

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 20 – INSURANCE

SUBCHAPTER 05 – PERSONAL LINES – AUTOMOBILE AND HOMEOWNERS INSURANCE

PART 9 – Insurance Coverage for Lead Poisoning

9.1 Authority

This Part is promulgated pursuant to R.I. Gen. Laws §§ 42-128.1-9, 42-14-17 and 42-35-3.

9.2 Purpose and Applicability

- A. The purpose of this Part is to establish a uniform policy regarding lead poisoning coverage in pre-1978 residential rental property liability insurance and to set forth requirements to assure the availability of insurance coverage for losses and damages caused by lead poisoning.
- B. This Part applies to liability coverage written by licensed carriers on all pre-1978 residential rental properties. This Part does not apply to excess or umbrella coverage or coverage written, pursuant to R.I. Gen. Laws Chapter 27-3 and Part 11 of this Subchapter by approved surplus lines insurers.

9.3 Definitions

- A. “Act” means the Insurance Coverage portion of the Lead Hazard Mitigation Act codified at R.I. Gen. Laws § 42-128.1-9.
- B. “Compliant rental property(ies)” means any pre-1978 residential rental property for which any one of the alternative methods of Prima Facie Evidence of Compliance can be produced by the owner of the property.
- C. “Department” means the Rhode Island Department of Business Regulation.
- D. “Dwelling” or “Dwelling unit” means an enclosed space used for living and sleeping by human occupants as a place of residence, including but not limited to, a house, an apartment, or condominium.

- E. “FAIR plan” means the basic property insurance and placement program established by R.I. Gen. Laws Chapter 27-33 and Part 11 of this Subchapter.
- F. “Lead liability” means the legal liability of owners of dwellings for losses to third parties arising from exposure to lead.
- G. “Lead liability coverage” means an insurance policy providing coverage to an insured for that insured’s Lead Liability.
- H. “Lead poisoning” means a confirmed venous blood lead level measured in micrograms of lead per deciliter of whole blood, established by rule of the Rhode Island Department of Health.
- I. “Liability coverage” means any insurance policy providing coverage for the legal liability of owners of Rental Properties for losses to third parties.
- J. “Non-Compliant rental property(ies)” means any pre-1978 residential rental property for which none of the alternative methods of Prima Facie Evidence of Compliance can be produced by the owner of the property.
- K. “Prima facie evidence of compliance” means a certificate issued pursuant to the provisions of R.I. Gen. Laws § 42-128.1-4.
- L. “Rental property(ies)” means pre-1978 premises containing dwelling unit(s) that are let, leased or rented to person(s) for the purposes of living, sleeping, cooking, or eating therein.
- M. “Stand alone lead liability coverage” means an insurance policy which provides coverage only for the legal liability of owners of dwellings for losses to third parties arising from exposure to lead.
- N. “Surplus lines broker” means a person or corporation licensed by the Department pursuant to R.I. Gen. Laws §§ 27-3-38 through 42 to place insurance with approved surplus lines insurers.

9.4 Policy Exclusions for Lead Poisoning

- A. Any policy form approved by the Department prior to the effective date of this Part which excludes liability coverage for Lead Poisoning, shall terminate on October 31, 2005.
- B. As of November 1, 2005, if a liability policy is issued insuring a Compliant Rental Property then coverage for Lead Poisoning shall be included in the policy. Notwithstanding any other provision in this Part, if a Rental Property is Non-Compliant, coverage for Lead Liability may be excluded by an endorsement in

accordance with R.I. Gen. Laws § 42-128.1-9 and this Part, including a previously approved endorsement that would otherwise be terminated by the first sentence of this section.

- C. Insurers and insurance producers are encouraged to insert mailers, produced and made accessible in electronic format by the Housing Resources Commission or the Department of Health, with renewal notices sent to insureds to which this Part applies.

9.5 Prospective Application and Notification to Insureds with Exclusions

- A. This statute does not provide or contemplate a retrospective application and will only be applied prospectively.
 - 1. Therefore, if an in-force policy has an approved exclusion in place prior to October 31, 2005, this exclusion will remain in effect until the expiration or other permissible termination of the policy.
 - 2. Any policy issued, delivered or renewed after October 31, 2005 must follow R.I. Gen. Laws § 42-128.1-9.
- B. If a policy issued prior to October 31, 2005 excludes coverage for lead liability and the policy will not expire until after October 31, 2005, persons covered by those policies will be able to obtain “stand alone” lead liability coverage from the FAIR Plan beginning November 1, 2005.
 - 1. Therefore, all insurers that issued policies with lead liability exclusions where the policy period will extend past October 31, 2005 must provide written notification to insureds of the availability of FAIR Plan coverage.
 - a. The insurer shall provide this notification directly or indirectly by the insurer through its producer.
 - b. This written notice must be separately sent to the insured not later than October 1, 2005 for policies which have already been renewed or upon renewal of the policy prior to October 31, 2005.
 - c. The notice shall be in at least 16-point type, clearly state that the policy does not include lead liability coverage and that the insured is eligible for lead liability coverage through the FAIR Plan unless otherwise ineligible.

- d. The notice must provide information on how the insured can contact the FAIR Plan, including the FAIR Plan's address and telephone number(s), including a toll-free number.

9.6 Insurance Coverage for Lead Poisoning in Compliant Properties

- A. With respect to Compliant Rental Properties, insurers issuing commercial and personal lines liability insurance policies covering Rental Properties are not permitted to insure said Rental Property against liability risks and refuse to issue Lead Liability Coverage if the property owner provides any form of Prima Facie Evidence of Compliance as defined herein.
- B. § 9.6(A) of this Part applies to all Compliant Rental Properties regardless of whether the property owner was required to obtain Prima Facie Evidence of Compliance or was exempted pursuant to R.I. Gen. Laws § 42-128.1-8. Therefore, if an owner of an exempt Rental Property voluntarily obtains Prima Facie Evidence of Compliance, the owner must be offered lead liability insurance in the same manner as if the owner was required to obtain the Prima Facie Evidence of Compliance pursuant to R.I. Gen. Laws § 42-128.1-8.
- C. R.I. Gen. Laws § 42-128.1-9 does not restrict an insurer's ability to establish and utilize underwriting guidelines. An insurer may refuse to issue insurance for a Rental Property even if the property owner provides any form of Prima Facie Evidence of Compliance. Such refusal must be in accordance with the insurers' underwriting guidelines, § 9.6(A) of this Part and not in violation of any other insurance laws and/or regulations including but not limited to R.I. Gen. Laws Chapter 27-29 which restricts insurers from declining risks based upon age or geographic location.
- D. If the policy provides lead liability coverage and further provides that coverage ceases during the policy term should the property become non-compliant during that period, insurers shall provide the following Notice on initiation and each renewal of the policy. The Notice must be in at least 16-point type and must be clearly identifiable by the insured. The written Notice shall provide the following in the language below or in substantially similar language:

ADVISORY NOTICE TO INSURED
Maintaining Proof of Compliance with the Lead Hazard Mitigation Act

The lead liability coverage contained in this policy is issued based upon your current compliance with the Lead Hazard Mitigation Act “Lead Act”. This coverage is contingent upon your maintaining the property in compliance with the Lead Act. Should the property become non-compliant (i.e. your certificate becomes invalid) during the policy period, coverage for lead liability will cease and will only be reinstated if proper proof of compliance with the Lead Act is presented to the insurer.

It is your duty to notify the insurer of non-compliance. If the insurer charged a premium for lead liability coverage the insurer will return any additional premium paid with regard to the lead liability portion of this policy during the non-compliant period. During the period of non-compliance, you may be eligible for lead liability coverage through the FAIR Plan. The FAIR Plan’s address and telephone number(s) are: FAIR Plan, Two Center Place, Boston, MA 02108-1904; (800)-851-8978

9.7 Insurance Coverage for Lead Poisoning in Non-Compliant Properties

- A. With respect to Non-Compliant Rental Properties including exempted residential rental properties as set forth in R.I. Gen. Laws § 42-128.1-8(e), an insurer issuing commercial and personal lines liability policies may decline to insure the Non-Compliant Rental Property against liability risks or may accept general liability coverage but reject that portion of the risk related to Lead Liability Coverage.
- B. If the insurer declines to issue coverage for Lead Liability, the insurer must assist the insured in placing Lead Liability coverage through the FAIR Plan. The insurer’s duty to assist the insured in placing the insurance through the FAIR Plan may be accomplished by providing a written notice to the insured either directly by the insurer or through one of the insurer’s own agents or brokers, in at least 16-point type, clearly stating that the policy coverage does not include Lead Liability and that the insured is eligible for Lead Liability coverage through the FAIR Plan unless otherwise ineligible as provided in § 9.11 of this Part. The notice must be clearly identifiable by the insured. The notice must provide information on how to contact the FAIR Plan, including address and telephone number(s), including a toll free number. The notice must also comply with Subchapter 20 Part 1 of this Chapter and Subchapter 05 Part 14 of this Chapter, where applicable. Such written notice shall be given on each renewal of the policy, unless the insurer decides to accept the Lead Liability Coverage.

9.8 Limits of Coverage

- A. For Compliant Properties, if Lead Liability is included in the policy coverage pursuant to the requirements of this Part and R.I. Gen. Laws § 42-128.1-9, the

coverage must be equal to the underlying policy limits of Liability Coverage for personal injury/bodily injury coverage. Such coverage is not severable by either the insured or the insurer.

- B. With regard to Non-Compliant Rental Properties, if an insurer offers Lead Liability in the policy coverage pursuant to the requirements of this Part and R.I. Gen. Laws § 42-128.1-9, the coverage offered must be equal to the underlying policy limits of Liability Coverage for personal injury/bodily injury coverage. For Non-Compliant rental properties, Lead Liability coverage is severable from general liability at the discretion of the insured or the insurer as long as the requirements of § 9.7 of this Part are met.

9.9 Rates and Forms for Lead Coverage

- A. Insurers shall file with the Department rates for Lead Liability Coverage for approval. The rates filed shall not be excessive, inadequate or unfairly discriminatory and shall give consideration to the standards set forth in R.I. Gen. Laws § 42-128.1-9(e). Approval from the Department must be obtained before the rates may be used.
- B. Insurers shall file with the Department the proposed language of endorsements for Lead Liability exclusions for Non-Compliant properties. Approval from the Department must be obtained before the form may be used.
- C. Insurers shall file rates and forms for proposed coverage and endorsements no later than October 1, 2003. Subsequent to initial approval, all changes to rates and/or forms must be filed with and approved by the Department before being used.
- D. Insurers that qualify for an exemption from filing requirements pursuant to R.I. Gen. Laws §§ 27-65-1(a)(2), (3) or (4) are subject to this Part and shall make the filings required hereunder.

9.10 Information to be Filed with the Department

- A. Each insurer writing liability insurance for Rental Properties in Rhode Island shall file with the Department annually, prior to February 1 of each year, a report detailing the following information with regard to personal and commercial lines for the prior calendar year. The insurer shall utilize the "Information Concerning Lead Liability Coverage" set forth in a bulletin issued for that purpose.
 - 1. The number of policies in force covering Rental Properties for which the insurer wrote any Liability Coverage and the total direct written premium for the liability coverage provided;

2. The number of policies in force covering Rental Properties for which the insurer wrote liability coverage and excluded Lead Liability Coverage by endorsement and the total direct written premium for the liability coverage provided;
3. The number of Rental Properties for which notice of eligibility to the FAIR Plan was given by the insurer;
4. The average premium for policies including Lead Liability Coverage;
5. The average premium for policies excluding Lead Liability Coverage;
6. Claim information including the number of claims made, settlements or judgments under Lead Liability Coverage and the total amount of payments made for Lead Liability during the calendar year;
7. Disclosure of underwriting rules restricting business based upon age or geographic location of the risk and the legal basis for said rule; and
8. Identification of the type(s) of Prima Facie Evidence of Compliance which the insurer is accepting for Compliant Rental Properties.

B. Each Surplus Lines Broker procuring liability insurance for Rental Properties in Rhode Island shall file with the Department annually, prior to February 1 of each year, a report detailing the following information with regard to personal and commercial lines for the prior calendar year. The insurer shall utilize the "Information Submitted by Surplus Lines Broker Regarding Lead Liability Coverage" set forth in a bulletin issued for that purpose.

1. The number of policies in force covering Rental Properties for which the Surplus Lines Broker placed any liability coverage and the total direct written premium for the liability coverage provided;
2. The number of policies in force covering Rental Properties for which the Surplus Lines Broker placed liability coverage which excluded Lead Liability Coverage and the total direct written premium for the liability coverage provided;
3. The average premium for policies procured including Lead Liability Coverage;
4. The average premium for policies procured excluding Lead Liability Coverage;

5. The identity of Approved Surplus Lines Insurers with whom the Broker placed insurance for Rental Properties by policy count.
- C. The FAIR Plan shall file with the Department annually, prior to February 1 of each year, a report, detailing the following information with regard to personal and commercial lines for the prior calendar year.
1. The number of applications received for either Stand Alone Lead Liability Coverage or general liability coverage which includes Lead Liability Coverage;
 2. The number of Rental Properties for which the FAIR Plan wrote general liability coverage;
 3. The number of Rental Properties for which the FAIR Plan wrote general liability coverage which included Lead Liability Coverage;
 4. The number of Rental Properties for which the FAIR Plan wrote Stand Alone Lead Liability Coverage;
 5. With regard to the Stand Alone Lead Liability policies, the identity of the insurer writing the general liability insurance reported as the number of policies per insurance company;
 6. The number of Rental Properties for which Lead Liability Coverage was offered by the FAIR Plan and rejected by the insured;
 7. The number of properties rejected for Lead Liability Coverage by the FAIR Plan in accordance with § 9.11 of this Part;
 8. The average premium for Stand Alone Lead Liability Coverage;
 9. The average premium for general liability coverage which included Lead Liability Coverage;
 10. The number of Compliant Rental Properties for which the FAIR Plan wrote Stand Alone Lead Liability Coverage;
 11. The number of Non-Compliant Rental Properties for which the FAIR Plan wrote Stand Alone Lead Liability Coverage;
 12. The geographic location, by zip code or other method approved in advance by the Department, of all Compliant Rental Properties for which the FAIR Plan provided Lead Liability Coverage; and

13. The geographic location, by zip code or other method approved in advance by the Department, of all Non-Compliant Rental Properties for which the FAIR Plan provided Lead Liability Coverage
- D. An insurer or Surplus Lines Broker that fails to make such filing will be subject to administrative action pursuant to R.I. Gen. Laws § 42-14-16 and Chapter 42-35.

9.11 Property Owners who are Ineligible for Lead Liability Coverage

- A. The FAIR Plan is not required to issue Lead Liability Coverage to any property owner who fails to remediate the property after a notice of violation issued subsequent to October 31, 2005.
- B. If a notice of violation is issued subsequent to October 31, 2005 and the property owner has not brought the property into compliance within ninety (90) days of the issuance of the notice, any insurance policy issued to that property owner shall be subject to cancellation and/or non-renewal.
- C. If a residential rental property owner owns only one (1) property and has one (1) unremediated dwelling unit at which a child was poisoned prior to November 1, 2005, that property owner shall be ineligible for Lead Liability Coverage. If a residential rental property owner owns more than one (1) property and has more than two (2) unremediated dwelling units at which a child was poisoned prior to November 1, 2005, that property owner shall be ineligible for Lead Liability Coverage.

9.12 FAIR Plan

- A. The FAIR Plan shall be obligated to provide Lead Liability Coverage not only for Non-Compliant Rental Properties but also for Compliant Rental Properties either through its own homeowners or dwelling liability policies or a Stand Alone Lead Liability policy. The FAIR Plan shall be permitted to use reasonable underwriting guidelines as approved by the Department to underwrite the property. The Stand Alone Lead Liability policy and the underwriting guidelines shall be in accordance with Subchapter 05 Part 11 of this Chapter.
- B. Subject to the provisions of § 9.11 of this Part, if requested by a residential rental property owner, the FAIR Plan will offer Stand Alone Lead Liability policies to property owners whose policies exclude coverage for lead liability. This includes policies issued prior to November 1, 2005.

9.13 Severability

If any section, term, or provision of this Part should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

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**TITLE 230 - DEPARTMENT OF BUSINESS REGULATION
(INCLUDES THE OFFICE OF THE HEALTH INSURANCE
COMMISSIONER)**

CHAPTER 20 - INSURANCE

**SUBCHAPTER 05 - PERSONAL LINES - AUTOMOBILE AND HOMEOWNERS
INSURANCE**

**PART 9 - Insurance Coverage for Lead Poisoning (formerly Insurance Regulation
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