



SCHUBERT CENTER
FOR CHILD STUDIES

Office of the General Counsel (Rules- Rental Registry)
Ohio Department of Health (ODH)
246 N. High Street
Columbus, Ohio 43215

September 28, 2018

Sent by electronic mail to ODHrules@ODH.ohio.gov

RE: Lead Safe Rental Registry – Comments on Proposed Rules OAC Chapter 3701-81

To the Office of General Counsel:

Thank you for the opportunity to provide comment on the important issue of lead-safe rental housing registry rules. The Schubert Center for Child Studies at Case Western Reserve University bridges research, education, policy and practice for the well-being of children and adolescents. As noted in our June 22, 2018 letter regarding the first set of proposed rules for a lead-safe rental registry, because children are especially vulnerable to the effects of lead toxicity and can suffer serious immediate harm and profound life-long damage, our Center has an interest in reducing childhood exposure to lead and supporting public policies that advance best practices for children and families.

First, we want to commend the Ohio Department of Health’s (ODH) for revising the lead-safe registry rule, in defining “post maintenance dust sampling”, to require a “clearance examination” as the only acceptable method for assessing lead hazards. Ensuring laboratory analysis of dust wipe samples, rather than a mere visual inspection, is essential to test for the presence of lead and effectively assess whether lead hazards exist. As such, the clearance examination is a critical and necessary requirement.

We remain concerned however that the revised guidance does not ensure a means of even minimal enforcement of the registry rules. For instance, while there is a requirement that “the owner must retain documentation of compliance...for a period of no less than three years” (OAC 3701-81-02 (D)(5)), **there is no process or procedure in place for monitoring compliance with this directive**, including checking to determine if inspections are executed appropriately, or conducting audits to ensure documentation meets the standards. Similarly, another section of the rule reads in part (OAC 3701-81-02(F)):

“(F) The director may remove any property from the lead-safe residential rental unit registry upon determination that the owner or agents of the owner did any of the following:

- (1) Falsified any of the required records;
- (2) Failed to comply with any requirement of this chapter, Chapter 3742. of the Revised Code, or any federal, or state regulations as they pertain to lead-based paint or lead hazards; ...”

It is unclear however how any “determination” may be made concerning whether an owner actually “falsified” records or otherwise “failed to comply” with this rule without some quality assurance mechanism in place.

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Moreover, even where a determination may somehow be made finding an owner has failed to comply, or worse, falsified documents under these rules, there are no penalties or consequences (such as removal from the registry) in the rule. **The lack of disincentives for breaking the rules, especially where the actions are intentional and where potential lead poisoning of children can occur as a result, is poor policy. At a minimum, where records have been falsified, the property should be removed from the registry for some time period.**

RECOMMENDATIONS:

(1) *Revise 3701-81-02(F)(1) to replace “may” with “shall” to ensure that any property where a determination has been made that records have been falsified not remain on a “lead-safe” registry.*

(2) *Add an additional section with quality control language, such as: “The director will conduct regular audits, collect and analyze data and otherwise investigate compliance and monitor the implementation and maintenance of the registry for quality assurance purposes in order to effectively meet the standards and procedures under this rule.”*

Again, support ODH in revising the proposed rule to require a clearance examination. Additionally, **we urge ODH to adopt stronger enforcement and quality assurance measures as noted above in order to achieve the best results for Ohio’s children, families and all taxpayers.** Given that the proposed registry is not mandatory, it is even more essential that the public can trust that the information provided within it reflects the best knowledge of the condition of a property in terms of lead hazards. **Taking steps to ensure the integrity of the information in the registry is especially important when it comes to parents and caregivers seeking a lead-safe home for their children.**

Thank you for your consideration of these comments and suggestions.

Respectfully,



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