

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
233 Richmond Street
Providence, RI 02903

INSURANCE REGULATION 101
INSURANCE COVERAGE FOR LEAD POISONING

Table of Contents

Section 1	Authority
Section 2	Purpose
Section 3	Definitions
Section 4	Policy Exclusions for Lead Poisoning
Section 5	Insurance Coverage for Lead Poisoning in Compliant Properties
Section 6	Insurance Coverage for Lead Poisoning in Noncompliant Properties
Section 7	Limits of Coverage
Section 8	Rates for Coverage
Section 9	Information to be Filed with the Department
Section 10	Severability
Section 11	Effective Date

Section 1 **Authority**

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

Section 2 **Purpose**

The purpose of this Regulation is to establish a uniform policy regarding lead poisoning coverage in pre-1978 residential rental property liability coverage and to set forth requirements to assure the availability of insurance coverage for losses and damages caused by lead poisoning. This Regulation applies to liability coverage written by licensed carriers and approved Surplus Line carriers on all pre-1978 residential rental properties.

Section 3 **Definitions**

1. “Act” means the Insurance Coverage portion of the Lead Hazard Mitigation Act codified at R.I. Gen. Laws § 42-128.1-9.

2. "Compliant Rental Property(ies)" means any pre-1978 residential rental property for which any one of the three alternative methods of Prima Facie Evidence of Compliance can be produced by the owner of the property.
3. "Department" means the Rhode Island Department of Business Regulation.
4. "Lead Liability" means the legal liability of owners of dwellings for losses to third parties arising from exposure to lead.
5. "Lead Liability Coverage" means an insurance policy providing coverage to an insured for that insured's Lead Liability.
6. "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 based on the best available information about the effects of elevated blood lead levels.
7. "Liability Coverage" means any insurance policy providing coverage for the legal liability of owners of Rental Properties for losses to third parties.
8. "Non-Compliant Rental Property(ies)" means any pre-1978 residential rental property for which none of the three alternative methods of Prima Facie Evidence of Compliance can be produced by the owner of the property.
9. "Prima Facie Evidence of Compliance" means (1) a certificate of compliance of an independent clearance inspection and affidavit of visual inspection required to maintain the validity of the independent clearance inspection, (2) proof of a clearance exam showing that lead hazards are mitigated or (3) proof of abatement.
10. "Rental Property(ies)" means pre-1978 residential rental housing.
11. "FAIR Plan" means the basic property insurance and placement program established by R.I. Gen. Laws § 27-33-1 *et seq.* and Insurance Regulation 15.

Section 4 Policy Exclusions for Lead Poisoning

Any policy form approved by the Department prior to the effective date of this Regulation which excludes liability coverage for Lead Poisoning, shall terminate on June 30, 2004. As of July 1, 2004 if a liability policy is issued insuring a Compliant Rental Property then coverage for Lead Poisoning shall be included in the policy unless the insured declines Lead Liability Coverage in accordance with Section 7(2) of this Regulation. If a Rental Property is Non-Compliant, coverage for Lead Liability may be offered by endorsement as set forth in R.I. Gen. Laws § 42-128.1-9 and this Regulation.

Section 5 Insurance Coverage for Lead Poisoning in Compliant Properties

1. 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 but reject Lead Liability Coverage if the property owner provides any form of Prima Facie Evidence of Compliance as set forth in R.I. Gen. Laws § 42-128.1-9.
2. R.I. Gen. Laws § 42-128.1-9 does not restrict an insurer's ability to establish and utilize underwriting guidelines. An insurer may decline to insure a Rental Property even if the property owner provides a form of Prima Facie Evidence of Compliance. Such rejection must be in accordance with the insurers underwriting guidelines, Section 5(1) above and not in violation of any other insurance laws and/or regulations.

Section 6 Insurance Coverage for Lead Poisoning in Noncompliant Properties

1. With respect to Non-Compliant Rental Properties, 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.
2. 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.
3. 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, in at least 10-point type, clearly stating that the policy coverage does not include Lead Liability and that the insured may be eligible for Lead Liability coverage through the FAIR Plan. 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 advise the insured that (s)he may contact another insurance carrier or his or her producer to seek to obtain Lead Liability coverage. The notice must also comply with Regulation 97, where applicable.

Section 7 Limits of Coverage

1. If an insurer offers Lead Liability Coverage pursuant to the requirements of this Regulation and R.I. Gen. Laws § 42-128.1-9, the insurer must offer coverage which is equal to the underlying limits of Liability Coverage for bodily injury or property damage.
2. The insured may reject any offer of Lead Liability Coverage or choose limits less than the underlying limits of Liability Coverage for bodily injury or property damage. If the insured chooses to reject Lead Liability Coverage or choose limits

lower than the underlying limits of Liability Coverage, the insurer must document such rejection or election in writing. The insurer must maintain such documentation in the underwriting file.

Section 8 Rates and Forms for Lead Coverage

1. Insurers shall file with the Department rates for Lead Liability Coverage for approval pursuant 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.
2. Insurers shall file with the Department the proposed language of endorsements for Lead Liability Coverage. Approval from the Department must be obtained before the form may be used.
3. Insurers shall file rates and forms for proposed coverage 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.
4. Insurers that qualify for an exemption from filing requirements pursuant to R.I. Gen. Laws § 27-65-1 *et seq.* are subject to this Regulation and shall make the filings required hereunder.

Section 9 Information to be Filed with the Department

- A. Each insurer writing liability insurance for Rental Property in Rhode Island shall file with the Department annually, prior to May 1 of each year, a report on the form attached hereto as Exhibit A, detailing the following information for the prior calendar year.
 1. The number of Rental Properties for which an application for general Liability Coverage was submitted to the insurer;
 2. The number of Rental Properties for which the insurer wrote general Liability Coverage;
 3. The number of Rental Properties for which the insurer wrote general Liability Coverage which included Lead Liability Coverage;
 4. The number of Rental Properties for which the insurer wrote general Liability Coverage but rejected Lead Liability Coverage;
 5. The number of Rental Properties for which Lead Liability Coverage was offered by the Insurer and rejected by the insured;
 6. The geographic location of each Property which the insurer wrote;

7. The geographic location of each Rental Property which the insurer rejected;
 8. The number of Rental Properties for which notice of eligibility to the FAIR Plan was given by the insurer;
 9. The average premium for Lead Liability Coverage; and
 10. 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.
- B. The FAIR Plan shall file with the Department annually, prior to May 1 of each year, a report on the form attached hereto as Exhibit B, detailing the following information for the prior calendar year.
1. The number of applications received for Lead Liability Coverage;
 2. The number of policies written for Lead 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 general Liability Coverage but rejected Lead Liability Coverage;
 5. The number of Rental Properties for which Lead Liability Coverage was offered by the FAIR Plan and rejected by the insured;
 6. The average premium for Lead Liability Coverage; and
 7. The reasons for rejection of Lead Liability Coverage given by the insured.
- C. An insurer that fails to make such filing will be subject to administrative action pursuant to R.I. Gen. Laws §§ 42-14-16 and 42-35-1 *et seq.*

Section 10 **Severability**

If any section, term, or provision of this Regulation 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.

Section 11 ***Effective Date***

This Regulation shall be effective twenty (20) days from the date of filing with the Secretary of State. The filing requirements of Section 9 of this Regulation shall be effective for the 2005 calendar year. Therefore, the first annual filing under Section 9 must be made on May 1, 2006.

EFFECTIVE DATE:

EXHIBIT A

Information Concerning Lead Liability Coverage

Name of Insurer: _____
 NAIC/Group Number: _____
 Calendar Year for Which Information is Reported: _____
 Date of Submission: _____

Each individual insurer must provide the following information regarding residential rental properties built prior to 1978. This information may not be reported on a group basis.

The following information is for **Personal Lines Insurance only**.

	Number of Application Received	Number of General Liability Policies Written	Number of Policies Including Lead Liability Written	Number of Policies without Lead Liability Written	Lead Liability Offered but Declined by Insured	Notice of Eligibility to FAIR Plan given
Independent Clearance Inspection and Affidavit of Visual Inspection						
Clearance Exam Showing Mitigation						
Abatement						
Non-Compliant						

Geographic Location

Zip Code	Applications Received	Any Coverage Written	All Coverage Rejected

Average Premium for Personal Lines Lead Liability Coverage: _____

Personal Lines Lead Liability Claims: Number of claims made _____

Number of Settlements: _____

Number of Judgments: _____

Total Claim Payments: _____

The following information is for **Commercial Lines Insurance only**:

	Number of Applications Received	Number of General Liability Policies Written	Number of Policies Including Lead Liability Written	Number of Policies without Lead Liability Written	Lead Liability Offered but Declined by Insured	Notice of Eligibility to FAIR Plan given
Independent Clearance Inspection and Affidavit of Visual Inspection						
Clearance Exam Showing Mitigation						
Abatement						
Non-Compliant						

Geographic Location

Zip Code	Applications Received	Any Coverage Written	All Coverage Rejected

Average Premium for Commercial Lines Lead Liability Coverage: _____

Commercial Lines Lead Liability Claims: Number of claims made _____

Number of Settlements: _____

Number of Judgments: _____

Total Claim Payments: _____

EXHIBIT B
Information Submitted by FAIR Plan Regarding Lead Liability Coverage

Calendar Year _____
 Date Submitted: _____

The following information must be submitted regarding residential rental properties built prior to 1978.

The following information is for **personal lines only**.

	Number of Application Received	Number of General Liability Policies Written	Number of Policies Including Lead Liability Written	Number of Policies without Lead Liability Written	Lead Liability Offered but Declined by Insured
Independent Clearance Inspection and Affidavit of Visual Inspection					
Clearance Exam Showing Mitigation					
Abatement					
Non-Compliant					

The following information is for **commercial lines only**.

	Number of Application Received	Number of General Liability Policies Written	Number of Policies Including Lead Liability Written	Number of Policies without Lead Liability Written	Lead Liability Offered but Declined by Insured
Independent Clearance Inspection and Affidavit of Visual Inspection					
Clearance Exam Showing Mitigation					
Abatement					
Non-Compliant					

Average Annual Premium for Lead Liability coverage written:

Personal Lines _____

Commercial Lines _____

Reasons Given for rejection of Lead Liability Coverage

(FAIR Plan should list each reason and give the number of consumer reporting that reason)

Premium Cost _____

No reason given _____