

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Lead Hazard Evaluation and Abatement Code

Adopted Amendments: N.J.A.C. 5:17-3.4, 3.5, and 9.1

Proposed: March 16, 2020, at 52 N.J.R. 497(a).

Adopted: June 3, 2020, by Lt. Governor Sheila Y. Oliver,

Commissioner, Department of Community Affairs.

Filed: December 21, 2020, as R.2021 d.008, **without change**.

Authority: N.J.S.A. 52:27D-124 and 436.

Effective Date: January 19, 2021.

Expiration Date: August 8, 2025.

Summary of Public Comments and Agency Responses:

Comments were received from Mitchell Malec, a former employee of the Department of Community Affairs (Department).

1. COMMENT: The commenter recommended that the Department review the Housing and Urban Development (HUD) guidance, entitled "Revised Dust-Level Action Levels for Risk Assessment and Clearance; Clearance of Porch Floors," and modify the extant Lead Hazard Evaluation and Abatement Code accordingly.

RESPONSE: The Department has determined that there is no conflict with the proposed amendments upon review of the HUD guidance. Porch floors could possibly be understood as "rough" or exterior surfaces for which there are different acceptable hazard and clearance levels; the recommended guidance is, therefore, outside the scope of this rulemaking.

2. COMMENT: The commenter disagreed with the Department's usage of the phrase, "and any requirements imposed by the certified laboratory that will analyze the samples," in the proposed amendment at N.J.A.C. 5:17-3.4(b) on the grounds that it is "unnecessary ... has an infinite number of possibilities, [and] appears to be a contractual matter."

RESPONSE: Per the Environmental Protection Agency's (EPA) adoption of enhanced standards, laboratories have requested that sampling be done over larger areas or with more material to allow them to test without changing their limits of detection. The Department has no preference with regards to these needs, and the laboratories are certified to perform the testing; consequently, the Department determined to follow the EPA approach, as the Department has lower hazard standards, which the laboratories conducting the testing will have to be able to test for compliance.

3. COMMENT: The commenter took issue with the phrasing at N.J.A.C. 5:17-3.5(a) and (b); as written, the rule states that a full evaluation, which the commenter understood as equivalent to a "risk assessment," must take place when floor wipes are in excess of 10 micrograms/square foot and that floors with a dust level of equal to or greater than 10 micrograms/square foot are considered to be lead hazards. The commenter stated that this would mean that a floor dust level of exactly 10 micrograms/square foot would be a lead hazard but would not require a full evaluation. The commenter recommended a rewrite of this language, as well as the similar language used for interior windowsills.

RESPONSE: The Department would like to clarify that screenings, evaluations, and risk assessments are all different procedures with distinct criteria established by the EPA. A screening involves composite sampling and, based on the results, establishes whether more needs to be done; an evaluation is surface-by-surface testing, as required. A risk assessment is a more comprehensive set of recommendations based on one or both of the above. Thus, the hypothetical described by the commenter, in which a space with a floor dust level of exactly 10 micrograms/square foot falls through the regulatory cracks, would not transpire given the various procedures already codified.

4. COMMENT: The commenter made the final recommendations: "[I]t is recommended that the Department, in the future, include any known

needed revisions to N.J.A.C. 5:17 when proposing any amendments. This is applicable to all Department regulations. It is recommended that the Department review N.J.A.C. 5:17-9.1(c) and 9.1(h) that refer to a non-existent N.J.A.C. 5:17-3.3(d), the reference of N.J.A.C. 5:17-9.1(d) to N.J.A.C. 5:17-3.4(c) for composite sampling, the text of Table 9.1, and even N.J.A.C. 5:17-1.3 to update information such as, but not limited to, the Steel Structures Painting Council name change of 1997. (Probably should also revise N.J.A.C. 5:17-3.2(a)2 and N.J.A.C. 5:17-11.1.)"

RESPONSE: The Department did not undertake a full revision of the chapter in this rulemaking, and consequently this recommendation is outside the scope of this rulemaking.

Federal Standards Statement

The adopted amendments are undertaken to comport with new Federal EPA regulations to lower the dust lead hazard standards. The Department is adopting more stringent clearance levels than that required by the EPA. Because the Department is authorized by the EPA to set levels at, or more stringent than, the EPA requirements, no Federal standards analysis is necessary.

Full text of the adoption follows:

SUBCHAPTER 3. EVALUATION AND TESTING

5:17-3.4 Additional testing requirements

(a) (No change.)

(b) Dust wipe sampling shall be done as per the HUD Guidelines and any requirements imposed by the certified laboratory that will analyze the samples.

(c)-(f) (No change.)

5:17-3.5 Lead hazards

(a) The following lead dust levels resulting from a lead screening shall indicate that a full evaluation shall be recommended in the report produced by the inspector/risk assessor:

1. Floor wipes in excess of 10 µg/square foot; or
2. Window sill wipes in excess of 100 µg/square foot.

(b) The following lead dust levels shall indicate lead hazards:

1. Floors—equal to or greater than 10 µg/square foot;
2. Interior window sills—equal to or greater than 100 µg/square foot;
3. (No change.)

SUBCHAPTER 9. FINAL INSPECTION AND CLEARANCE TESTING

5:17-9.1 Final inspection and clearance testing

(a)-(e) (No change.)

(f) The following lead dust levels are acceptable for clearance at residential buildings and child occupied facilities:

1. Floors—less than 10 µg/square foot;
2. Interior window sills—less than 100 µg/square foot;
3. (No change.)

(g)-(i) (No change.)

(b)

DIVISION OF CODES AND STANDARDS

Notice of Readoption

Construction Board of Appeals

Readoption: N.J.A.C. 5:23A

Authority: N.J.S.A. 40:55D-53.2.a, 52:27D-119, and 52:27D-192.

Authorized By: Lt. Governor Sheila Y. Oliver, Commissioner,

Department of Community Affairs.

Effective Date: December 17, 2020.

New Expiration Date: December 17, 2027.