and exemptions

(a) This chapter applies to all rental single-family, two-family, and multiple dwelling units with the exception of those exempt pursuant to (b) below.

(b) The following rental dwelling units shall be exempt from the requirements of this chapter and, thus, shall not be subject to periodic lead-based paint inspection and evaluation for the presence of lead-based paint hazards:

1. Dwelling units that were constructed during or after 1978.
2. Single-family and two-family seasonal rental dwelling units that are rented for less than six months duration each year by tenants that do not have consecutive lease renewals;
3. Dwelling units that have been certified to be free of lead-based paint, pursuant to N.J.A.C. 5:17;
4. Multiple rental dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years and have no outstanding paint violations from the most recent cyclical inspection performed on the multiple dwelling pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq. and N.J.A.C. 5:10.
 - i. All multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years and that have a current certificate of inspection issued by the Department of Community Affairs, Bureau of Housing Inspection, shall be exempt from this chapter;

ii. All multiple dwelling units constructed prior to 1978 that have been registered with the Department for at least 10 years with open inspections that have no violations for paint shall also be exempt from this chapter; and

5. Dwellings with a valid lead-safe certification issued pursuant to this chapter. Lead-safe certifications are valid for two years from the date of issuance pursuant to N.J.A.C. 5:28A-2.4.

SUBCHAPTER 2. PERIODIC LEAD-BASED PAINT INSPECTIONS

5:28A-2.1 Periodic lead-based paint inspection: performance

(a) The initial inspection for all single-family, two-family, and multiple dwellings subject to this chapter shall be upon tenant turnover or within two years of the effective date of P.L. 2021, c. 182, July 22, 2022, whichever is sooner. Thereafter, all such dwelling units shall be inspected for lead-based paint hazards every three years or upon tenant turnover, whichever is earlier, except that an inspection shall not be required at tenant turnover, if the dwelling unit owner has a valid lead-safe certification for the dwelling unit.

1. In all scenarios, the next periodic lead-based paint inspection shall be counted from the most recent periodic lead-based paint inspection which resulted in a valid lead-safe certification.

(b) A municipality that maintains a permanent local agency shall be responsible for inspecting every single-family, two-family, and multiple dwelling subject to this chapter for lead-based paint hazards, except pursuant to (d) below. Inspections shall be performed on the time table set forth at (a) above.

1. The municipality may appoint a qualified staff member(s) within the permanent local agency to conduct periodic lead-based paint inspections pursuant to this chapter. Qualification shall be determined in accordance with applicable State laws or rules.

(c) If a municipality does not maintain a permanent local agency or a qualified staff member, the municipality shall hire a lead evaluation contractor to perform inspections for lead-based paint hazards in every single-family, two-family, and multiple dwelling subject to this chapter.

Inspections shall be performed on the time table set forth at (a) above.

(d) A municipality shall permit, if a landlord or owner so chooses, a dwelling unit owner or landlord to directly hire a lead evaluation contractor to conduct the periodic lead-based paint inspections for lead-based paint. Inspections shall be performed on the time table set forth at (a) above.

1. The municipality shall have the authority to conduct inspections or investigations of landlords or owners that directly hire lead evaluation contractors to ensure that periodic lead-based paint inspections are being performed, in accordance with this chapter.

2. The municipality shall have the authority to prohibit an owner from directly hiring a lead evaluation contractor to conduct a periodic lead-based paint inspection in the following situations:

i. An owner, who previously opted to hire a lead evaluation contractor to perform the periodic lead-based paint inspection, failed to have the inspection completed; or

ii. The municipality determines there is a conflict of interest between the owner and their lead-evaluation contractor of choice.

5:28A-2.2 Fees for inspection

(a) The municipality shall charge the dwelling owner or landlord a fee sufficient to cover the cost of the periodic lead-based paint inspection, including the cost of hiring a lead evaluation

contractor, where applicable. These fees shall be solely dedicated to meeting the costs of implementing and enforcing this chapter and shall not be used for any other purpose.

(b) In addition to these fees, each municipality shall assess an additional fee of \$20.00 per unit inspected by a lead evaluation contractor or permanent local agency for the purposes of the Lead Hazard Control Assistance Act, P.L. 2003, c. 311 (N.J.S.A. 52:27D-437.1 et seq.) concerning lead hazard control work, unless the unit owner demonstrates that the Department has already assessed an additional inspection fee of \$20.00 pursuant to the provisions of Section 10 at P.L. 2003, c. 311 (N.J.S.A. 52:27D-437.10). The fees collected pursuant to this subsection shall be deposited into the Lead Hazard Control Assistance Fund established pursuant to Section 4 at P.L. 2003, c. 311 (N.J.S.A. 52:27D-437.4).

(c) In a common interest community, any inspection fee charged pursuant to this chapter shall be the responsibility of the unit owner and not the homeowners' association, unless the association is the owner of the unit.

5:28A-2.3 Periodic lead-based paint inspection: procedure

(a) For municipalities in which less than three percent of children tested, six years of age or younger, have a blood lead level greater than or equal to five µg/dL, or if different, the level set forth at N.J.S.A. 52:27D-437.16, according to the central lead screening database maintained by the New Jersey Department of Health, or other data deemed appropriate by the Department, the periodic lead-based paint inspection may be performed through a visual assessment.

1. For a visual assessment, the permanent local agency or lead evaluation contractor shall examine dwellings, in accordance with HUD guidelines and regulations at 42 U.S.C. § 4851b for

deteriorated paint or visible surface dust, debris, or residue on all painted building components, especially any walls, window, trim, and surfaces that experience friction or impact.

(b) For municipalities in which at least three percent of children tested, six years of age or younger, have a blood lead level greater than or equal to five µg/dL, or if different, the level set forth at N.J.S.A. 52:27D-437.16, according to the central lead screening database maintained by the New Jersey Department of Health, or other data deemed appropriate by the Department, the inspection shall be performed through dust wipe sampling.

1. For dust wipe sampling, the permanent local agency or lead evaluation contractor shall collect samples by wiping representative surfaces, including floors, interior windowsills, and other similar surfaces, and tested, in accordance with methods approved by HUD.
2. A visual assessment, in accordance with (a) above may be undertaken during the course of the dust wipe sampling.

5:28A-2.4 Inspection results and lead-safe certification

(a) If, following inspection, a lead evaluation contractor or permanent local agency finds that no lead-based paint hazard exists in a dwelling unit, the lead evaluation contractor or permanent local agency shall certify the dwelling unit as lead-safe on the form prescribed by the Department.

1. The lead-safe certification shall be valid for a period of two years from the date of issuance.
 - i. If, during the two-year certification period, a lead evaluation contractor, lead inspector/risk assessor, a local health department, or a public agency conducts an independent inspection or risk assessment and determines that there is a lead-based paint hazard, the lead-safe

certification issued pursuant to this chapter shall be invalid. A periodic lead-based paint inspection shall be scheduled upon the conclusion of remediation, in accordance with N.J.A.C. 5:28A-2.5(e).

ii. Where an independent inspection or risk assessment determines that there is a lead-based paint hazard, the inspector/risk assessor shall inform the municipality of the results of the inspection.

iii. The lead-safe certification shall not exempt the dwelling from any other law that would require a lead inspection/risk assessment.

2. A copy of the lead-safe certification shall be provided to the owner of the dwelling. If a lead evaluation contractor issues the lead-safe certification, a copy shall also be provided to the municipality at the time it is issued.

(b) If a lead evaluation contractor or permanent local agency finds that a lead-based paint hazard exists in a dwelling unit, they shall notify the Department for review of the findings, in accordance with the Lead Hazard Control Assistance Act.

1. If a lead-based paint hazard is identified in an inspection of one of the dwelling units in a building consisting of two or three dwelling units, then the lead contractor or permanent local agency shall inspect the remainder of the building's dwelling units, with the exception of those dwelling units that have been certified to be free of lead-based paint or which have a valid lead-safe certification.

(c) The owner of the dwelling unit shall be responsible for remediation of the lead-based paint hazard. Remediation must be conducted consistent with the requirements at N.J.A.C. 5:28A-2.5.

5:28A-2.5 Remediation

- (a) Where a lead-based paint hazard exists in a dwelling, the owner shall remediate the hazard by using either abatement or interim controls. The owner shall choose the appropriate remediation mechanism.
- (b) Interim controls shall be performed, in accordance with the requirements of the United States Department of Housing and Urban Development at 42 U.S.C. § 4851b and detailed within the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing.
- (c) Abatement work shall be performed in accordance with the requirements in the Lead Hazard Evaluation and Abatement Regulations, N.J.A.C. 5:17.
- (d) Any relocation of tenants required pursuant to a remediation shall be undertaken, in accordance with applicable law.
- (e) Upon conclusion of the remediation, the following procedure shall be followed:
 1. If the owner utilized interim controls for remediation, the lead evaluation contractor or permanent local agency shall conduct an additional inspection within 60 days of the initial inspection by using dust wipe sampling. If the inspections shows that the hazard no longer exists, the lead evaluation contractor or permanent local agency shall certify the unit as lead-safe on the form prescribed by the Department. The certification shall be valid for a period of two years from the date of issuance; and
 2. If the owner utilized abatement for remediation, and a lead abatement clearance certificate has been issued by the local enforcing agency in accordance with N.J.A.C. 5:17, then the lead-free certificate issued at the final clearance inspection shall exempt the dwelling from future periodical lead-based paint inspections.

5:28A-2.6 Consultation with agencies

A permanent local agency or lead evaluation contractor with the duty to inspect dwellings subject to this chapter may consult with the Department, the local health board, or the New Jersey Department of Health concerning the criteria for the inspection and identification of areas and conditions involving a high risk of lead poisoning in such dwellings, methods of detection of lead in such dwellings, and standards for the repair of such dwellings containing lead paint.

SUBCHAPTER 3. RECORDKEEPING REQUIREMENTS

5:28A-3.1 Owner responsibility

- (a) The owner of a dwelling that is subject to this chapter shall provide to the tenant and to the municipality evidence of a valid lead-safe certification obtained pursuant to this chapter at the time of tenant turnover. The owner shall also affix a copy of any such certification as an exhibit to the tenant's lease.
- (b) The owner of a multiple dwelling that is subject to this chapter shall provide evidence of a valid lead-safe certification obtained pursuant to this chapter, as well as evidence of the most recent tenant turnover, at the time of any cyclical inspection performed pursuant to the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.
- (c) The owner of a dwelling that is subject to this chapter shall maintain a record of the lead-safe certification, which shall include the name or names of a unit's tenants, if the inspection was conducted during a period of tenancy.
- (d) The owner of any dwelling subject to this chapter shall inform the municipality of all tenant turnover activity to ensure any required inspection may be scheduled.
- (e) The owner of a dwelling shall provide a copy of this chapter, and any lead-safe certifications issued pursuant thereto, along with the accompanying guidance document, Lead-Based Paint in

Rental Dwellings, to any prospective owners of the dwelling during a real estate transaction, settlement, or closing.

5:28A-3.2 Municipal and lead evaluation contractor responsibility

- (a) The municipality shall maintain a record of all dwellings subject to this chapter which shall include up-to-date information on inspection schedules, inspection results, and tenant turnover.
- (b) The municipality shall maintain a record of all lead-safe certifications issued pursuant to this chapter.
 - 1. Where a lead evaluation contractor performs inspections for the municipality, the lead evaluation contractor shall provide a copy of the lead-safe certification to the municipality.
 - 2. Where an owner hires a lead evaluation contractor to perform inspections for his or her dwelling, the lead evaluation contractor shall provide a copy of the lead-safe certification to the municipality.
- (c) The municipality shall maintain a record of all lead-free certifications issued pursuant to N.J.A.C. 5:17.

SUBCHAPTER 4. INVESTIGATIONS AND ENFORCEMENT

5:28A-4.1 Municipal enforcement

- (a) A municipality, or its permanent local agency, shall be authorized to conduct investigations and issue penalties in order to enforce a property owner's failure to comply with this chapter.
 - 1. The owner of the dwelling shall first be given a period of 30 days to cure any violation by conducting the required inspection or initiating any required remediation efforts.

2. If the owner of the dwelling has not cured the violation within that time period, they shall be subject to a penalty, not to exceed \$1,000 per week, until the required inspection has been conducted or the remediation efforts have been initiated. Remediation efforts shall be considered to be initiated when the dwelling owner has hired a lead abatement contractor or other qualified party to perform lead-hazard control methods.

(b) Pursuant to N.J.A.C. 5:28A-2.1(d), above, the municipality shall exercise appropriate oversight of a landlord or owner who chooses to hire a lead evaluation contractor to perform the periodic lead-based paint inspection.

(c) Upon the filing of a complaint with the Department by any person, or on the Department's initiative, the Department shall be authorized to conduct investigations and issue penalties against a municipality for its failure to comply with this chapter.

1. The municipality shall be given a period of 30 days to undertake necessary inspections of dwellings subject to this chapter and provide proof of inspection to the Department. Proof of inspection shall be in the form of lead-safe certifications issued pursuant to this chapter, or notification that a lead-based paint hazard exists in a dwelling, and that remediation will be initiated.

2. If the municipality has not cured the violation within that time period, it shall be subject to a penalty not to exceed \$1,000 per week until the necessary action has been taken.