

860-RICR-00-00-2

TITLE 860 – HOUSING RESOURCES COMMISSION

CHAPTER 00 – N/A

SUBCHAPTER 00 – N/A

PART 2 – Rules and Regulations Governing Lead Hazard Mitigation

2.1 Authority

Authority for these rules and regulations is contained in R.I. Gen. Laws Chapter 42-128.1.

2.2 Purpose

The purpose of this Part is to establish rules and regulations under the Housing Resources Commission (HRC) Lead Hazard Mitigation Program for owners of pre-1978 residential rental properties, tenants, and licensed lead professionals to achieve lead safe compliance, and their respective rights and responsibilities. In developing these rules and regulations, the HRC considered regulatory guidelines set forth in R.I. Gen. Laws § 42-128.1-5(b).

2.3 Applicability

These rules and regulations shall be liberally construed to permit HRC to effectuate state law, and to allow tenants to exercise their rights as stipulated herein.

2.4 Definitions

- A. "At risk occupant" means a person under six (6) years of age, or a pregnant woman, who has been a legal inhabitant in a dwelling unit for at least thirty (30) days; provided, however, that a guest of any age shall not be considered an occupant.
- B. "Designated person" means either:
 - 1. A property owner, or the agent of the property owner, who has completed an HRC-approved lead hazard awareness seminar; or
 - 2. A Licensed Lead Professional.

- C. "Damaged or deteriorated paint" means any paint or coating on a damaged or deteriorated component, or any surface which has loose, delaminating, flaking, peeling, chipping, chalking, blistering, or paint that is otherwise becoming separated from the substrate, or paint which is abraded by friction or impact, shows evidence of teeth marks, or is damaged by water. For the purposes of this Part, painted surfaces are not 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 or substrate.
- D. "HRC" means the Housing Resources Commission.
- E. "Lead hazard" means any of the following:
1. Deteriorated paint assumed to be lead-based paint;
 2. Visible lead dust, paint chips or debris; or
 3. Damaged paint, interior dust, bare soil, or drinking water above the lead safe thresholds established by RIDOH in 216-RICR-50-15-3.7.
- F. "Lead hazard control" means any window replacement or interim controls performed to correct lead hazards by a Lead Renovation Firm licensed by RIDOH in accordance with 216-RICR-50-15-3.11.
- G. "Lead hazard mitigation" means spot removal or minor repair and maintenance activities performed to correct lead hazards and/or maintain lead safe compliance by an Owner or Designated Person who completed an HRC-approved lead hazard awareness seminar.
- H. "Lead hazard reduction" means lead abatement, interim controls, or a combination of both, performed to correct lead hazards by a Lead Contractor licensed by RIDOH in accordance with 216-RICR-50-15-3.12.
- I. "Lead mitigation standard" means:
1. All lead-based paint, including pre-1978 surfaces required to be assumed to contain lead-based paint, must be intact with no paint or coating on a damaged or deteriorated component; no surface which has loose, delaminating, flaking, peeling, chipping, chalking, or blistering paint; no paint that is otherwise becoming separated from the substrate; no paint which is abraded by friction or impact, shows evidence of teeth marks, or is damaged by water;
 2. All surfaces must be clean and free of lead dust, paint chips or debris; and

3. All horizontal surfaces except ceilings (e.g. floors, stairs, window sills, window wells) must be covered with a smooth, cleanable covering or coating.
- J. "Lead safe compliance" means:
1. Compliance with the HRC Lead Mitigation Standard as evidenced by a Certificate of Conformance; or
 2. Compliance with the RIDOH Lead Safe Standards as evidenced by a Conditional Lead Safe Certificate or Full Lead Safe Certificate.
- K. "Lead safe standards" means:
1. Lead in paint, dust and/or soil below the lead safe thresholds ranges established by RIDOH in 216-RICR-50-15-3.7; or
 2. Intact paint and/or covered soil above the lead safe threshold established by RIDOH in 216-RICR-50-15-3.7.
- L. "Licensed lead inspector" means anyone who is licensed by RIDOH as a Lead Inspector or Lead Assessor.
- M. "Licensed lead professional" means anyone who is licensed or certified by RIDOH in accordance with to 216-RICR-50-15-3 as a:
1. Lead Inspector or Lead Assessor licensed to perform lead inspections;
 2. Lead Renovation Firm or Lead Renovator licensed or certified to perform lead hazard control; or
 3. Lead Contractor, Lead Supervisor, or Lead Worker licensed to perform lead hazard reduction.
- N. "Mitigation report" means the final independent clearance inspection report, laboratory report, copy of lead hazard awareness seminar completion certificate or RIDOH lead professional license and weather variance, as applicable.
- O. "Owner" means the person who owns a pre-1978 rental dwelling.
- P. "RIDOH" means Rhode Island Department of Health.
- Q. "Substrate" means the material directly beneath the painted surface out of which the components are constructed. The underlying surface which remains after paint is removed. Examples of substrates include wood, plaster, sheetrock, concrete, and metal.

- R. "Tenant" means any person, other than the owner, who enters into an agreement to rent, lease, or sublease a single-family house, dwelling unit, or premises.
- S. "Turnover" means the time at which all existing occupants vacate a unit and all new occupants move into the unit.

2.5 Owner Responsibilities

2.5.1 Education

Owners or their designee must complete a lead hazard awareness seminar approved by HRC, pursuant to R.I. Gen. Laws § 42-128.1-8.

2.5.2 Evaluations

- A. After attending a lead awareness seminar, Owners or their Designated Person shall conduct a visual inspection of the premises to identify Deteriorated Paint and determine who can perform the work to correct those hazards; or
- B. Owners shall hire a Licensed Lead Professional to conduct an inspection of the premises to identify any lead hazards and determine who can perform the work necessary to correct those hazards.

2.5.3 Lead Hazard Corrections

- A. The Owner must correct identified lead hazards under the following conditions:
 - 1. All painted surfaces constructed before January 1, 1978 (pre-1978) must be assumed to exceed the RIDOH lead safe thresholds in 216-RICR-50-15-3.7, unless determined otherwise by a Lead Inspector licensed by RIDOH in accordance with 216-RICR-50-15-3.13.
 - 2. If the work will result in disturbing less than six (6) square feet of lead-based paint per interior room or less than twenty (20) square feet on the exterior, and the work does not involve window replacement or demolition activities, then the work may be performed as lead hazard mitigation by someone who has attended a lead hazard awareness seminar provided that no prohibited work practices are used.
 - 3. If the work will result in disturbing six (6) square feet or more of lead-based paint per interior room or twenty (20) square feet or more on the exterior, then the work must be performed as lead hazard control by a Lead Renovation Firm licensed by RIDOH in accordance with 216-RICR-50-15-3.11.

4. If the Owner is in receipt of a Notice of Violation from RIDOH requiring the paint, dust, soil, and water to meet the Lead Safe Standards in 216-RICR-50-15-3.7, then the work must be performed as lead hazard reduction by a Lead Contractor licensed by RIDOH in accordance with 216-RICR-50-15-3.12.
- B. All corrections of lead hazards must be conducted in accordance with lead safe work practices pursuant to 216-RICR-50-15-3.16.
- C. The Owner shall make all reasonable efforts to ensure that occupants are not present during the work.

2.5.4 Independent Clearance Inspections

- A. After all Deteriorated Paint is corrected, the Owner must have a Licensed Lead Inspector perform an independent clearance inspection to obtain a Certificate of Conformance.
- B. Lead Inspectors may not present a conflict of interest pursuant to 216-RICR-50-15-3.5.1(C). Lead Assessors may perform independent clearance inspections and issue certificates of conformance only within the purview of their employment.
- C. The Licensed Lead Inspector shall follow the comprehensive environmental lead inspection protocol for evaluating paint in 216-RICR-50-15-3.5.3(B), except that paint testing is not required; all pre-1978 painted surfaces may be assumed to be lead-based paint. Intact lead-based paint is conditionally lead safe.
 1. Optional paint testing may be conducted pursuant to 216-RICR-50-15-3.6.2. Paint below the lead safe thresholds in 216-RICR-50-15-3.7 is lead safe regardless of condition.
- D. Dust wipe samples must be collected pursuant to 216-RICR-50-15-3.6.3.
 1. For a single-family dwelling, a minimum of three (3) dust wipes and one (1) field blank must be collected.
 2. For a multi-family dwelling, a minimum of three (3) dust wipes must be collected in the dwelling unit and a minimum of one (1) dust wipe collected in each associated common area, plus one (1) field blank per building.
- E. For condominium units, the inspection requirements are limited to the interior of the dwelling unit. The interior and exterior common areas are exempt from the HRC inspection requirements.

- F. Optional soil testing may be conducted pursuant to 216-RICR-50-15-3.6.4. The Licensed Lead Inspector shall follow the comprehensive environmental lead inspection protocol for soil in 216-RICR-50-15-3.5.3(D). Covered soil is conditionally lead safe.
- G. The Licensed Lead Inspector shall submit the lead samples to a laboratory certified by RIDOH within seven (7) days of the inspection, issue the Certificate of Conformance for passing results, complete the Mitigation Report on forms approved by HRC, and provide a copy to the Owner, tenant(s), and HRC within seven (7) days of receiving the sample results.
- H. Lead Inspectors and Environmental Lead Technicians shall retain copies of all Mitigation Reports for at least three (3) years. Lead Assessors' employers shall retain copies of all Mitigation Reports for at least three (3) years.
- I. To receive access to the password protected sections of the HRC web-based system, which allows Licensed Lead Inspectors to issue Certificates of Conformance, the inspector must submit a written request, on a form approved by HRC, for a login and password.
- J. HRC may deny a request for access to the system if HRC determines that the applicant has not demonstrated the ability to comply fully with applicable requirements established by this Part or RIDOH Regulation 216-RICR-50-15-3.
- K. Suspension or revocation of any privileges or database access granted pursuant to this Part may be implemented in any circumstances of intentional, egregious, repeated or grossly negligent conduct.
- L. Written notice of any disciplinary action taken by HRC and/or RIDOH, including appeal rights, and a detailed explanation of the facts and circumstances for which the disciplinary actions are being taken must be provided to the party being disciplined before such action shall take effect.

2.5.5 Lead Disclosure

- A. Owners shall provide current tenants with a copy of the Mitigation Report within seven (7) days of receipt.
- B. Owners shall provide current tenants with a copy of the latest Certificate of Conformance and Affidavit(s) of Completion of Visual Inspection within seven (7) days of the last affidavit being notarized.
- C. Owners shall provide prospective tenants with the following information on or before signing a lease, or before occupancy in the case of an oral lease:

1. Lead Warning Statement and acknowledgment pursuant to 24 C.F.R. § 35.92 and 40 C.F.R. § 745.113;
 2. EPA pamphlet "Protect Your Family from Lead in Your Home" and the RIDOH insert "What You Should Know About the Rhode Island Lead Law";
 3. Any known information about the presence of lead-based paint and/or environmental lead hazards;
 4. The most recent Certificate of Conformance and/or Affidavit(s) of Completion of Visual Inspection; and
 5. Notice of Deteriorating Conditions with the name and contact information of the Owner, their agent, or Designated Person who is responsible for maintaining the property.
- D. The acknowledgment must include the property address and unit number, if applicable, and be signed by the Owner or agent and the tenant(s). The Owner must retain a copy for at least three (3) years or the term of tenancy, whichever period is longer.
- E. These requirements are in addition to, not in lieu of, 24 C.F.R. Part 35 Subpart A, 40 C.F.R. Part 745 Subpart F, and 216-RICR-50-15-3.8.

2.5.6 Certificate of Conformance

- A. A Certificate of Conformance is valid for two (2) years or until the next turnover of the dwelling unit, whichever period is longer.
- B. An independent clearance inspection is required within thirty (30) days of the expiration of the Certificate of Conformance or unit turnover, provided that no more than one independent clearance inspection is required in any twenty-four (24) month period.
- C. If the tenancy is two (2) years or more, the Owner or Designated Person may conduct a visual inspection to determine that the Lead Mitigation Standard was maintained.
 1. The Owner or Designated Person shall complete an Affidavit of Completion of Visual Inspection, on forms approved by HRC, have the form notarized and submitted to HRC for approval within thirty (30) days of the visual inspection.

2. A visual inspection must be performed, and an Affidavit of Completion of Visual Inspection must be completed every two (2) years until the next unit turnover.
- D. The Certificate of Conformance and Affidavit(s) of Completion of Visual Inspection must be kept by the Owner for a minimum of five (5) years pursuant to R.I. Gen. Laws § 42-128.1-4(9)(ii).

2.6 Lead Safe Compliance

- A. As a minimum, an Owner shall have one of the following to document lead safe compliance:
1. A current Certificate of Conformance;
 2. A Certificate of Conformance and a current notarized Affidavit of Completion of Visual Inspection approved by HRC; or
 3. A current Certificate of Presumptive Compliance issued by HRC.
- B. Pursuant to R.I. Gen. Laws § 42-128.1-4(9)(iii), an Owner of ten (10) or more dwelling units is eligible to obtain a Certificate of Presumptive Compliance from HRC, provided the following conditions are met:
1. The dwelling units were constructed after 1960 or after 1950 on federally owned or leased lands;
 2. There are no outstanding Notices of Violation from RIDOH or the municipality where the property is located;
 3. The Owner has no history of multiple lead poisonings as defined by R.I. Gen. Laws § 23-24.6-23; and
 4. Independent clearance inspections have been conducted in at least five percent (5%) of the dwelling units, but not less than two (2) dwelling units, and at least ninety percent (90%) of the independent clearance inspections passed the initial inspection.
- C. The Owner or Designated Person shall complete an application for presumptive compliance, on forms approved by HRC. The application and all supporting documentation must be submitted to HRC for approval within sixty days (60) of the independent clearance inspections.
- D. A certificate of Presumptive Compliance is valid for two (2) years. The Certificate of Presumptive Compliance may be maintained by visual inspections conducted

by the Owner or Designated Person. Once complete, Affidavits of Completion of Visual Inspection shall be submitted to HRC for approval.

- E. Alternatively, an Owner may have one of the following to document lead safe compliance:
1. A current Conditional Lead Safe Certificate;
 2. A Full Lead Safe Certificate; or
 3. A Certification of Lead Free Status for the dwelling unit and common areas including the building exterior.

2.7 Tenant Rights

- A. Tenants shall have the right to file a complaint with HRC if the Owner's response to a Notice of Deteriorating Conditions is unsatisfactory or if the lead hazard mitigation performed is unsatisfactory.
- B. Tenants shall have the right to voluntarily notify the Owner of any At-Risk Occupants, potential or otherwise, at any point before, during, or after unit Turnover. At-Risk Occupants have the right to lead safe housing.
- C. Households that include an At-Risk Occupant shall have the right of a private action to seek injunctive relief from a court with jurisdiction against the Owner to compel lead safe compliance. A person who prevails is entitled to an award of the costs of the litigation and reasonable attorney's fees in an amount to be fixed by the court.

2.8 Lead Hazard Awareness Seminar Training Providers

- A. To apply for certification as a training provider for the lead hazard awareness seminar, an applicant shall submit a completed application to HRC, on forms approved by HRC, at least forty five (45) days prior to the first scheduled course date. The application must include all information required by R.I. Gen. Laws Chapter 42-128.1 and all supporting documentation specified on the application form.
1. For in person seminars, the application must include the name(s) and qualifications of the instructor(s) to be approved by HRC. Training providers shall notify HRC of all scheduled and canceled in-person seminars at least (7) days in advance. HRC may audit any lead hazard awareness seminar.

2. For online trainings, a link, login and password must be provided to HRC for course review and approval.
- C. Any training provider certified pursuant to this Section shall notify HRC in writing before making any changes which would amend the information contained in their application.
- D. The certification shall expire four (4) years from the date of issue by HRC, unless sooner suspended or revoked.
- E. A training provider shall renew a certification every four (4) years by re-applying to HRC, without reference to any previously submitted material. In any case in which the provider has submitted a renewal application in proper form not less than thirty (30) days prior to expiration of its current certification, the current certification will not expire until final action on the application has been taken by HRC.
- F. Suspension or revocation of any certification, privileges or database access issued pursuant to this Part may be implemented in any circumstances of intentional, egregious, repeated or grossly negligent conduct.
- G. Written notice of any disciplinary action taken by HRC, including appeal rights, and a detailed explanation of the facts and circumstances for which the disciplinary actions are being taken must be provided to the party being disciplined before such action shall take effect.
- H. HRC may deny an application for certification pursuant to this Section if it determines that the applicant has not demonstrated the ability to comply fully with applicable requirements established by this Part.

2.9 Variances

- A. A variance may be granted to an Owner where there exists a hardship to financing Lead Safe Compliance, or where weather, materials, or personnel delay completion of the work.
- B. A request for a variance must be submitted in writing, on a form approved by HRC.
- C. For the purposes of this Part, an interior Certificate of Conformance issued between November 1 and March 31, when the weather prevents correcting exterior lead hazards, is considered an automatic weather variance which will expire the following June 30.

1. On or before June 30, a Licensed Lead Inspector shall conduct an exterior re-inspection to issue a full Certificate of Conformance if the exterior inspection passes. The full Certificate of Conformance will expire two (2) years from the date that the interior inspection, including dust wipe sampling, passed. Both the interior and exterior independent clearance inspection forms and signed variance request must be included in the final Mitigation Report.
 2. After June 30, a Licensed Lead Inspector shall conduct a full independent clearance inspection (i.e. interior, including dust wipe sampling, and exterior) to issue a full Certificate of Conformance if the inspection passes. The new Certificate of Conformance will expire two (2) years from the date of the last inspection and dust wipe sampling.
- D. HRC may declare any variance granted pursuant to this Section immediately null and void if the HRC determines that the terms of the variance have been violated.

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