COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Lead Hazard Evaluation and Abatement Code

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

Authorized by: Lieutenant Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

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

Proposal Number: PRN 2020-

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

Submit written comments by: , 2020 to:

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Lieutenant Governor Sheila Y. Oliver
Commissioner

The agency proposal follows:

Summary

The Department is proposing amendments to its Lead Hazard Evaluation and Abatement regulations in response to the U.S. Environmental Protection Agency's (EPA) adoption of enhanced standards, which are found at: EPA Final Rule 40 CFR Part 745, 80FR 32632 (July 9, 2019). The Federal rule, which was effective January 6, 2020, changed the acceptable levels for leaded dust during risk assessments. The Department's Lead Hazard Evaluation and Abatement Code, N.J.A.C. 5:17, references the EPA standards repeatedly in requirements for lead testing. In its adoption of new lower risk assessment levels, the U.S. EPA states:

> "EPA is finalizing its proposal to revise the [dust lead hazard standards] DLHS to 10 µg/ft² for floors and 100 µg/ft² for window sills. This final action is informed by the achievability of these standards in relation to their application in lead risk reduction programs, whether lower dust-lead loadings can be reliably detected by laboratories, resources for addressing [lead-based paint] LBP hazards, and consistency across the federal government.
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> EPA Final Rule, *supra*, at p. 32634.
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> EPA further stated: "EPA did not propose to change post-abatement clearance levels in 40 CFR part 745, subpart L. In this regard, EPA believes it has reasonably focused this rulemaking on the DLHS and the definition of LBP, which are the two actions EPA agreed to undertake in response to the 2009 citizen petition… EPA has initiated action on this issue under a separate rulemaking, entitled "Review of Post-Abatement Clearance Levels for Dust-lead" (RIN 2070-AK50), as noted in the Spring

2019 Unified Agenda of Regulatory and Deregulatory Actions" (EPA Final Rule, *supra*, at p. 32634).

The Department is proposing to change the dust lead risk hazard levels to match EPA's new levels and the post-abatement clearance levels for residential buildings and child-occupied facilities. While the EPA is only now starting consideration of post-abatement clearance levels, the Department believes the safety level and the post-abatement clearance level are so inextricably linked that moving forward with the post-abatement change avoids creating confusion in the regulated community. Moreover, the Department thinks it is highly unlikely that any contractor or insurance company would agree with allowing "clearance" and re-occupancy at a higher level than that which the EPA has identified as a risk, especially since a later reduction to the EPA's risk level could trigger a new round of work. In the event that the EPA later alters the post-occupancy clearance level, the Department will review the EPA rule and consider regulatory changes at that time.

As the EPA undertakes rulemaking to lower the post-abatement clearance levels, the Department could not justify a disparity between the hazard and clearance levels. Future EPA adoptions will be addressed appropriately through future rulemaking.

A section-by-section description of amendments follows:

1. At N.J.A.C. 5:17-3.4, the proposed amendment would add the requirement that licensed lead evaluation and abatement companies follow the HUD Guidelines and any other requirement from the certified labs that they use. During the EPA's comment period for its new risk levels, some laboratories stated that to maintain current efficiencies and costs, and to continue using their existing analysis equipment without a great capital investment, they might require that larger sample areas be wiped and submitted to them. EPA agreed with this strategy

and the Department would not interfere with a certified laboratory's reasonable instructions to its clients.

2. At N.J.A.C. 5:17-3.5, the proposed amendment would change the lead dust risk level from 25 to 10 micrograms per square foot (µg/square foot) to 10 for floors and from 125 to 100 µg/square foot for window sills.

3. At N.J.A.C. 5:17-9.1 5, the proposed amendment would change the lead dust clearance risk levels from 25 to 10 µg/square foot to 10 for floors and from 125 to 100 µg/square foot for window sills.

As the Department has provided a 60-day comment period on this 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 anticipated that the proposed amendments would have a positive social impact by lowering lead risk and clearance levels for child-occupied spaces. This would benefit the health and safety of their occupants. "The NTP (National Toxicology Program) concluded that there is sufficient evidence for risk of adverse health effects in children and adults at [blood lead levels (BLLs)] less than 10 µg/dL, and less than 5 µg/dL as well. In children, there is sufficient evidence that BLLs less than 5 µg/dL are associated with increased diagnoses of attention-related behavioral problems, greater incidence of problem behaviors, and decreased cognitive performance." (*See,* EPA Final Rule, *supra* at p. 32634).

Economic Impact

It is unclear to the Department if the federally mandated lower risk levels and corresponding lower clearance levels would necessarily require building owners to pay more for lead hazard reduction and abatement work. These are federally mandated lead dust hazard levels,

and the Department is required adopt regulations that match or are more stringent than those determined by the federal government.. It is possible that contractors will rapidly adapt to testing and cleaning to a new, lower level, or that some contractors already have procedures in place to remediate, abate, clean, and clear to lower levels so as to have a margin of error. In adopting the new lower risk levels, EPA received many comments from certified laboratories about what testing methods and results are readily achievable, and these concerns were already addressed in the adoption of the final federal rule.

Federal Standards Statement

These proposed changes are undertaken to comport with new federal EPA regulations to lower the dust lead hazard standards. The Department is proposing to adopt more stringent clearance levels than that required by the EPA. Because the Department is authorized by EPA to set levels at or more stringent than EPA requirements, this is allowable.

Jobs Impact

The proposed changes lower the lead dust risk levels to align the State standards with recently adopted federal EPA regulations. It is not anticipated that the amended regulations would have an impact on the creation or loss of jobs, however, the new lower risk levels and the corresponding clearance levels may indirectly create more work for contractors resulting in more jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments will impact the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments, which align the State regulations with recently adopted federal EPA regulations regarding dust lead hazard standards, and the amendments to lower the post-abatement clearance requirements, are not expected to impose any new reporting or recordkeeping requirements on "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., nor do the proposed amendments create a need for other professional services.

Smart Growth Development Impact

The proposed amendments do not impact zoning or what may be built in a given location; thus, it is not anticipated that the proposed amendments will have any impact upon housing production within planning areas one and two or within designated centers under the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments could minimally impact the cost of lead safe or lead-free housing, in that they will require lead hazard work at a lower dust hazard level, however, the levels are federally mandated.

Racial and Ethnic Community Criminal Justice and Public Safety Impact Statement

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.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 17

LEAD HAZARD EVALUATION AND ABATEMENT SUBCODE

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 [25] **10** µg/square foot; or
2. Window sill wipes in excess of [125] **100** µg/square foot.

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

1. Floors--equal to or greater than [40] **10** µg/square foot;
2. Interior window sills--equal to or greater than [250] **100** µg/square foot;
3. Window wells--equal to or greater than 400 µg/square foot.

§ 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 [40] **10** µg/square foot;

2. Interior window sills--less than [250] **100** µg/square foot;

3. Window wells--less than 400 µg/square foot.

(g) – (i) (No change.)