

**State of Rhode Island
Housing Resources Commission
Providence, Rhode Island**

LEAD HAZARD MITIGATION REGULATIONS

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Part I Authority

As authorized by 42-128.1-5. of the general laws: Housing Resources Commission - Powers and Duties with respect to lead hazard mitigation

1. The Housing Resources Commission shall implement and put into full force and effect the powers, duties, and responsibilities assigned to it by the Lead Hazard Mitigation Act, chapter 42-128.1 of the general laws; and
2. The Housing Resources Commission shall serve as the lead state agency for lead hazard mitigation, planning, education, technical assistance, and coordination of state projects and state financial assistance to property owners for lead hazard mitigation in accordance with 45-128.1-5 of the general laws.

Part II Purpose

To establish implementing regulations for the Lead Hazard Mitigation Act in Chapter 42-128.1 of the general laws of the State of Rhode Island

Part III Definitions

1. *Affidavit of Completion of Visual Inspection* – Shall mean an affidavit signed by a Designated Person attesting that the visual inspection has been conducted on the subject property and that the premises meet the standards for Lead Hazard Control.
2. *At Risk Occupant* - Shall mean a person under six (6) years of age, or a pregnant woman, who has been a legal inhabitant in a dwelling unit at least thirty (30) days. A guest of any age shall not be considered an occupant.
3. *Certificate of Conformance (also Certificate of Compliance)* -Shall mean a certificate issued by a certified Lead Hazard Mitigation Inspector certifying conformance with the requirements for visual inspection and the independent clearance inspection.
4. *Certificate of Presumptive Compliance* –Shall mean a certificate issued by the Housing Resources Commission upon receipt of evidence that the requirements have been met.
5. *Damaged Painted Surface* – Surface which has loose, delaminating, flaking, peeling, chipping, or chalking paint, or paint which is abraded by friction, shows evidence of teeth marks, or is damaged by water. For purposes of these Regulations, painted surfaces shall not be considered damaged if the paint is adhered to the substrate and the surface contains only minor impact damage (e.g., a nail hole), minor stress fractures, or other minor damage which is not related to deteriorated paint.
6. *Designated Person* – Shall mean a property owner, or the agent of the property owner, who has completed a Housing Resources Commission approved awareness seminar on lead hazards and their control; or a Lead Hazard Mitigation Inspector.

7. Designated Play Area – Land and/or buildings that include play equipment, sand boxes, or are otherwise designed for use by children.
8. Dwelling or Dwelling Unit – Shall mean 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, but shall not include hotels or temporary housing.
9. Elderly Housing - Shall mean a federal, state, or local housing program that is specifically designed for and operated to assist elderly persons, sixty-two (62) years of age, or older, as set forth in a regulatory agreement or zoning ordinance.
10. Environmental Lead Poisoning Level – Shall have the same meaning as Lead Poisoned”
11. Feathering – Light sanding, performed after damaged material has been removed by scraping, to soften abrupt transitions between bare substrate and remaining Intact Paint; or exposed layers of Intact Paint; or patching materials and the surrounding surface. Proper Feathering will produce a surface that, after painting, has no edges that can be lifted with a fingernail.
12. Guest - Shall mean any person who shares a dwelling unit in a nonpermanent status for not more than thirty (30) days.
13. Independent Clearance Inspection – Shall mean an inspection as required to certify conformance with Lead Hazard Mitigation Standards performed by a person who is not the property owner or an employee of the property owner and who is authorized by the Housing Resources Commission to conduct Independent Clearance Inspections.
14. Intact Paint – Painted surface that does not have lose, delaminating, flaking peeling, chipping or chalking paint, and is not abraded by friction, and does not show evidence of teeth marks or water damage.
15. Lead Free – Shall mean a dwelling, dwelling unit, or premises that contains no lead or contains lead in amounts less than the maximum acceptable environmental lead levels established by regulation by the Rhode Island Department of Health.
16. Lead Hazard Abated – Shall mean a dwelling and premises which are lead free or lead safe, as those terms are defined in chapter 23-24.6 of the “Lead Poisoning Prevention Act”.
17. Lead Hazard Mitigation Compliance – Shall mean consistency with the Lead Hazard Mitigation Standards as determined by an Independent Clearance Inspection and

certificate undertaken to determine whether the Lead Hazard Mitigation Standards have been met.

18. Lead Hazard Controls – Shall mean those portions of the Lead Hazard Mitigation Standard pertaining to repair of deteriorating paint, correction of dust generating conditions, provision of cleanable surfaces, and correction of soil lead hazards that can be identified by Visual Inspection or inspections conducted in accordance with chapters 45-24.2, Minimum Housing, and 45-24.3, Housing Maintenance and Occupancy Code, of the general laws.
19. Lead Hazard Mitigation Inspector – Shall mean either a person approved by the Housing Resources Commission to perform independent clearance inspections or inspections required by 24 CFR 35 Subpart M, or by the Department of Health to conduct inspections pursuant to section 23-24.6.
20. Lead Hazard Mitigation Standards – Shall mean standards for painted surfaces, soil, and for interior lead dust as adopted by regulation by the Housing Resources Commission for a dwelling unit, associated common areas and premises.
21. Lead Poisoned – Shall mean a confirmed venous blood lead level established by the Department of Health pursuant to section 23-24.6-4.
22. Lead Safe – Shall mean that a dwelling, dwelling unit, or premises has undergone sufficient lead hazard reduction to ensure that no significant environmental lead hazard is present and includes, but is not limited to, covering and encapsulation and is evidenced by a Lead Safe Certificate issued by the Department of Health.
23. Major Minimum Housing Violations - Shall mean deteriorated housing conditions as defined by the Housing Resources Commission under the Housing Maintenance and Occupancy Code Chapter 45-24.3 of the general laws.
24. Occupant – Shall mean any person who legally resides in, or regularly uses, a dwelling, dwelling unit, or structure. A guest of any age shall not be considered an occupant.
25. Person - Means any individual, firm, corporation, association, or partnership and includes municipal and state agencies.
26. Premises – Shall mean a platted lot or part thereof or unplatted lot or parcel of land, or plot of land, occupied by a dwelling or structure and includes any building, accessory structure, or other structure thereon.
27. Property Owner – Shall mean any person who, alone or jointly or severally with others:
 - 27.1. Shall have legal title, including tax title, to any dwelling, dwelling unit, or structure with or without accompanying actual possession thereof; or

- 27.2. Shall have charge, care, or control of any dwelling unit, or structure as owner or agent of the owner, or an executor, administrator, trustee, or guardian of the estate of the owner. Any person representing the actual owner shall be bound to comply with the provisions of this chapter, and rules and regulations adopted pursuant thereto, to the same extent as if that person were the owner. An agent of the owner excludes real estate and property management functions where the agent is only responsible for the property management and does not have authority to fund capital and/or major property rehabilitation on behalf of the owner.
- 27.3. For purposes of publicly owned property only, the owner shall be defined to be the chief executive officer of the municipality which owns, leases, or controls the use of the property.
28. Regulatory Agreement – Shall mean a recorded land deed or mortgage restriction as to the use of the property.
29. Repeated Lead Poisoning – Shall mean a lead poisoning rate of greater than one half percent (.005) per dwelling unit year, with dwelling unit years being calculated by multiplying the number of dwelling units owned by the property owner by the number of years of ownership since 1992.
30. Rental Property – Any premises containing dwelling unit(s) that are let, leased or rented to a person for the purposes of living, sleeping, cooking, or eating therein.
31. Temporary Housing - Any seasonal place of residence that is rented for no more than one hundred (100) days per calendar year to the same tenant, where no lease renewal or extension can occur, and any emergency shelter intended for night to night accommodation.
32. Tenant Turnover – Shall mean the time at which all existing occupants vacate a unit and all new occupants move into the unit.
33. Visual Inspection – Shall mean a visual inspection by a designated person to determine that the lead hazard controls have been met.

Part IV Duties of Property Owners

1. **Exemption:** The following types of pre-1978 rental Dwelling Units are exempt from the requirements of this regulation.
 - a. Rental units with current lead-safe or lead-free certificates;
 - b. Temporary housing ;
 - c. Elderly housing;
 - d. Housing, structure, Premise comprised of two (2) or three (3) units where one unit is occupied by the property owner.
2. **Responsibilities of Owners:** Property Owners, or Designated Person, of Rental Property constructed prior to 1978 and which do not qualify for one of the exemptions set forth in Section 1 above shall mitigate lead hazards and shall comply with all the following requirements.
 - 2.1 Learn about lead hazards by taking a lead hazard awareness seminar approved by the Housing Resources Commission. The approved lead hazard awareness seminar will be also available on the Internet and in VHS and DVD format;
 - 2.2 Evaluate the dwelling unit and premises for lead hazards consistent with the requirements for a Lead Hazard Clearance Inspection;
 - 2.3 Correct identified lead hazards by meeting and maintaining the Lead Hazard Mitigation Standards;
 - 2.4 Provide tenants: (i) basic information about lead hazard control as approved by the Housing Resources Commission; (ii) a copy of any Independent Clearance Inspections; and (iii) information about how to give notice of deteriorating conditions;
 - 2.5 Correct lead hazards within thirty (30) calendar days after notification from the tenant of a Dwelling Unit with an At Risk Occupant, or as provided by section 34-18-22.
 - 2.6 Correct lead hazards identified by a Visual Inspection or Independent Clearance Inspection within sixty (60) calendar days of inspection or receipt of inspection report.
3. **Responsibilities of New Property Owners:** A new Property Owner, as evidenced by a change of title, of a rental Dwelling Unit constructed prior to 1978 that has not been made Lead Safe or Lead Free, and that is occupied by an At Risk Occupant, shall have up to sixty (60) calendar days after the property has been transferred by change of ownership to meet the requirements for Lead Hazard Mitigation, if those requirements were not met by the previous owner at the time of transfer, provided that the new Property Owner has the property visually inspected within thirty (30) business days after assuming ownership to determine conformity with the lead hazard control standards.
4. **Responsibilities of Mortgage and Lien Holders:** A holder of a mortgage or other lien holder who, in enforcing a security interest, acquires title by foreclosure or deed

in lieu of foreclosure shall not be considered a property owner if such holder transfers title within one (1) year after the date such title is acquired; provided however, if said mortgage or lien holder, subsequent to acquiring title, is notified of a lead hazard under the General Laws in Chapter 23-24.6 entitled "Lead Poisoning Prevention Act" or Chapter 128.1 entitled "Lead Hazard Mitigation Act", then in that event, said mortgage or lien holder shall take steps to reduce the lead hazard as shall be required under the provisions of chapter 23-24.6 or shall correct lead hazards within thirty (30) days after notification from a tenant of a dwelling unit with an At Risk Occupant as in Part IV Section 1.5, as applicable.

5. **Inspection Requirements.** Property Owners shall cause Visual Inspections and /or Independent Clearance Inspections to be conducted in all rental Dwelling Units owned by the Property Owners in order to comply with these regulations. Exterior lead hazards identified between the 1st of November and the 1st of March shall be corrected and inspected by the following 1st of June. The length of tenancy of an occupant in the Dwelling Unit(s) shall determine the frequency and type(s) of inspections required. Property Owners with ten (10) or more units may qualify for Presumptive Compliance under Part VIII.

- 5.1 An Independent Clearance Inspection shall be required at unit turnover within thirty (30) days of reoccupancy, or once in a twenty-four (24) month period, whichever period is longer;
- 5.2 A Certificate of Conformance (Compliance) shall be valid for two (2) years or until the next turnover of the Dwelling Unit, whichever period is longer, provided that no more than one (1) Independent Clearance Inspection shall be required in any twenty-four (24) month period.
- 5.3 If the tenancy of the occupant is two (2) years or greater, the Certificate of Conformance (Compliance) shall be maintained by a Visual Inspection. A Visual Inspection shall be performed every two (2) years or an Independent Clearance Inspection shall be conducted at unit turnover within thirty (30) days of reoccupancy, whichever time period is shorter.

6. **Visual Inspections:**

- 6.1 The Visual Inspection shall be conducted by a Designated Person to determine that the Lead Hazard Mitigation Standards have been met. If the Designated Person concludes that the Lead Hazard Mitigation Standards have been met, the Designated Person may complete an Affidavit of Completion of Visual Inspection. The Affidavit shall be valid upon its being signed by the Designated Person and notarized within thirty (30) days after completion of the Visual Inspection and shall set forth:
 - 6.1.1 The date and location that the Designated Person took the Lead Hazard Control awareness seminar approved by the Housing Resources Commission;
 - 6.1.2 The date and finding of the most recent Independent Clearance Inspection;
 - 6.1.3 The date and description of the Lead Hazard Control measures undertaken;

- 6.1.4 The date of the Visual Inspection; and
- 6.1.5 The name and signature of the Designated Person and date of the Affidavit of Completion of Visual Inspection.
- 6.2 An Affidavit of Completion of Visual Inspection shall be valid for two (2) years after the date it was notarized or until unit turnover, whichever time period is the shorter , and shall be kept by the Property Owner for a minimum of five (5) years.
- 7. **Independent Clearance Inspections:** An Independent Clearance Inspection shall include:
 - 7.1 A Visual Inspection to determine that the Lead Hazard Controls have been met; and
 - 7.2 Dust testing in accordance with rules established by the Department of Health and in Part VII of the Lead Hazard Mitigation Regulations;
 - 7.3 An Independent Clearance Inspection shall be performed by a person who is not the Property Owner or an employee of the Property Owner and who is authorized by the Housing Resources Commission to conduct Independent Clearance Inspections.

Part V Lead Hazard Mitigation Standards

1. **General Requirements** – Property Owners of rental housing constructed prior to 1978 and which do not qualify for one of the exemptions set forth in Part IV, Section 1 are required to mitigate or abate lead hazards in Dwelling Units, Premises and associated common areas. All Dwelling Units shall at all times be maintained in conformance with Lead Hazard Mitigation Standards and Lead Hazard Control Standards in accordance with Part V and Part VI. Lead Hazard Mitigation Standards shall include interior and exterior paint, dust generating conditions such as friction and impact areas, and soil containing lead. Property Owners have a continuing and ongoing responsibility for meeting and maintaining the Lead Hazard Mitigation Standard through visual assessments and dust testing.
2. **Exceptions.** When a Dwelling Unit has been cited by a notice of violation by the Department of Health for lead violations, the unit shall be disqualified and prohibited from using the Lead Hazard Mitigation Regulations. Property Owners of such dwelling units shall utilize approved lead hazard reduction and/or lead hazard control techniques established by the Department of Health to address identified lead hazards and shall maintain a valid current Lead Safe Certificate for the unit issued by the Department of Health.
3. **Significant Environmental Lead Hazard Standard.** Lead levels in interior dust that are in excess of forty (40) µg/ft² on floors, two hundred and fifty (250) µg/ft² on window sills, four hundred (400) µg/ft² in window wells, or forty (40) µg/ft² on any surfaces shall be considered significant environmental lead hazards and shall require lead hazard control in accordance with Part VI of this regulation.

4. **Lead Hazard Mitigation Standards.** The Standards apply to all rental units constructed prior to 1978 unless otherwise exempted elsewhere in the regulations. For rental Dwelling Units located in a condominium building or structure, the Lead Hazard Mitigation Standards shall only apply to the interior of the Dwelling Unit. Exterior lead hazards identified between the 1st of November and the 1st of March shall be corrected and inspected by the following 1st of June.

- 4.1.1. All painted surfaces shall be assumed to contain lead unless constructed after 1978 or specifically determined to be Lead Free in accordance with regulations established by the Department of Health.
- 4.1.2. All painted surfaces in dwelling units, associated common areas, exterior surfaces and other premises shall be free from chipping, chalking, and/or peeling paint. All painted surfaces shall be intact.
- 4.1.3. All friction surfaces including, but not limited to windows, doors, and cupboards, that are painted shall be free from abrasion and friction points;
- 4.1.4. All painted high impact areas shall be covered with a durable cover or lead free coating.
- 4.1.5. All horizontal surfaces including, but not limited to window sills, window troughs/wells, floors, and stairs, but excluding ceilings, in a Dwelling Unit shall be provided with a cleanable surface.
- 4.1.6. All soil within five (5) feet of the dwelling, other buildings on the Premises, and within five (5) feet of any Designated Play Area for children shall be covered or made inaccessible to children in accordance with the control standards set forth in Part VI, section 8.
- 4.1.7. All surfaces shall be clean and free of lead dust in excess of the standards set forth in 4.1.8.
- 4.1.8. **Mitigation Standards for Lead in Interior Dust.** The acceptable standards for mitigation shall be the permissible standard for lead in interior dust established by the Department of Health. The standards for wipe samples shall be defined as follows, or as modified by regulation by the Department of Health:

- 1) Floors: Twenty(20) micrograms of lead per square foot (20 µg/ft²) to forty (40) micrograms of lead per square foot (40 µg/ft²);
- 2) Window Sills: Twenty (20) µg/ft² to two hundred and fifty (250) µg/ft²;
- 3) Window Wells: Twenty (20) µg/ft² to four hundred (400) µg/ft²;
- 4) Any Other Surfaces: Twenty (20) µg/ft² to forty (40) µg/ft².

Part VI Lead Hazard Controls

- 1. All painted surfaces shall have Intact Paint free from visible chipping, chalking, and/or peeling.

2. The following persons shall be allowed to perform repairs or corrections in conformance with the Lead Hazard Controls:
 - 2.1. Spot removal of interior lead-based paint may be performed by a Designated Person if the surface areas from which paint is to be removed are less than thirty (30) square feet in any dwelling unit and less than six (6) square feet in any common area, provided further that no room or common area contains more than eight (8) components with damaged lead-based paint, regardless of the square footage amount of paint that must be removed. Windows and doors shall not be counted as damaged components provided removal of lead is performed off the Premises. Components shall include:
 - 2.1.1. Walls
 - 2.1.2. Ceilings
 - 2.1.3. Floors
 - 2.1.4. Window molding
 - 2.1.5. Window wells
 - 2.1.6. Woodwork/molding
 - 2.1.7. Windows
 - 2.1.8. Doors
 - 2.2. Components that are repaired off the Premises shall not be counted for the purposes of the requirements in 2.1.
 - 2.3. Removal of Damaged Painted Surfaces in excess of those cited in 2.1 shall only be done by lead licensed contractors or remodeler/renovators as certified by the Department of Health.
 - 2.4. A Designated Person may repair Damaged Painted Surfaces in accordance with the standards in Part VI .4.
3. **Training Requirement.** Unless otherwise certified or licensed by the Housing Resources Commission or the Department of Health as a Lead Hazard Reduction Contractor or Lead Safe Remodeler/Renovator, a Property Owner or Designated Person is required to attend a three (3) hour lead hazard awareness seminar approved by the Housing Resources Commission before performing Lead Hazard Mitigation/Control work as identified in Part VI 2.1 and 4.
4. **Repair of Damaged Paint Surface:** Repair shall include the application of a protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new coating or paint. All protective coating and paint shall be applied in accordance with manufacturer's recommendations.
 - 4.1. Repair of intact, factory applied prime coating on metal surfaces is not required. Finish coatings on such surfaces, however, require repair if those coatings contain lead-based paint.
 - 4.2. Any physical defect in the substrate of a painted area or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened.

5. **Removal of Damaged Painted Surfaces.** Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for paint removal/surfaces preparation include:
 - 5.1.1. Wet hand scraping,
 - 5.1.2. Wet sanding; or
 - 5.1.3. “Feathering” of interior surfaces; or
 - 5.1.4. Utilization of non-flammable strippers which do not contain methylene chloride;
 - 5.1.5. Use of a heat gun restricted to a temperature not to exceed one thousand (1,000) degrees Fahrenheit is allowed only if the occupants are not present on the premises;
 - 5.1.6. Dry hand scraping is allowed only by a lead licensed contractor using appropriate containment and where the occupants are not present on the Premises; or
 - 5.1.7. Any other methods approved in writing by the Department of Health and/or Housing Resources Commission.
6. **Friction and Impact Surfaces.** Lead Hazard Control for impact or friction surfaces shall be sufficient to protect lead-based paint from impact or abrasion.
 - 6.1. Treatment of friction surfaces is required only if:
 - 6.1.1. Lead-based paint is known or assumed to be present as required in Part V, 4.1.1; and
 - 6.1.2. There is evidence that the paint is subject to abrasion.
 - 6.2. Treatment for friction surfaces shall eliminate friction points or treat the friction surface so that paint is not subject to abrasion. Paint on stair treads and floors shall be protected with a durable cover or coating that will prevent abrasion of painted surfaces.
 - 6.2.1. Doors: Examples of acceptable treatment include rehanging and/or planing doors so that door does not rub against the door frame.
 - 6.2.2. Windows: Acceptable methods of eliminating friction surfaces on windows includes:
 - 6.2.2.1. installing window linings,
 - 6.2.2.2. removing, wet strip, and repaint windows,
 - 6.2.2.3. replacing window or
 - 6.2.2.4. installing window channel guides that reduce or eliminate abrasion of painted surfaces.
 - 6.2.3. Stair treads and floors: Examples of acceptable materials for stair treads and floors include carpeting, tile, and sheet flooring.
 - 6.2.4. Treatment of impact surfaces is required only if:
 - 6.2.4.1. Lead-based paint is known or assumed to be present; and
 - 6.2.4.2. Paint on an impact surface is damaged, abraded, rubbed, impacted or otherwise deteriorated; and
 - 6.2.4.3. The damaged paint is caused by impact from a related building component (e.g., a door knob that strikes a wall, or a door that rubs against its door frame).

- 6.2.5. Treatment of impact surfaces shall protect the paint from impact.
 - 6.2.5.1. Examples of acceptable treatment include eliminating impact surfaces, such as installing a door stop to prevent a door from striking a wall or baseboard.

7. Provision for Cleanable Surfaces

- 7.1. Dust control shall involve a thorough wet cleaning of all horizontal surfaces, such as interior window sills, window troughs/wells, floor, and stairs, but excluding ceilings. All horizontal surfaces, including, but not limited to floors, stairs, window sills and window troughs, that are rough, pitted, or porous shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.
- 7.2. Surfaces covered by rug or carpeting shall be cleaned as follows:
 - 7.2.1. An attached carpet located in an area of the dwelling unit containing dust-lead hazards shall be thoroughly vacuumed equipped with a working HEPA filter system or wet vacuum if it is not to be removed.
 - 7.2.2. Protective measures shall be used to prevent the spread of dust upon removal of a rug, carpet or padding from the dwelling. For example, it shall be misted to reduce dust generation during removal. The item(s) being removed shall be wrapped or otherwise sealed before removal from the worksite.
 - 7.2.3. An unattached rug or an attached carpet that is to be removed, and padding associated with such rug or carpet, located in an area of the Dwelling Unit with lead dust hazards on the floor, shall be thoroughly vacuumed with HEPA vacuum or wet vacuum.
 - 7.2.4. The floor surfaces under a rug or carpeting shall be cleaned where feasible, including upon removal of the rug or carpeting, with a HEPA vacuum or wet vacuum.

8. Acceptable Lead Hazard Mitigation Treatments for Soil

- 8.1. All visible paint chips on the ground in any areas accessible to children under six (6) years of age shall be cleaned up and properly disposed of.
- 8.2. The following treatments shall be acceptable to meet the Lead Hazard Mitigation Standard for exposed soil:
 - 8.2.1. Establish full coverage with grass or other ground covering plants.
 - 8.2.2. Cover with landscape cloth and 6" of mulch.
 - 8.2.3. Cover with landscape cloth and 4" of crushed stone, stone dust, gravel, sand, etc.
 - 8.2.4. Cover with asphalt or cement.
 - 8.2.5. Make the area inaccessible to children by installing fences or hedges.
- 8.3. High traffic areas shall be covered using treatments described in Section 6.2.3. or 6.2.4

9. **Prohibitions.** The following Lead Hazard Mitigation/Control methods are prohibited under all conditions:

- 9.1. Abrasive blasting and/or utilization of mechanical removal equipment on interior surfaces containing lead-based paint; or
- 9.2. Utilization of a torch or open flame burning; or
- 9.3. Utilization of chemical strippers containing methylene chloride for interior work areas; or
- 9.4. Dry sweeping of lead-contaminated areas or surfaces; or
- 9.5. Dry sanding and scraping of interior painted surfaces except for “Feathering” of previously treated surfaces or as allowed in 5.1.6.

10. Occupant Protection and Work Preparation

10.1. Occupant Protection.

10.1.1. The Property Owner of a dwelling shall;

10.1.1.1. Make all reasonable efforts to ensure that occupants are not present during Lead Hazard Mitigation/Control activities. Reasonable efforts shall include, as a minimum, providing written notification to the occupants at least one week in advance of the proposed Lead Hazard Mitigation/Control activities. Said notice shall be signed by both the owner/owner’s agent and a tenant and shall include the days and hours during which the work will be performed; the method by which the tenants will be compensated (e.g. pro-rata adjustment and abatement of the rent) for loss of use of living space if tenants are required to vacate the property overnight for three (3) or more days to complete the lead hazard reduction activities; and

10.1.1.2. Provide information on lead hazards and avoidance and control to tenants.

10.1.2. The dwelling and worksite shall be secured against unauthorized entry, and occupants’ belongings protected from contamination by dust-lead hazards and debris during lead hazard mitigation/control activities.

Occupants’ belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams or edges taped or otherwise sealed.

11. Worksite Preparation.

11.1. The worksite shall be prepared to prevent the release of leaded dust, and contain lead-based paint chips and other debris from Lead Hazard Mitigation/Control activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation. At a minimum, these practices shall include all requirements of 29 CFR 1926.62 or its successor regulations.

Part VII Lead Hazard Mitigation Compliance

1. **Independent Clearance Inspection:** The Independent Clearance Inspection shall be performed by a person who is not the Property Owner or an employee of the Property Owner and who is authorized by the Housing Resources Commission to conduct such inspections.
2. An Independent Clearance Inspection shall consist of;
 - 2.1. a Visual Inspection to confirm that the Lead Hazard Mitigation Standards in part V have been met; and
 - 2.2. Dust testing in accordance with procedures established by the Department of Health to determine that the requirements of Part V 4.1.8 of the Lead Hazard Mitigation Standards have been met.
3. **Priority of Inspection.** The priority of an Independent Clearance Inspection shall focus in and/or around areas where the conditions pose greater health risk to children under six (6) years of age; including the children's bedrooms; and the play areas in the unit.
4. For rental Dwelling Units located in a condominium building or structure, the inspection requirements shall be limited to the interior of the Dwelling Unit. The exterior, soil and common areas of the building are exempt from inspection requirements.
5. **Evaluate Lead in Interior Dust.**
 - 5.1. **General Requirements.** Lead Hazard Mitigation Inspectors shall collect interior dust samples in accordance with Subsection 4.2(e)(7) of R23-24.6-PB of regulations established by the Department of Health.
 - 5.2. **Minimum Sampling Requirements for Dwelling Units.** For each Dwelling Unit, Lead Hazard Mitigation Inspectors shall include a minimum of one (1) blank dust wipe and three (3) interior dust wipe samples.
 - 5.3. For units occupied by an At Risk Occupant, minimum sampling requirements shall include:
 - 5.3.1. One (1) dust wipe sample in each bedroom occupied by a child; and
 - 5.3.2. One (1) dust wipe sample in each room used by children for play such as a playroom, television room, or living area; and
 - 5.3.3. Additional dust wipes as determined by the inspector to insure compliance with the Lead Hazard Control Standards.
6. **Conflict of Interest.**
 - 6.1 Lead Hazard Mitigation Inspectors shall not have any interest, financial or otherwise, direct or indirect, or contractual, or engage in any business or employment, with regards to:
 - 6.1.1 The Dwelling Unit that is the subject of a Lead Hazard Mitigation Inspection; or a Property Owner who conducted the Lead Hazard Mitigation works at the Dwelling Unit which is the subject of the Independent Clearance Inspection;
 - 6.1.2 The contractor performing lead hazard control on the Dwelling Unit;

- 6.1.3 A laboratory that is used to analyze the Independent Clearance Inspection unless the Lead Hazard Mitigation Inspector or his/her employer disclose his/her connection with the laboratory to the person requesting the inspection and on the inspection report.
- 6.2 Employees of public agencies and quasi-public agencies licensed to conduct inspection may perform Independent Clearance Inspections on properties in which the agencies hold a financial interest.
- 7. **Evaluation of Independent Clearance Inspection Results.** Lead Hazard Mitigation Inspectors shall:
 - 7.1. Notify the Property Owner by written report if it is found, through Visual Inspection or dust testing, that the unit does not meet the Lead Hazard Mitigation Standards.
 - 7.2. If the unit meets all of the Lead Hazard Mitigation Standards, the Lead Hazard Mitigation Inspector shall provide the Property Owner with a Certificate of Conformance (Compliance) on a form approved and supplied by the Housing Resources Commission.
 - 7.3. A copy of the certificate and the written report shall be provided to the Housing Resources Commission.

PartVIII Presumptive Compliance

- 1. General Requirements
 - 1.1. A Property Owner of ten (10) or more Dwelling Units shall be eligible to obtain a Certificate of Presumptive Compliance for units designated by the owner from the Housing Resources Commission provided that the following conditions are met:
 - 1.1.1. All Dwelling Units were constructed after 1960;
 - 1.1.2. There are no outstanding Major Minimum Housing Violations on the premises; and
 - 1.1.3. The Property Owner has no history of Repeated Lead Poisonings.
- 2. Application for Certificate of Presumptive Compliance
 - 2.1. Applications for Presumptive Compliance shall be submitted to the Housing Resources Commission on forms provided by the Commission. At a minimum the following information shall be provided:
 - 2.1.1. A list of all units by address, plat, lot;
 - 2.1.2. The date of construction of each structure;
 - 2.1.3. All Independent Clearance Inspection report(s) for a minimum of five percent (5%) of the units owned by this Property Owner issued in the past twelve (12) months;
 - 2.1.4. Ownership information; and
 - 2.1.5. The date of acquisition of each property

3. Presumptive Compliance Certification Requirements
 - 3.1. To meet the requirements for certification, a Property Owner is required to cause Independent Clearance Inspections to be conducted on at least five percent (5%) of the dwelling units, but no less than two (2) dwelling units per year. The Dwelling Units to be inspected shall be selected by the inspector. The units selected shall be rotated until all units have been inspected. At least ninety percent (90%) of the units must receive a Certificate of Conformance (Compliance) as a result of the initial Independent Clearance Inspections;
 - 3.2. Qualified units that receive and pass an Independent Clearance Inspection can be maintained by a Visual Inspection; and
 - 3.3. The Department of Health must have no record of Repeated Lead Poisonings for the Property Owner or for the properties identified for certification;
 - 3.3.1. Repeated Lead Poisoning for purposes of this paragraph shall mean a lead poisoning rate of greater than one half percent (.005) per Dwelling Unit years.
 - 3.3.2. Dwelling Unit years shall be calculated by multiplying the number of Dwelling Units owned by the property owner by the number of years of ownership since 1992; and
 - 3.4. There are no Major Minimum Housing Violations on the property.
 - 3.4.1. Major Minimum Housing Violations are defined by rule by the Housing Resources Commission to include violations of the following Sections of Chapter 45-24.3 Housing Maintenance and Occupancy Code or as amended from time to time:
 - 3.4.2. Section 45-24.3-6 (b) Every owner of a multiple dwelling is responsible for maintaining, in a clean and sanitary condition, the shared or public areas of the Dwelling Unit and Premises. Occupants of two (2) and three (3) family dwellings shall share the maintenance of clean and sanitary condition within the shared or public areas of the dwelling and Premises;
 - 3.4.3. Section 45-24.3-7 (ii) Cabinets and/or shelves for the storage of eating and drinking and cooking equipment and utensils, and of food that does not, under ordinary maximum summer conditions, require refrigeration for safe keeping, and a counter or table for food preparation; the cabinets and/or shelves shall be adequate for the permissible occupancy of the Dwelling Unit and of sound construction finished with surfaces that are easily cleanable and that will not impart any toxic or deleterious effect to food.
 - 3.4.4. Section 45-24.3-9 (1) Every Dwelling Unit must have heating facilities properly installed and maintained in safe and working condition, and capable of safely and adequately heating habitable rooms, bathrooms, and watercloset compartments in every Dwelling Unit located at a distance of eighteen inches (18") above the floor level under average winter conditions to a temperature of at least sixty-eight (68) degrees Fahrenheit.
 - 3.4.5. Section 45-24.3-10 (1) Every foundation, floor, roof, ceiling, and exterior and interior wall must be reasonably weathertight, watertight, and damp free, and shall be kept in sound condition and good repair. All exterior wood surfaces, other than decay resistant woods, must be protected from the elements and decay by paint or other protective covering or treatment.

Potentially hazardous materials will not be used where readily accessible to children. Walls must be capable of affording privacy for the occupants. Every Premise must be graded, drained, free of standing water, and maintained in a clean, sanitary, and safe condition;

- 3.4.6. Section 45-24.3-10 (2) Potentially hazardous material on the interior surfaces of any Dwelling Unit, rooming house, rooming unit, or facility occupied by children is prohibited. The interior surfaces shall include, but are not limited to, window sills, window frames, doors, door frames, walls, ceilings, stair-rails and spindles, or other appurtenances;
 - 3.4.7. Section 45-24.3-10 (3) Lead based substances are prohibited whenever circumstances present a clear and significant health risk to the occupants of the property, as defined by the Department of Health;
 - 3.4.8. Section 45-24.3-10 (18) Every plumbing fixture and all water and waste pipes must be properly installed and maintained in good condition.
- 3.5. The Housing Resources Commission shall not arbitrarily withhold its approval of applications for Presumptive Compliance.
 - 3.6. A Certificate of Presumptive Compliance shall be deemed to be satisfactory for purposes of demonstrating compliance with the requirements of these regulations.
 - 3.7. A Certificate of Presumptive Compliance is valid for twelve (12) months and may be renewed for a twelve (12) month period upon submission of evidence of continued compliance with 3.1, 3.2, and 3.3.

Part IX Tenants Rights

- 1. Pregnant women and families with children under six (6) years of age shall be deemed to have a right to housing in which lead hazards have been mitigated or abated.
- 2. All tenants have a right to notify Property Owners of deteriorating paint conditions. Property Owners shall be required to provide a process for tenants to notify of deteriorating condition(s) in the Dwelling Unit and/or Premises.
- 3. If the tenant receives no response to the notification, if the response is, in the tenant's opinion unsatisfactory, or if the remedy performed is in the tenant's opinion unsatisfactory, the tenant may request a review of the matter by the Housing Resources Commission. After its review of the matter, the Housing Resources Commission shall either send notice of violation to the Property Owner, which notice shall be issued in a manner substantially similar to a notice of violation issued pursuant to the Housing Maintenance and Occupancy Code, chapter 24.3 of title 45 of the general laws, or promptly inform the tenant of the reason such notice is not being given. If the owner does not respond to the notice of violation within 30 days, a second notice will be issued and the Housing Resources Commission shall file a complaint with the city or town pursuant to the Housing Maintenance and Occupancy Code. Copies of the second notice shall be sent to the Department of Health and the Office of the Attorney General. The Housing Resources Commission may recover the cost of inspections and filings from the Property Owner found to be in violation of the Lead Hazard Mitigation Standards.

4. Tenants shall receive basic information about lead hazard control from the Property Owner. Such information will be made available by the Housing Resources Commission
5. Tenants shall have a right to housing without fear of retaliation for reporting unsafe housing conditions where lead may pose a hazard to their well being.
6. Unless requested and agreed to by an At Risk Occupant, meeting the Lead Hazard Mitigation Standard shall not be construed to authorize a Property Owner to compel or cause a person, who is in tenancy on January 1, 2004, and remains in tenancy continuously thereafter, to vacate such rental unit temporarily, for three (3) or more days overnight, or otherwise unless the owner provides acceptable short term accommodations while lead reduction or mitigation work is performed.
7. Tenants may voluntarily notify property owners of a legal tenancy of an “at-risk” occupant.

Part X Dissemination of Information

1. For rental housing constructed prior to 1978, Property Owners are required to certify at the time of transfer on or after November 1, 2005 whether the dwelling and/or Premises meet the requirements for Lead Hazard Mitigation or Lead Hazard Abatement in addition to any other State and/or Federal disclosure requirements. Nothing in this Part shall be interpreted to prohibit a Property Owner from transferring his property.
 - 1.1. Certification shall include all available records and reports pertaining to lead and/or lead hazards including, but not limited to, the most recent Certification of Conformance (Compliance), Affidavit of Completion of Visual Inspection, Certification of Presumptive Compliance, or Lead Safe Certificate.
 - 1.2. If the property does not meet the requirements for Lead Hazard Mitigation or Lead Hazard Abatement, then the party or parties acquiring the property must be notified of the potential hazards.
 - 1.3. The Property Owner must provide any inspection reports indicating potential lead hazards and;
 - 1.4. The party or parties acquiring the property shall sign and acknowledge receipt of notification of potential lead hazards and shall correct those hazards in compliance with Part IV.2 of these regulations.
2. Property Owners shall provide tenants with:
 - 2.1. Basic information about Lead Hazard Control Standards as made available by the Housing Resources Commission;
 - 2.2. A copy of the most recent Independent Clearance Inspection reports; and
 - 2.3. Information on how to give notice to the Property Owner of deteriorating conditions.
3. The Housing Resources Commission shall provide copies of the second Notice of Violation to the Property Owner, the tenants, the Department of Health, the City or Town in which the property is located and the Office of the Attorney General.

4. Lead Hazard Mitigation Inspectors shall provide a copy of the Certificate of Conformance to the Property Owner and to the Housing Resources Commission.

Part XI Variance from Regulations

1. A variance may be granted to a property owner where there exists a hardship to financing lead hazard mitigation, or where materials, personnel, or weather delays the mitigation completion.
2. A request for a variance must be submitted in writing, on a form approved by the Housing Resources Commission.
3. The Housing Resources Commission may declare any variance granted pursuant to this Section immediately null and void if the Housing Resources Commission determines that the terms of the variance have been violated.

Part XII Enforcement

1. The standards for Lead Hazard Control and for Lead Hazard Mitigation in pre-1978 housing shall be considered basic housing standards and shall be enforceable through the provisions of this chapter and through procedures established in the Minimum Housing Standards in 45-24-2-3; and the Housing Maintenance and Occupancy Code in 45-24.3 of the general laws;
2. Injunctive relief: Effective November 1, 2005, if the Property Owner of a rental dwelling fails to comply with the standards for Lead Hazard Mitigation, or abatement, as applicable, a right of private action shall exist that allows households that include an At Risk Occupant to seek injunctive relief from a court with jurisdiction against the Property Owner in the form of a court order to compel compliance with the requirements for Lead Hazard Control Standards or Lead Hazard Mitigation Standards. A person who prevails is entitled to an award of the costs of the litigation and reasonable attorney's fees in an amount fixed by the court. Cases brought before the court shall be granted an accelerated hearing.

Part XIII Severability

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

Part XIV Effective Date

1. This regulation shall be effective twenty (20) days from the date of filing with the Secretary of State.
2. The requirements for Lead Hazard Mitigation as required in Part IV and Part V of these regulations shall apply to the first change in ownership or tenancy after November 1, 2005.