

N.J.A.C. 5:28A

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 9, May 1, 2023

***NJ - New Jersey Administrative Code > TITLE 5. COMMUNITY AFFAIRS > CHAPTER 28A.
LEAD-BASED PAINT INSPECTIONS IN RENTAL DWELLINGS***

Title 5, Chapter 28A -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

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

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2023 d.057, effective May 1, 2023.

See: [54 N.J.R. 1355\(a\)](#), [55 N.J.R. 829\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 28A, Lead-Based Paint Inspections in Rental Dwellings, was adopted as new rules by R.2023 d.057, effective May 1, 2023. See: Source and Effective Date.

N.J.A.C. 5:28A-1.1

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§ 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."

End of Document

[N.J.A.C. 5:28A-1.2](#)

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§ 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 the 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](#).

[N.J.A.C. 5:28A-1.3](#)

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§ 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](#).

N.J.A.C. 5:28A-2.1

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§ 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 that 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.

N.J.A.C. 5:28A-2.2

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§ 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.

N.J.A.C. 5:28A-2.3

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§ 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 [micro]g/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 [micro]g/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.

[N.J.A.C. 5:28A-2.4](#)

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§ 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](#).

N.J.A.C. 5:28A-2.5

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§ 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.

N.J.A.C. 5:28A-2.6

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§ 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.

End of Document

N.J.A.C. 5:28A-3.1

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§ 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.

N.J.A.C. 5:28A-3.2

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§ 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](#).

End of Document

N.J.A.C. 5:28A-4.1

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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\(d\)](#), 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.