

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

### EXEMPTIONS OR GRANDFATHERED PROPERTIES

- 1) **Question** - Are there any exemptions to RSA 130-A:5-d for zero-bedroom units, dormitories, 62 and older per HUD definition, etc.? In other words, are there exemptions for non-target housing?

**Answer** – There are no exemptions in RSA 130-A:5-d Sale and Rental of Property.

- 2) **Question** – Are there projects that are ‘grandfathered in’ under RSA 130-A:5-d, meaning they obtained their building permit and started working on their project long before July 1, 2024.

**Answer** – Under RSA 130-A:5-d, there are no projects ‘grandfathered in’. If a project is ‘substantially completed’, meaning a project is considered complete enough to serve its intended purpose, even if not finished in every detail, and is seeking an occupancy permit after July 1, 2024, then the project would require a *Certificate of Lead-Safe*.

### PORTIONS OF THE PROPERTY INCLUDED IN THE LEAD-SAFE CERTIFICATE

- 3) **Question** - Will a full *Certificate of Lead-Safe* be required for all parts of the property, (i.e., common areas, exterior, other buildings on the same lot) or can the *Certificate of Lead-Safe* be ‘qualified’ such as interior of unit or house only?

**Answer** – In accordance with NH Administrative Rules He-P 1608.14(d), a *Certificate of Lead-Safe* for the interior of a multi-family dwelling shall not be issued until all interior work areas associated with the dwelling unit(s) where lead hazard reduction activities have occurred, has passed a clearance inspection, including, when applicable, interior common areas associated with the dwelling unit(s).

In accordance with RSA 130-A:1 Definitions, ‘dwelling unit’ means any room, group of rooms or other interior area of a dwelling or other structure, all or part of which is offered or made available for human habitation and may include all common areas of the unit and exterior surfaces. A *Certificate of Lead Safe* would be required for common areas and exterior areas used or made available for human habitation.

- 4) **Question** – For a residential rental unit that is located within a mixed-use facility (residential and commercial), would the *Certificate of Lead-Safe* need to cover the entire exterior of a property?

**Answer** – RSA 130-A:5-d requires newly-constructed rental units ‘within’ buildings erected prior to 1978 to have *Certification of Lead-Safe* prior to occupancy. The RSA does not make mention of the exterior of the property. A *Certificate of Lead Safe* would be required for common areas and exterior areas used or made available for human habitation. See Question #3 above.

### UNDERSTANDING THE DIFFERENCE BETWEEN RRP VS ABATEMENT

- 5) **Question** - What is the definition of renovation? How do I determine if a particular activity is a regulated renovation activity?

**Answer** - The US Environmental Protection Agency (EPA) [Lead Renovation, Repair, and Painting \(RRP\) Rule](#) covers activities that modify an existing structure and that result in the disturbance of painted surfaces. According to the [EPA](#), the RRP Program rule only applies to persons who perform renovations for compensation. All types of repairs, remodeling,

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

maintenance, modernization, and weatherization projects are covered, including projects performed as part of another Federal, State, or local program, if the projects meet the definition of 'renovation'. The term 'renovation' includes, but is not limited to:

- Removing, modifying, or repairing painted surfaces or painted components. Examples include modifying painted doors, surface restoration, window repair, and surface preparation activity like sanding and scraping that may generate paint dust.
- Removing building components such as walls, ceilings, plumbing, or windows.
- Weatherization projects such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, or planing thresholds to install weather-stripping.
- Interim controls that disturb painted surfaces.

**6) Question** – Are EPA Renovate, Repair, and Paint (RRP) certified contractors allowed to do demolition or window replacement?

**Answer** – Yes, according to the [EPA](#), RRP certified contractors can replace windows. Some remodels will be classified as 'comprehensive renovation', and others may be classified as 'gut rehabilitation'. EPA RRP contractors can conduct both however, RRP certification is not required for 'gut rehabilitation'. See below for more information.

**7) Question** - What EPA RRP requirements apply to a comprehensive renovation project involving the removal and replacement of all interior painted surfaces from target housing or a child-occupied facility?

**Answer** – According to the [EPA](#), a project that involves the removal and replacement of all interior painted surfaces but leaves all exterior painted surfaces intact is considered a renovation for RRP purposes. Therefore, all requirements of the EPA RRP Rule apply including, but not limited to, those for firm and renovator certification, containment, waste disposal, cleaning and verification, and recordkeeping. The type of activity described in the question should not be confused with a 'whole house gut-rehabilitation project' that effectively results in new construction as discussed in [FQ 23002-18426](#).

EPA has recognized the fact that there may be circumstances where it is impossible for firms to meet all the requirements under the RRP Rule. To the extent that performance of an RRP requirement would be impossible, the firm is excused from compliance. However, impossibility of one work practice does not excuse a firm from complying with other requirements. EPA further recommends that the firm document and keep records of the specific circumstances surrounding the impossibility.

With respect to the comprehensive renovation activities described in the question, impossibilities may be more prevalent. For example, during removal of a floor, covering the floor surface with taped-down plastic sheeting as required by 40 CFR 745.85(a)(2)(i)(D) would be impossible. As described above, the firm would be excused from this requirement. Nevertheless, the firm must still ensure that the work area is properly contained. Windows, doors, and ducts in the work area must be closed and covered. Precautions must be taken to ensure that all personnel, tools, and other items are free of dust and debris before leaving the work area. At the conclusion of each workday and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris and disposed of properly.

Following the renovation, the work area must also be cleaned until no dust, debris or residue remains. If no more painted surfaces will be disturbed, then cleaning may take place after either removal of all components, or after all new surfaces have been installed. Further, should cleaning or verification be impossible to achieve (for example, due to the nature of the surfaces), a firm must still make their best effort to collect and remove all paint chips, dust, debris and residue.

The phrase 'gut rehabilitation' may have different meanings across the construction industry. EPA, however, used the phrase 'whole house gut rehabilitation' in a very limited sense to describe only those activities that demolish and rebuild a structure to a point where it is effectively new construction. At a minimum, these activities include the removal and replacement of all interior and exterior painted surfaces, including windows. The term should not be confused with a comprehensive renovation as described in [FQ 23002-23415](#).

If an activity meets these narrow criteria (i.e., if a firm demolishes and rebuilds a structure to the extent that it is effectively new construction), then the activity is not a renovation for purposes of the EPA [RRP Rule](#) and therefore not subject to any RRP requirements.

**8) Question** - What is the definition of abatement? How do I determine if a particular activity is a regulated abatement activity?

**Answer** – According to He-P 1602.01(a) "Abatement" means measure(s) designed to permanently eliminate lead-based paint hazards as defined in 40 CFR Part 745.223 including:

(1) Activities resulting in the permanent elimination of lead-based paint hazards, including all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures conducted by individuals certified or licensed in accordance with He-P 1612;

(2) Activities resulting in the permanent elimination of lead-based paint hazards that are conducted in response to an investigation, an order of lead hazard reduction or other enforcement action undertaken by the commissioner pursuant to RSA 130-A:5 or RSA 130-A:7, or by a local health department pursuant to RSA-130-A:11, II; or

(3) Any other measures or set of measures conducted in, or to, a residential dwelling, dwelling unit, or child-care facility designed to permanently eliminate lead-based paint hazards.

**9) Question** - If there is a requirement to receive a *Certificate of Lead Safe* after work is completed, why doesn't a licensed lead abatement contractor have to do the work?

**Answer** – Whether a lead abatement contractor is required to conduct the work depends upon the intent of the work. In accordance with 40CFR745.223(4). Abatement does not include renovation, remodeling, landscaping or other activities, when such

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

**10) Question** – Can the ‘intent’ of my project change?

**Answer** – Yes, a project can start out with the intent of completing a routine renovation or repair and change midway to abatement or vice versa. A project can start with the goal of eliminating lead exposure hazards and then move to renovation or repair.

In projects involving both lead abatement and renovation, if abatement work is completed first, it must conclude by passing a lead dust clearance test performed by a licensed Risk Assessor. If the project continues with renovation, the RRP Rule still applies unless additional lead testing determines that no lead-based paint is present, or a *Lead-Free Certificate* is issued post abatement.

If renovation work is completed first, abatement contractors at the end of the project may have a hard time passing lead dust clearance test and may be reluctant to take on the project knowing they would be responsible for dust clean-up and passing clearance wipes.

It is recommended prior to work beginning to have a supervisor overseeing the project that is both certified in EPA RRP and licensed in NH in lead abatement so they are aware of the difference between the two laws and can make sure the entire project is run with minimal setbacks and complications.

Being certified in both RRP and abatement means a company would not need to subcontract with another company in the middle of a project. There are also certain non-dust generating abatement activities that would not require a licensed abatement worker to perform provided the work plan is approved and the activities are overseen by a licensed lead abatement supervisor. Having a licensed lead abatement supervisor onsite will be very important as they can oversee these activities as well as perform other lead abatement activities that may need to be completed pre or post renovation.

### ISSUING A LEAD-SAFE CERTIFICATE

**11) Question** – In the event a contractor has gutted a property (no-painted components remain), but the new construction has yet to take place, can the Risk Assessor provide a *Lead-Safe Certificate* for the wide-open space that has been gutted? Does the Risk Assessor have to wait for the new construction to be completed to provide a Lead-Safe Certificate for the interior?

**Answer** – Though it may be difficult to pass dust wipe sampling required for the certificate, there is nothing prohibiting the Risk Assessor from providing a *Lead-Safe Certificate* for a gutted wide-open space.

**12) Question** – A Risk Assessor can issue different types of certificates. Of the certificates listed below, what certificates meets the requirements of RSA 130-A:5-d?

- a. Certificate of No Lead-Based Paint.
- b. Certificate of No Lead-Based Substances

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

- c. Certificate of Lead-Safe
  - i. Abatement or
  - ii. Interim control

**Answer** – A *Certificate of Lead-Safe abatement, Certificate of Lead-Safe Interim Controls, and a Certificate of No Lead-Based Substances* meets the requirements of the new law. A *Certificate of No Lead-Paint* would not be acceptable.

**13) Question** – If the licensed Risk Assessor is requested to provide a *Lead-Safe Certificate* for a multi-unit building, can the Risk Assessor use HUD Guidelines under Chapter 7 for random unit selection and testing of interior units, interior commons and exterior buildings?

**Answer** – In accordance with NH Administrative Rules He-P 1608.12(n)(5), when lead hazard reduction work has occurred in a multi-family dwelling with similarly constructed and maintained dwelling units, if random sampling is utilized it shall be conducted in accordance with 40 CFR Part 745.227(e)(9)(i)-(iii) or any subsequent amendments thereto.

In accordance with 40 CFR Part 745.227(e)(9)(i)-(iii), in a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in [paragraph \(e\)\(8\)](#) of this section.

### FAILING DUST WIPES AT THE CLEARANCE

**14) Question** - Immediately following the completion of renovation activities, a licensed Risk Assessor conducts a clearance examination which reveals lead dust levels above the clearance standard. Is removal of lead dust to address the failure of the clearance examination considered abatement, which would require licensed abatement workers?

**Answer** - No. The removal of lead dust to address the failure of the clearance examination would be considered part of cleanup from the renovation activities. Routine cleanup of renovation-related dust is not abatement, even if the dust is known to be above the dust lead hazard standard. The RRP certified contractor can conduct this cleanup.

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

### IDENTIFYING LEAD BUILDING COMPONENTS AT THE CLEARANCE

**15) Question** – If the Developer chooses to have the licensed Risk Assessor come in after all the renovation work is completed and lead hazards are identified, is the developer required to hire a licensed NH Lead Abatement Contractor to remove the lead hazards (e.g. scraping friction surfaces such as door jambs, treads, thresholds).

**Answer** – A licensed NH Lead Abatement Contractor may be required at this point. It would be wise for the onsite Supervisor to be both certified in EPA RRP and lead abatement. There are certain activities that non-licensed individuals can do in accordance with NH RSA 130-A and He-P 1600, such as application of encapsulation paint, removing a door from its hinges, carpeting, installation of vinyl siding, etc. provided:

- A **licensed lead abatement supervisor is present at all times** in accordance with He-P 1609.01(f);
- **The work scope is reviewed and approved by a NH licensed lead abatement contractor or supervisor** in accordance with RSA 130-A:9,VI;
- The individual does not engage directly in lead-based substance abatement in accordance with RSA 130-A:9, VI;
- **All other requirements of He-P 1600** are followed;
- The work is being conducted in an area free of dust and debris where all dust generating activities have been completed; and
- **The passing of a preliminary clearance** as described in He-P 1608.12(d) has been achieved.

### CHILD CARE FACILITIES

**16) Question** – What is the role of municipal Health Officers in the inspection of newly licensed childcare facilities? How is their role different from that of a licensed Lead Risk Assessor?

**Answer** – The Department of Health & Human Services (DHHS) requires all childcare facilities applying for a new license or having their license renewed, to be inspected by the municipal Health Officer. The inspection that the municipal Health Officer completes is a general inspection using a [DHHS Check list](#). Health Officers in NH are not licensed to complete Lead risk assessments. Those childcare facilities built prior to 1978 that are applying for a new license with DHHS are required to have a *Certificate of Lead-Safe* issued by a [licensed NH Risk Assessor](#).

**17) Question** – For a child-care facility that is located within a mixed-use facility (residential and commercial), would the *Certificate of Lead-Safe* need to cover the entire exterior of a property?

**Answer** - RSA 130-A:5-d requires newly licensed day care facilities ‘within’ buildings erected prior to 1978 to have certification of lead-safety. This would include those portions of the property that the children have access to.

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

### ENFORCEMENT

**18) Question** - Who will enforce RSA 130-A:5-d?

**Answer** – Currently NH Administrative Rules He-P 1600 Lead Paint Poisoning Prevention and Control does not include parameters for enforcement. Changes to Administrative Rules He-P 1600 are being proposed that if passed will allow the NH Department of Health and Human Services to impose fines to those property owners and child-care facilities that fail to obtain the necessary *Certificates of Lead-Safe*. It is anticipated that if passed, new administrative rules will be in place for January 2025.

**19) Question** - Will there be enforcement of the new law especially in the case of single-family owner-occupied now becoming a rental or will enforcement occur once the child gets poisoned?

**Answer** – Currently NH Administrative Rules He-P 1600 Lead Paint Poisoning Prevention and Control does not include parameters for enforcement. Changes to Administrative Rules He-P 1600 are being proposed that if passed will allow the NH Department of Health and Human Services to impose fines to those property owners and child-care facilities that fail to obtain the necessary *Certificates of Lead-Safe*. This law is designed to be proactive thus not waiting on a child to be poisoned to enforce however, enforcement action may vary depending upon the facts of the case.

### THE ROLE OF THE LOCAL MUNICIPALITY

**20) Question** - What is the role of local **Planning and Zoning Boards** in making sure new rental units comply with RSA 130-A:5-d?

**Answer** – Local Planning Boards often meet informally with applicants to discuss parameters of upcoming projects. This is an opportunity to facilitate open communication and make the applicant aware of RSA 130-A:5-d Sale and Rental of Property.

As part of the application process the local Planning and Zoning Boards are recommended to request from the applicant the age of the structure being renovated and what the use will be. If the property was built prior to 1978 and the use will be residential rental units, then the Planning board is recommended to include the requirement of a *Certificate of Lead-Safe* in the list of conditions of approval.

**21) Question** - Before granting a site plan approval or subdivision approval, is the local Planning and Zoning Board required to ask the applicant the age of the structure and whether the new dwelling units being permitted will be rented?

**Answer** – As part of the application process the local Planning and Zoning Boards are recommended to request from the applicant the age of the structure being renovated and what the use will be. If the property was built prior to 1978 and the use will be residential rental units, then the Planning board is recommended to include the requirement of a *Certificate of Lead-Safe* in the list of conditions of approval.

**22) Question** - What is the role of municipal Building Official in making sure new rental units comply with RSA 130-A:5-d?

**Answer** – Municipal Building Officials, who issue building permits, have a unique opportunity to educate applicants on the requirements of the new lead law. Applications for building permits are recommended to include the age of the structure

## RSA 130-A:5-d Sale and Rental of Property Questions and Answers

and what the use will be. If the property was built prior to 1978 and the use will be residential rental units, then the Building Official is recommended to include the requirement of a *Certificate of Lead-Safe* in the list of conditions of approval.

As there is no one 'grand-fathered' under RSA 130-A:5-d Sale and Rental of Property, it is recommended that Building Officials notify any applicant who applied for a building permit prior to July 1, 2024, of the new law and its requirements.

### ACCESSORY DWELLING UNITS (ADU)

**23) Question** - Does RSA 130-A:5-d Sale and Rental of Property apply to attached accessory dwelling unit (ADU) or second units built as an addition to an existing pre-1978 single family home as the statute says "newly-constructed rental units" within buildings erected prior to January 1, 1978?

**Answer** – ADU or second units that are built as an addition to the original structure would not require a *Lead-Safe Certificate* as they are neither "within buildings erected prior to January 1, 1978" nor is it a conversion from another use.

ADU or second units that are built in combination (e.g. part of the structure is in the original footprint and part of it is out), would require a *Certificate of Lead-Safe*.

**24) Question** - Does RSA 130-A:5-d, apply if a homeowner builds an ADU within their home or converts their single-family home into a duplex with the intent it is occupied by a family member or care giver?

**Answer** - ADU or second units that are built within the original structure would require a *Lead-Safe Certificate*. If there is an adult person other than the property owner(s) living in the unit, then the unit is considered to be a rental.

**25) Question** - What happens if this ADU or second unit is later put up for rent? Is it still a "newly constructed rental unit" for purposes of complying with RSA 130-A:5-d?

**Answer** - Yes, if the unit or room hasn't been previously rented out.

### SHORT TERM RENTALS

**26) Question** - Does RSA 130-A:5-d, I apply to homes marketed as short-term rentals?

**Answer** - Yes as the definition of "rental unit" in RSA 153:I, IX-a applies to both permanent or transient living facilities for one or more persons, which is occupied by tenants on a rental basis.

**QUESTIONS** – Email [NHLeadProgram@dhhs.nh.gov](mailto:NHLeadProgram@dhhs.nh.gov)