

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

NOTICE OF PROPOSED AMENDED REGULATION
AND NOTICE OF PUBLIC HEARING

Notice is hereby given, in accordance with R.I. Gen. Laws §§ 42-14-17 and 42-35-3, that the Director of the Department of Business Regulation (“Department”) proposes to amend the following Regulation:

Insurance Regulation 101 – Insurance Coverage for Lead Poisoning

This Regulation is proposed in order to implement the amendments to R.I. Gen. Laws § 42-128.1-9 effective November 1, 2005 and to incorporate issues which have been addressed by bulletin since the initial enactment of R.I. Gen. Laws § 42-128.1-9.

Notice is also hereby given, in accordance with R.I. Gen. Laws § 42-35-2, that the Department of Business Regulation will hold a public hearing beginning at 10:00 a.m. on September 8, 2005 in the Main Hearing Room of the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903, regarding the proposed amendments to Regulation 101.

Copies of the proposed amended Regulation are on file at the Department and copies may be obtained from the Legal Division, Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 during normal working hours on regular business days or by mail upon request. The proposed amended Regulation may also be obtained from the Department’s website www.dbr.state.ri.us.

In the development of the proposed amended Regulation, consideration was given to overlapping approaches, overlap and duplication with other statutory and regulatory provisions and economic impact on small business and cities and towns.

All interested persons may submit their views, data or arguments regarding the proposed amended Regulation, including information relating to alternative approaches, duplication or overlap with other state rules or regulations and the economic impact of the Regulation on small business and/or cities and towns, orally at the public hearing or in writing, either by delivering the same in person or United States mail with postage pre-paid thereon to the Department of Business Regulation, 233 Richmond Street, Providence, Rhode Island 02903 attention Elizabeth Kelleher Dwyer, Hearing Officer or by e-mail to elizabeth_dwyer@dbr.state.ri.us.

ALL SUBMISSIONS MUST BE RECEIVED NOT LATER THAN
SEPTEMBER 8, 2005 AT 10:00 A.M.

The hearing room is accessible to the handicapped. Individuals requesting interpreter services for the hearing impaired must notify the Office of Legal Counsel at (401) 222 5400 or TDD (401) 222 2999 not less than ninety-six (96) hours in advance of the hearing date.

A. Michael Marques
Director, Department of Business Regulation

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
233 Richmond Street
Providence, RI 02903
PROPOSED AMENDMENT TO
INSURANCE REGULATION 101
INSURANCE COVERAGE FOR LEAD POISONING

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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 and Applicability**

The purpose of this Regulation 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.

This Regulation applies to liability coverage written by licensed carriers on all pre-1978 residential rental properties. This Regulation does not apply to excess or umbrella coverage or coverage written, pursuant to R.I. Gen. Laws § 27-3-38 through 42 and Regulation 11, by approved surplus lines insurers.

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 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. “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, but does not include hotels, temporary housing, rooming or boarding houses and rooms rented in otherwise owner occupied homes.
5. “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.
6. “Lead Liability” means the legal liability of owners of dwellings for losses to third parties arising from exposure to lead.
7. “Lead Liability Coverage” means an insurance policy providing coverage to an insured for that insured’s Lead Liability.
8. “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.
9. “Liability Coverage” means any insurance policy providing coverage for the legal liability of owners of Rental Properties for losses to third parties.
10. “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.
11. “Prima Facie Evidence of Compliance” means (1) a certificate issued by the Housing Resources Commission pursuant to the authority granted in of compliance of an independent clearance inspection and affidavit of visual inspection required to maintain the validity of the independent clearance inspection as defined by R.I. Gen. Laws § 42-128.1-4(57)(i) and (ii) (“Certificate of Conformance”), (2) proof of a clearance exam showing that lead hazards are mitigated as defined by R.I. Gen. Laws § 42-128.1-4(5)(iii), (3) proof of abatement as defined by a certificate issued by the Department of Health pursuant to the authority granted in R.I. Gen. Laws § 42-128.1-4(310) (“Certificate of Compliance”) or (4) a Certificate of Presumptive Compliance as defined by R.I. Gen. Laws § 42-128.1-4(57)(iii) and (iv).

12. "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.
13. "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.
14. "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.

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~~October 31, 2005. As of ~~July 1, 2004~~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. If a Rental Property is Non-Compliant, coverage for Lead Liability may be excluded by endorsement in accordance with R.I. Gen. Laws § 42-128.1-9 and this Regulation.

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 Regulation applies.

Section 5 Prospective Application and Notification to Insureds with Exclusions

1. This statute does not provide or contemplate a retrospective application and will only be applied prospectively. 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. Any policy issued, delivered or renewed after October 31, 2005 must follow R.I. Gen. Laws § 42-128.1-9.
2. 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. 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. The insurer shall provide this notification directly or indirectly by the insurer through its producer. 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. 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. 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.

Section 56 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 and refuse to issue Lead Liability Coverage if the property owner provides any form of Prima Facie Evidence of Compliance as defined herein.
2. Subsection 1 above 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 exactly 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.
- ~~2.3.~~ 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, Section 56(1) above and not in violation of any other insurance laws and/or regulations including but not limited to R.I. Gen. Laws § 27-29-1 et seq which restricts insurers from declining risks based upon age or geographic location.
4. If the policy provides that lead liability 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 state:

ADVISORY NOTICE TO INSUREDS
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". Before this policy was issued you provided documentation

showing that the property for which this insurance is issued is in compliance with the 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 and, upon the insurer's receipt of such notice, the insurer will return any 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

Section 67 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. 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 Section 110 of this Regulation. 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 Regulations 38 and 97, where applicable. Such written notice shall be given on each renewal of the policy, unless the insurer decides to accept the Lead Liability Coverage.

Section 78 Limits of Coverage

1. For Compliant Properties, if Lead Liability is included in the policy coverage pursuant to the requirements of this Regulation 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.

2. With regard to Non-Compliant Rental Properties, if an insurer offers Lead Liability in the policy coverage pursuant to the requirements of this Regulation 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 Section ~~67~~ of the Regulation are met.

Section ~~89~~ Rates and Forms for Lead Coverage

1. 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.
2. 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.
3. 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.
4. Insurers that qualify for an exemption from filing requirements pursuant to R.I. Gen. Laws § 27-65-1 ~~(a)(2), (3) or (4)-et seq.~~ are subject to this Regulation and shall make the filings required hereunder.

Section ~~910~~ 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 on the form attached hereto as Exhibit A, detailing the following information with regard to personal and commercial lines for the prior calendar year.
 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 insured 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 on the form attached hereto as Exhibit B, detailing the following information with regard to personal and commercial lines for the prior calendar year.

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 Section 110 of this Regulation;
 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 42-35-1 *et seq.*

Section 101 Property Owners Who Are Ineligible for Lead Liability Coverage

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~~June 30, 2004~~. If a notice of violation is issued subsequent to October 31, 2005~~June 30, 2004~~ 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. 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~~July 2, 2004~~, 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 July 1, 2002~~November 1, 2005~~, that property owner shall be ineligible for Lead Liability Coverage.

Section 112 FAIR Plan

1. 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 under its own homeowner policy 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 Regulation 15.
2. Subject to the provisions of Section 11 of this Regulation, 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.

Section 123 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 134 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 910 of this Regulation shall be effective for the 20056 calendar year. Therefore, the first annual filings under Section 910 must be made on February 1, 20067.

EFFECTIVE DATE: April 8, 2003
AMENDED: September 2005

EXHIBIT A

Information Concerning Lead Liability Coverage

Name of Insurer: _____
NAIC/Group Number: _____
Calendar Year for Which Information is Reported: _____
Date of Submission: _____
Identity of Person Completing Form (name and telephone number) _____

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 **commercial lines** only

Policies in force covering Rental Properties: number _____ direct written premium _____

Policies in force covering Rental Properties that exclude Lead Liability Coverage:
number _____ direct written premium _____

Number of Rental Properties for which notice of eligibility to the FAIR Plan was given: _____

Average Premium for Commercial Lines including Lead Liability Coverage: _____

Average Premium for Commercial Lines excluding Lead Liability Coverage: _____

Number of Lead Liability Claims: _____ Settlements: _____ Judgments: _____

Total Lead Liability Claim Payments: _____

Does the insurer have underwriting rules restricting business based upon age or geographic location of risk?
Yes No

If the answer to the preceding question is in the affirmative, attach a copy of said rules to this form and indicate how such rules comply with R.I. Gen. Laws § 27-29-4 (iii) and (iv) and R.I. Gen. Laws §.27-29-4.1.

Prima Facie Evidence of Compliance (indicate whether the insurer is accepting or rejecting Rental Properties when the property owner provides one of the following forms of compliance)

~~Independent Clearance Inspection and Affidavit of Visual Inspection - Accepting Rejecting~~

~~Clearance Exam Showing Certificate of Conformance (Lead Mitigation) - Accepting Rejecting~~

~~Proof of Abatement Certificate of Compliance (Lead Safe) - Accepting Rejecting~~

Certificate of Presumptive Compliance - Accepting Rejecting

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

Policies in force covering Rental Properties: number _____ direct written premium _____

Policies in force covering Rental Properties that exclude Lead Liability Coverage:
number _____ direct written premium _____

Number of Rental Properties for which notice of eligibility to the FAIR Plan was given: _____

Average Premium for Personal Lines including Lead Liability Coverage: _____

Average Premium for Personal Lines excluding Lead Liability Coverage: _____

Number of Lead Liability Claims: _____ Settlements: _____ Judgments: _____

Total Lead Liability Claim Payments: _____

Does the insurer have underwriting rules restricting business based upon age or geographic location of risk?
Yes No

If the answer to the preceding question is in the affirmative, attach a copy of said rules to this form and indicate how such rules comply with R.I. Gen. Laws § 27-29-4 (iii) and (iv) and R.I. Gen. Laws §.27-29-4.1.

Prima Facie Evidence of Compliance (indicate whether the insurer is accepting or rejecting Rental Properties when the property owner provides one of the following forms of compliance)

~~Independent Clearance Inspection and Affidavit of Visual Inspection - Accepting Rejecting~~

~~Clearance Exam Showing Certificate of Conformance (Lead Mitigation) - Accepting Rejecting~~

~~Proof of Abatement Certificate of Compliance (Lead Safe) - Accepting Rejecting~~

Certificate of Presumptive Compliance - Accepting Rejecting

EXHIBIT B

Information Submitted by Surplus Lines Broker Regarding Lead Liability Coverage

Name of Broker: _____
Surplus Lines Broker License Number: _____
Calendar Year _____
Date Submitted: _____

The following information must be submitted regarding residential Rental Properties built prior to 1978.

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

Policies in force covering Rental Properties: number _____ direct written premium _____

Policies in force covering Rental Properties that exclude Lead Liability Coverage:
number _____ direct written premium _____

Average Premium for Commercial Lines Policies including Lead Liability Coverage: _____

Average Premium for Commercial Lines Policies excluding Lead Liability Coverage: _____

Name of Approved Surplus Lines Insurer	Number of Insurance Policies Written on Rental Properties

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

Policies in force covering Rental Properties: number _____ direct written premium _____

Policies in force covering Rental Properties that exclude Lead Liability Coverage:
number _____ direct written premium _____

Average Premium for Personal Lines Policies including Lead Liability Coverage: _____

Average Premium for Personal Lines Policies excluding Lead Liability Coverage: _____

Name of Approved Surplus Lines Insurer	Number of Insurance Policies Written on Rental Properties