

211 CMR: DIVISION OF INSURANCE

211 CMR 131.00: REQUIREMENTS APPLICABLE TO INSURANCE ON LIABILITY FOR INJURY FROM EXPOSURE TO DANGEROUS LEVELS OF LEAD IN DWELLING UNITS

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131.01: Authority

211 CMR 131.00 is promulgated in accordance with the authority granted to the Commissioner of Insurance by M.G.L. c. 175, § 111H, as enacted by St. 1993, c. 482, § 20, by M.G.L. c. 175, § 3A, by M.G.L. c. 174A, § 15, and by M.G.L. c. 175A, § 15.

131.02: Definitions

As used in 211 CMR 131.00, the following words shall mean:

Buyback coverage. Coverage for lead poisoning liability initially excluded pursuant to 211 CMR 131.08(1) that must be offered in accordance with 211 CMR 131.08.

Commercial lines insurance. Insurance providing coverage for businesses or other commercial entities, such as commercial general liability insurance, commercial package policies, businessowners policies, or commercial fire insurance policies which include liability coverage.

Excess and umbrella liability insurance. Insurance providing liability coverage after insurance provided by primary liability insurance or self-insured retention has been exhausted. For liability insurance to be considered excess or umbrella coverage, the limits for underlying coverage or self-insured retention shall be at least \$100,000 per occurrence for personal lines insurance and \$300,000 per occurrence for commercial lines insurance.

Letter of Full Compliance or Letter of Compliance. Letter of Initial Lead Inspection Compliance, Letter of Lead Abatement Compliance or other letter of compliance issued by a licensed government or private lead inspector pursuant to applicable law and Department of Public Health regulations on lead poisoning prevention and control: provided, however, that a letter of interim control shall not be considered a letter of compliance.

Letter of Interim Control. Letter, other than a letter of compliance, which may be issued by a licensed lead inspector pursuant to M.G.L. c. 111, § 197, in accordance with the requirements of Department of Public Health regulations (105 CMR) and in connection with an emergency lead management plan which has been established to address urgent lead paint hazards until a letter of full compliance is obtained.

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131.02: continued

Liability insurance policy. Any policy of insurance, except excess or umbrella liability insurance policies, which covers legal liability of owners of residential premises for liability that arises in connection with such premises, and which may also cover certain other types of liability conventionally made available with coverage for liability arising in connection with the premises, and any policy covering predominantly or solely liability for injury from exposure to lead.

Personal lines insurance. Insurance providing both property and liability coverage for individuals and families, such as homeowners insurance policies, dwelling fire policies with a personal liability supplement or separate personal liability policies.

Premises. Any residential premises, dwelling unit or residential property constructed prior to 1978. The residential premises of a building which includes business and residential uses are subject to the requirements of 211 CMR 131.00 applicable to residential premises.

Rates. Rates for insurance written pursuant to 211 CMR 131.00, whether developed on a stand-alone basis or as the product of approved loss costs and loss cost multipliers.

The Massachusetts Lead Law or the Lead Law. M.G.L. c. 111, §§ 189A through 199B, inclusive.

131.03: Purpose and Scope

211 CMR 131.00 is designed to encourage preventative lead abatement activities by residential property owners, to ensure the availability of liability insurance for owners of residential property who bring their premises into compliance with M.G.L. c. 111, § 189A through 199B (the Massachusetts Lead Law), and to establish rules governing policy forms, rates, data reporting, and other matters related to insurance on liability for injury or damage resulting from dangerous levels of lead in dwelling units.

131.04: Coverage for Premises for Which a Letter of Interim Control or Letter of Compliance Is in Effect

When any liability insurance policy which an insurer has elected to offer provides coverage to the owner of any premises for which a letter of interim control or letter of full compliance is in effect, in accordance with M.G.L. c. 111, § 197, such policy shall provide coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units, and which occurs during the policy period, as long as said injury or damage is not the result of gross or willful negligence. Coverage provided in accordance with 211 CMR 131.04 will be effective from the date of policy inception if the letter of compliance or letter of interim control is effective on or before such date.

131.05: Modification of Coverage When A Letter of Interim Control or Letter of Compliance Is Obtained and Maintained

Except as provided in 211 CMR 131.06, when any liability insurance policy which an insurer has elected to offer provides coverage to the owner of any premises for which there is no letter of interim control or letter of full compliance in accordance with M.G.L. c. 111, § 197, the insurer shall endorse or otherwise modify the policy to provide coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units, and which occurs on or after the date the endorsement or other contractual modification is effective, if and when the owner of such premises obtains and maintains a letter of interim control or letter of compliance. Coverage provided to any dwelling unit in accordance with 211 CMR 131.05 shall be effective on any dwelling unit on the date that any letter of interim control or letter of compliance applicable to such unit is effective.

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131.06: Special Coverage for New Owners under Certain Circumstances

Notwithstanding the requirements and limitations of 211 CMR 131.05, a new owner of premises who has taken title as a result of a *bona fide* transaction and who has complied with the requirements of M.G.L. c. 111, § 199(d) applicable to new owners, including coming into conformance with M.G.L. c. 111, §§ 189A through 199B within 90 days after becoming the owner of the premises, shall be covered for injury or damage which results from exposure to dangerous levels of lead in dwelling units, and which occurs during the policy period of any policy of liability insurance an insurer has elected to provide to such owner. Coverage shall apply from the date such owner took title to the premises, or from the effective date of the policy, if the owner did not obtain insurance until after the date of taking title.

131.07: Additional Requirements Applicable to Insurance Provided Pursuant to 211 CMR 131.04 - 131.06

Lead poisoning liability coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06 shall not be subject to special limits not applicable to other liability claims under such a policy. Lead poisoning liability coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06 shall be provided to any dwelling unit for which a letter of interim control or letter of compliance is in effect, regardless of whether such letters are in effect with respect to other units in the same building. When coverage is provided in accordance with such Sections on any unit or portion of premises for which a letter of compliance or letter of interim control is in effect, such coverage will apply only to lead poisoning liability claims arising from the portion of the premises covered by such a letter. An insurer may require an insured to provide a copy of any letter of compliance or letter of interim control that is in effect with respect to any premises or portion of premises that qualifies for coverage.

131.08: Coverage for Premises Not In Compliance

(1) Companies that offer a liability insurance policy for any premises for which the owner has not obtained a letter of interim control or letter of compliance may exclude coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units. Such companies must offer the insured or prospective insured the opportunity to buy back the initially excluded coverage, subject to the limits contained in 211 CMR 131.08(2), at an additional cost to be determined pursuant to 211 CMR 131.10.

(2) The coverage that an insured or prospective insured may buy back pursuant to 211 CMR 131.08 must be offered at the same time that such insureds or prospective insureds are advised that the insurer intends to exclude coverage as permitted under 211 CMR 131.08(1). Insurers shall offer such buyback coverage with separate limits of at least \$100,000 per occurrence for personal lines insurance on residential premises and at least \$300,000 per occurrence for commercial lines insurance on residential premises. Notwithstanding the foregoing, if the general liability per occurrence limit of an insured's policy is less than \$100,000 in the case of a personal lines policy, or less than \$300,000 in the case of a commercial lines policy, then the insurer may provide lead poisoning liability coverage in accordance with 211 CMR 131.08 with a per occurrence limit of not less than the policy's general liability per occurrence limit. The foregoing separate minimum per occurrence limits shall not increase any aggregate limit or policy limit of liability of any policy of insurance which includes buyback coverage provided in accordance with 211 CMR 131.08. The limits of a policy written in accordance with 211 CMR 131.08 apply regardless of the number of units covered by such insurance.

(3) Buyback coverage elected within 30 days of receipt of an offer of such coverage shall be deemed effective on the inception date of the policy. Buyback coverage elected after 30 days of receipt of an offer shall be effective on the date of the request by the insured, unless otherwise agreed by the insured and the insurer.

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131.09: Coverage of Owner-occupied Single Family Premises

Notwithstanding any of the other provisions of 211 CMR 131.00, any liability insurance policy covering owner-occupied single family premises shall provide coverage for injury or damage resulting from exposure to dangerous levels of lead in dwelling units, except that such a policy's lead poisoning liability coverage will not apply to claims made by persons who are insureds under that policy. The exclusion and buyback requirements of 211 CMR 131.08 do not apply to owner-occupied single family premises.

131.10: Rates

- (1) Rates for insurance under 211 CMR 131.00 must be filed with the Commissioner, and are subject to the requirements of M.G.L. c. 175A.
- (2) Loss costs for insurance under 211 CMR 131.00 must be filed with the Commissioner and must satisfy the requirements of SRB Bulletin 90-05 (Insurance Rating Organizations: Implementation of Loss Costs Filing Procedures) or any superseding bulletin, rule, or regulation.
- (3) Filings under 211 CMR 131.00 must include full justification for proposed rates, loss costs, or buyback coverage, and must be accompanied by all actuarial data used in their formulation, such as:
 - (a) Historical exposure and claim data (both in number and in dollar amount, paid as well as incurred), including information relative to claims closed both with and without indemnity payments, for the previous five years.
 - (b) Projected claims costs underlying the proposed loss costs, along with supporting documentation.
 - (c) A narrative explanation of actuarial assumptions used in developing the loss costs.
- (4) Each rate or loss cost filing must be made at least 15 days prior to its proposed effective date. The Commissioner may delay the effective date for 30 additional days if he or she determines the delay is necessary to properly examine the filing or to request any supporting information or to permit a hearing on the filing.

131.11: Policy Forms and Endorsements

- (1) Policy forms and endorsements providing or excluding coverage for liability for injury or damage resulting from dangerous levels of lead in dwelling units must be filed with the Commissioner, and are subject to the requirements of M.G.L. c. 175, §§ 22A, 193F, 193G, and 193H.
- (2) Companies must file with the Commissioner disclosure statements which include the information required by 211 CMR 131.13 at the same time that policy forms and endorsements are filed. Such disclosure statements are subject to the requirements of 211 CMR 131.11(1) regarding filing, review, approval, and disapproval of policy forms and endorsements.
- (3) Coverage must be provided, or excluded, and claims shall be paid, in accordance with 211 CMR 131.00, notwithstanding that approved rates, policy forms, endorsements, or disclosure forms are not available to provide to policyholders.

131.12: Data Collection and Reporting

- (1) Licensed statistical agents for each liability insurer shall collect data on lead poisoning liability with respect to all policies subject to the requirements of 211 CMR 131.00, including premium, exposure and claims experience, with information separately coded for buyback coverage, coverage excluding lead poisoning liability, and coverage including lead poisoning liability. The Commissioner may require reporting of additional categories of data.
- (2) Each such licensed statistical agent shall file with the Commissioner for approval of revised statistical plan pages in order to capture such lead poisoning liability information.

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131.12: continued

(3) Revised statistical reporting shall be compiled annually by the statistical agent and reported to the Commissioner in summary format, as of the end of the preceding calendar year, by July 1 of each year, and shall account for each of the five prior accident years separately.

(4) To the extent that data for prior accident years has not as yet been captured by the statistical reporting plan, the statistical agent may rely on a special call for data in order to complete the summary report required to be filed with the Commissioner in accordance with 211 CMR 131.12. The instructions for the special call shall be filed with the Commissioner along with the summary report.

131.13: Disclosure Forms

(1) Insurers shall provide to insureds or prospective insureds disclosure notices summarizing the coverage which they provide or make available for lead poisoning liability insurance with respect to all policies issued or renewed. Such notices shall indicate:

- (a) whether the policy is intended to exclude coverage for injury or damage which results from exposure to dangerous levels of lead in dwelling units;
- (b) that such exclusions may not be applied to premises to which a letter of compliance or letter of interim control is in effect;
- (c) that buyback coverage is available for an additional charge in the event that the insurer intends to apply such an exclusion to premises for which no letter of compliance or letter of interim control is in effect;
- (d) that buyback coverage elected within 30 days of receipt of an offer of such coverage will be deemed effective on the inception date of the policy, and that buyback coverage elected after 30 days of receipt of an offer will be effective on the date of the request by the insured, unless otherwise agreed by the insured and the insurer;
- (e) that if the owner of residential premises brings his or her premises into compliance during the term of the policy as stated in 211 CMR 131.05, coverage will be added for lead poisoning liability arising from exposure which occurs on and after the date the added coverage is effective;
- (f) that if a new owner brings his or her premises into compliance in the manner indicated in 211 CMR 131.06, the new owner shall be provided coverage back to the date he or she took title, or from the effective date of the policy, if the owner did not obtain insurance until after the date of taking title;
- (g) that, for an insured to qualify for coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06, an insurer may require an insured to provide a copy of any letter of compliance or interim control that is in effect with respect to any premises or portion of premises for which such insurance is sought;
- (h) that lead poisoning liability coverage provided in accordance with 211 CMR 131.04, 131.05 and 131.06 shall be provided to any dwelling unit for which a letter of interim control or letter of compliance is in effect, regardless of whether such letters are in effect with respect to other units in the same building;
- (i) that, when lead poisoning liability coverage is provided in accordance with 211 CMR 131.04, 131.05 and 131.06 on any unit or portion of premises for which a letter of compliance or letter of interim control is in effect, such coverage will apply only to lead poisoning liability claims arising from the portion of the premises covered by such a letter; and
- (j) the limits of the lead poisoning liability coverage being provided or offered.

(2) At the same time that insurers provide to insureds the disclosure notice specified in 211 CMR 131.13(1), insurers shall provide an additional disclosure notice describing the requirements of M.G.L. c. 111, § 189A through 199B (the Massachusetts Lead Law). Such notice is available from the Division of Insurance, which shall determine its form and content.

131.14: Guidelines

The Commissioner may issue written guidelines clarifying 211 CMR 131.00 or its application, or establishing administrative requirements for filings subject to 211 CMR 131.00.

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131.15: Severability

If any section or portion of a section of 211 CMR 131.00 or the applicability thereof to any person, entity, or circumstance is held invalid by a court, the remainder of 211 CMR 131.00 or the applicability of such provision to other persons, entities or circumstances, shall not be affected thereby.

REGULATORY AUTHORITY

211 CMR 131.00: M.G.L. c. 175, § 111H as enacted by St. 1993, 482, § 20; c. 175, § 3A; c. 174A, § 15 and c. 175, § 15.

(PAGES 835 AND 836 ARE RESERVED FOR FUTURE USE.)