

**INTERPRETIVE GUIDANCE FOR
THE REAL ESTATE COMMUNITY ON THE
REQUIREMENTS FOR DISCLOSURE OF INFORMATION
CONCERNING LEAD-BASED PAINT IN HOUSING
PART II**

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Prepared by the

**Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
Washington, D.C. 20460**

and

**Office of Lead Hazard Control
U.S. Department of Housing and Urban Development
Washington, D.C. 20410**

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INTRODUCTION

On March 6, 1996, the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) published a final rule, "Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing," (61 FR 9064-9088). This final rule requires persons selling or leasing most residential housing built before 1978 to provide purchasers and renters with a federally approved lead hazard information pamphlet and to disclose known lead-based paint and/or lead-based paint hazards. The specific requirements of the final rule are discussed in detail in the March 1996 notice. Other documents used in the development of this rule are included in a public docket available for inspection at EPA.

The requirements of the final rule are applicable as follows: (1) For owners of more than four residential dwellings, the requirements were applicable beginning on September 6, 1996, and (2) For owners of one to four residential dwellings, the requirements are applicable beginning on December 6, 1996.

Subsequent to the publication of the final rule, EPA and HUD have received questions from the real estate community about implementation of the rule. EPA and HUD developed the first "Interpretive Guidance" document, dated August 20, 1996, containing questions 1-28, to supplement the information presented in the final rule. EPA and HUD have developed this Part II of the "Interpretive Guidance" to answer additional questions received from the real estate community. This guidance will be expanded and updated as necessary.

The August 20, 1996 Interpretive Guidance, and other support documents, may be obtained from the National Lead Information Clearinghouse (NLIC) at (800) 424-LEAD, or TDD(800) 526-5456 for the hearing impaired. Requests may also be sent by fax to (202) 659-1192 or by Internet E-mail to ehc@cais.com. The Interpretive Guidance documents and other lead information can also be accessed electronically as follows:

EPA's web site at <http://www.epa.gov/opptintr/lead/index.html>

HUD's web site at <http://www.hud.gov/lea/leahome.html>.

EFFECTIVE DATE OF RULE

29. If a contract is signed before the effective date of the rule but contingencies are satisfied after the effective date, would the contract be subject to the disclosure requirements of the rule?

EPA and HUD wish to clarify the discussion of the point of obligation as it relates to contingencies in questions numbered 3 and 5 in the August 20, 1996 document for sellers and lessors. Only contracts or leases signed on or after the effective date are subject to the rule. Contracts signed before the applicable effective date are not subject to the requirements, even if they have contingencies that are satisfied or otherwise lifted after the effective date or the closing occurs after the effective date. This is because the terms and conditions of the contract were negotiated, agreed upon, and endorsed by the parties before the 1018 rule became effective, and the rule cannot be applied retroactively to require a change in those terms and conditions.

APPLICABILITY

Trusts

30. In the rule, the term "owner" is defined to include trusts. However, trustees are not specifically listed as "owners." Are trustees intended to be exempt from the rule requirements? In the case of a trust, which party (the beneficial owner or the trustee) is expected to comply with the rule?

In cases where a trustee has been given authority to sell or lease target housing by a beneficial owner, the trustee would have the responsibility to comply with the requirements of this rule. Otherwise, the responsibility would rest with the beneficial owner. In both cases, the effective date for compliance would be determined by the number of units owned by the beneficial owner involved in the particular transaction.

Gifts

31. Does the rule cover owners who give property away, i.e., there is no sale or exchange of money or other consideration?

No. The rule does not cover a situation where property is transferred as a gift.

Housing in lieu of compensation

32. Is housing that is provided in lieu of monetary compensation included in the rule?

Yes. Housing that is provided in lieu of monetary compensation to employees, pastors, etc. is not exempt.

Mobile homes

33. Are mobile homes included in the definition of "target housing" under the disclosure rule?

Yes. Mobile homes (manufactured housing) built before 1978 are included in the definition of "target housing". Although these units may have been constructed largely of pre-finished materials, some surfaces, both interior and exterior, may have been painted with lead-based paint. Therefore, EPA and HUD cannot exempt mobile homes as a class. Houseboats, recreational vehicles, etc. are not considered "target housing."

Rehabilitated property

34. Is a pre-1978 residential property subject to the rule if the property has been completely rehabilitated, such that all pre-1978 painted components have been removed or replaced after 1977?

EPA and HUD will consider amending the disclosure rule to exempt residential properties in which all interior and exterior architectural components, such as doors, windows, walls and all other painted surfaces (including any outbuildings, fences, signs, etc) that were painted prior to December 31, 1977 have been removed or replaced after December 31, 1977.

DISCLOSURE

Who Must Disclose

Co-ops and condos

35. Who is responsible for disclosure in the case of cooperatives or condominiums ("co-ops or condos")? What about common areas?

This question originally appeared as number 10 in the "Interpretive Guidance" document dated August 20, 1996. EPA and HUD recognize that the response to question 10 was confusing and, upon further reflection, now offer the following guidance in lieu of the response to question 10.

Under the final rule implementing Section 1018, the disclosure responsibility rests with the owner(s) of the target housing which is being sold or leased. Generally, the

"owners" in co-op and condo arrangements are the persons who purchase shares in the co-op and possess occupancy rights to individual units or purchase a condo unit and a percentage of the common area, or lease individual units from the co-op or condo. The co-op corporation or condo association represents the joint interests of these owners. EPA and HUD believe that, in such situations, the responsibility for disclosure regarding the unit being sold or leased should reside with the individual owners of the unit. This responsibility also includes disclosure of information concerning common areas.

Lead-based paint information, particularly regarding common areas, may not be in the hands of the individual owners. In such cases, it may be administratively more efficient for individual owners to arrange for disclosure of information through the corporation or association. But in no instance should information held by the corporation or association be withheld, as it is considered known information held by the individual owners or reasonably obtainable by the owners, i.e. the corporation or association simply holds such information for the benefit of the individual owners and in no way does the representative arrangement shield the individual owners from disclosure responsibility.

On occasion, a co-op or condo association, rather than an individual unit owner, may possess occupancy rights (however denominated) to a unit being transferred at the point of transfer. In these cases, the co-op or condo association, rather than a unit owner, must comply with the disclosure requirements of the rule.

In co-op arrangements where owners purchase shares and also lease access to individual units from the co-op, EPA and HUD consider the purchase of shares to be the primary transaction for purposes of the disclosure rule. Therefore, in those cases, EPA and HUD do not consider the co-op to be a lessor and the individual unit "owner" to be the lessee and would not impose separate disclosure requirements on the co-op as lessor under this rule.

Timeshares

36. Who must disclose in sales or leases involving timeshares?

Timeshares, like co-ops and condos, can be structured in a variety of ways. Nevertheless, the owner(s) of a timeshare must disclose in any sale or lease of the timeshare, if the unit qualifies as target housing. Thus, as with all sales or leases under the final rule, the disclosure responsibility rests with the owner(s) of the target housing who is selling or leasing a timeshare, and such an obligation is not affected by multiple-ownership arrangements.

Owners who are selling or leasing a timeshare should disclose any information they have about the presence of lead-based paint or lead-based paint hazards in the timeshare. In this case, EPA and HUD would consider "reasonably obtainable" records to include those records retained by the management company for the timeshare.

Owners of timeshares who lease the unit should note the relief from disclosure responsibility provided in 24 CFR § 35.82(c) and 40 CFR § 745.101(c). These provisions exclude short-term leases of 100 days or less, where no lease renewal or extension can occur, from coverage under the final rule. In the case of timeshares, EPA and HUD have interpreted this exclusion to mean leases of 100 consecutive days per visit.

New owners

37. Does the purchase of a rental unit require the new owner (buyer), who has received disclosure, to disclose that information to the current renter?

In this situation, disclosure is required only if there is a new lease or when renewal of the lease takes place. If there is a significant change in the lease, i.e., a new owner decides to change the name on the lease or the amount of rent is changed, this constitutes renewal, and disclosure of any information not previously disclosed should take place at that time.

What Must Be Disclosed

Property

38. Does the disclosure requirement extend to garages, tool sheds, other outbuildings, signs, fences, and mechanical equipment on the property?

Yes, if these items are affixed to the residential portion of the property. The Lead Warning Statement required by the statute states that the purchaser is notified that the residential real property may present exposure to lead. Thus, disclosure of known lead-based paint or lead-based paint hazards associated with any items that are affixed to the property must be made. However, because section 1018 is limited to contracts for sale or lease of housing, the regulations apply only to those items that are located on that part of the real property that is used primarily for purposes associated with residential use. EPA and HUD consider garages for personal vehicles, storage sheds, play areas and play equipment, air conditioners, storage tanks for home fuel, yards, driveways, fences and signs to be examples of items that are associated with residential use, in addition to structures actually used by people

as living quarters. For most urban and many suburban residential lots, the entire property is normally considered as being devoted to residential use. In the case of real property that is used for nonresidential as well as residential purposes, a judgment should be made as to which part of the property is used primarily for residential purposes.

Mini-blinds

39. If a home has lead-containing non-glossy vinyl mini-blinds, must this be disclosed to fulfill the 1018 disclosure requirements?

No. For purposes of section 1018, lead-containing mini-blinds in and of themselves are not a lead-based paint hazard and their mere presence need not be disclosed. The lead in lead-containing non-glossy mini-blinds is not a component of paint or any other surface coating and, therefore, does not fall within the definition of "lead-based paint" under 24 CFR § 35.85 and 40 CFR § 745.103. Further, because a "lead-based paint hazard" as defined under 24 CFR § 35.85 and 40 CFR § 745.103 is a condition that causes exposure to lead in paint, or lead-contaminated dust or soil, the lead in mini-blinds could not constitute a lead-based paint hazard by virtue of its presence in the mini-blinds. However, if the lead stabilizer in lead-containing mini-blinds breaks down into dust, it could contribute to lead contaminated dust and, therefore, could become a lead-based paint hazard which would have to be disclosed. Lead-contaminated dust, by definition, means dust with lead above certain levels regardless of the source.

Home test kits

40. EPA's pamphlet "Protect Your Family from Lead in Your Home" states that recent studies suggest that home test kits for lead are not always accurate, and that consumers should not rely on home test kits to assure safety. Therefore, does the use of home test kits for lead constitute knowledge of lead-based paint for disclosure purposes?

Yes. If an owner has information obtained from the use of a home test kit for lead, that information must be disclosed; however, the owner should also disclose information about the reliability of the test kit results.

Information subject to disclosure

41. Must records/reports involving lead-based paint or lead-based paint hazards that no longer exist be disclosed?

Yes. Lessors and sellers are obligated to disclose all known information, including information which shows that the lead-based paint or lead-based paint hazards have been corrected. Section 1018 provides for disclosure of any available lead hazard evaluation reports, and the rule requires the disclosure of the existence of any available records or reports pertaining to lead-based paint or lead-based paint hazards.

Existing summaries

42. When lessors provide a summary of an inspection report or risk assessment, in lieu of a full report, may they use a summary prepared before the effective date of this rule?

Yes. A summary prepared prior to the effective date of the section 1018 rule may be used in lieu of a paint inspection or risk assessment report, since the rule cannot be applied retroactively to summaries done before the rule. In question #13 of the August 20, 1996 Interpretive Guidance Document, EPA and HUD discussed generally how lessors may provide summaries in lieu of complete inspection and risk assessment reports.

Disclosure Process

Disclosure forms

43. May sellers, lessors, and agents develop their own disclosure forms?

Sellers, lessors, and agents may develop their disclosure forms as long as the forms meet the requirements of 24 CFR § 35.92 and 40 CFR § 745.113. Persons developing disclosure forms are advised to determine whether they must meet additional state requirements before finalizing their forms. For example, in some states, licensed real estate agents must have forms which they develop approved by an attorney before any forms may be used as part of a real estate transaction.

Type size

44. How large must the type size be for the Lead Warning Statements included on the disclosure forms?

The type size of the Lead Warning Statements must be as large or larger than the predominant type size on the disclosure form. This is illustrated in the sample disclosure forms included in the preamble to the final rule (60 FR 9074-75, March 6, 1996).

42 U.S.C. 4852d

45. The regulations at 24 CFR § 35.92(a)(6)(i) and (b)(5)(i) and 40 CFR § 745.113(a)(6)(i) and (b)(5)(i) require agents to sign the disclosure forms, indicating that they have informed sellers or lessors of their obligations under 42 U.S.C. 4852d. What does 42 U.S.C. 4852d refer to?

The citation 42 U.S.C. (United States Code) 4852d is the authority under which the section 1018 disclosure rule was written. Therefore, the agent is certifying that the seller or lessor has been informed of the requirements of the statute as implemented by the final rule.

Some copies of the sample disclosure forms that have been distributed have incorrectly listed the citation as 42 U.S.C. 4582d. EPA and HUD have corrected subsequent versions of the sample disclosure forms, but are aware that some persons may still be using copies of the forms containing the incorrect cite.

Multiple lessees

46. How many lead information pamphlets must be distributed in a lease transaction involving multiple lessees? In college towns, large living units are frequently rented on a yearly basis by groups of students, all of whom are required to sign as lessees. In those cases, must each individual lessee be given a pamphlet, or can one copy be provided per lease transaction?

Lessors must provide one copy of the pamphlet per lease transaction; however, in cases involving multiple lessees, lessors should make additional copies of the pamphlet readily available and offer them to everyone who signs the lease.

Lessee refusal to sign

47. How do lessors fulfill their disclosure requirements when lessees refuse to accept the lead information pamphlet and/or refuse to sign the disclosure forms?

When a lessee is unavailable for signature or refuses to accept the pamphlet and/or sign the disclosure form, lessors may certify attempted delivery of the pamphlet, disclosure information, and disclosure form. This certification may be included on the copy of the disclosure form retained by the lessor or attached to that disclosure form and should indicate exactly how delivery was attempted and what occurred (e.g., sent material certified mail and never heard from lessee; lessee refused to sign disclosure form).

For example, lessors may deliver the pamphlet, disclosure information, and disclosure form by certified mail, return receipt requested. Lessors should then retain the signed certified mail receipt in their records as evidence that the material

was delivered to the lessees. In cases where the lessee refuses to sign the disclosure form, lessors may certify in writing that the delivery was attempted and indicate why a signed and dated disclosure form could not be obtained.

LEAD-BASED PAINT FREE HOUSING

Recordkeeping for exemption

48. What type of paperwork should a rental property owner maintain to prove that the property is lead-based paint free? Should the inspector or risk assessor provide a lead-based paint free certificate, or a letter to the owner?

A rental property owner should maintain a copy of the inspection report that is prepared by a certified inspector and indicates there is no lead-based paint in or on the target housing in order to prove that the property is lead-based paint free.

Abatement

49. If I own a number of pre-1978 homes which I lease to the public, and I "abate" them through encapsulation and/or enclosure, can I take advantage of the lead-based paint free exemption?

The regulations at 24 CFR § 35.82(b) and 40 CFR § 745.101(b) exclude from coverage leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal program. Lead-based paint free housing is target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint that has been encapsulated or enclosed would not result in a finding by a certified inspector that the target housing is free of lead-based paint. Therefore, the lead-based paint free exemption would not be available to excuse a lessor from the disclosure requirements under the final rule.

INSPECTIONS

Auctions

50. How does the 10 day inspection period apply to real estate sold at auctions? Real estate auctions take place at a set time and set place. Typically, there is a period of "due diligence" prior to the auction when all potential buyers are permitted to view the property, ask any questions and conduct any testing, such as a termite inspection or a test

of structural soundness. Would it be permissible for the seller to give potential buyers any information on lead-based paint and allow lead-based paint inspections during this period as well?

Prior to an auction not associated with a foreclosure proceeding (which would be exempted under the rule), there is typically a period of "due diligence" that allows all potential buyers to view the property, ask any questions and conduct any testing, such as a termite inspection or a test of structural soundness. EPA and HUD have determined that during this due diligence period, the seller may give potential buyers any information on lead-based paint, allow lead-based paint inspections, and otherwise comply with this rule.

EPA and HUD are considering the appropriate way to address auctions lacking a "due diligence" period.

Certified Inspectors

51. Where can I find a certified inspector or information on certified inspections?

HUD has a current list of certified inspectors available electronically. HUD's website address is <http://www.hud.gov/lea/leahome.html>. EPA is in the process of developing a pamphlet entitled "Finding a Qualified Lead Professional for Your Home" (EPA-747-F-96-006), which will assist owners in asking appropriate questions when hiring professional to do this work. This information will be available in the near future from the National Lead Information Clearinghouse (NLIC) (see information in Introduction).

PAMPHLET ISSUES

Information changes

52. Has any of the information in the Federal pamphlet changed?

Yes. Some of the telephone numbers for State agencies have changed. The following list provides the status of numbers only for States which have had changes. If a state is not listed below, the phone number listed in the pamphlet remains the primary contact number.

<u>State</u>	<u>Phone as listed</u>	<u>Status of phone line</u>
Alabama	205-242-5661	Change to 334-613-5373
Alaska	907-465-5152	Also 907-745-3236

Arizona	602-542-7303	Change to 602-230-5830
Connecticut	203-566-5808	Change to 860-509-7299
Hawaii	808-832-5860	Also 808-586-5800
Idaho	208-332-5544	Change to 208-334-6584
Illinois	800-972-2026	Not accessible from outside state
Indiana	317-382-6662	Change to 317-232-8219
Iowa	800-972-2026	Not accessible from outside state
Kentucky	502-564-2154	Also 502-564-4537
Louisiana	504-765-0219	Also 504-765-2547
Massachusetts	800-532-9571	Not accessible from outside state
Minnesota	612-627-5498	Also 612-215-0890
Mississippi	601-960-7463	Also 601-961-5011
Missouri	314-526-4911	Also 800-575-9267
Montana	406-444-3671	Also 406-444-5267
Nebraska	402-471-2451	Typo 402-471-2541
New Mexico	505-841-8024	Change to 505-768-4390
New York	800-458-1158	Not accessible from outside state
North Carolina	919-715-3292	Also 919-715-5381
Oklahoma	405-271-5220	Change to 405-290-8247
Pennsylvania	717-782-2884	Change to 717-783-8451
Tennessee	615-741-5683	Also 615-532-7778
Virginia	800-523-4019	Not accessible from outside state
Washington	206-753-2556	Change to 360-753-3855
Wisconsin	608-266-5885	Change to 608-266-5817

Different formats

53. Is the Federal pamphlet, "Protect Your Family from Lead in Your Home" available in different versions?

Yes. See the list below for information about the availability of both the Federal pamphlet and sample disclosure forms from various sources.

1018 DOCUMENT AVAILABILITY

PAMPHLET -- "PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME"

- (1) 3-Color, 8.5 x 5.5", in English or Spanish
- (2) B&W, 8.5 x 11", "double sided double", in English or Spanish

(3) 3-Color or B&W, 8.5 x 5.5", "Internet single sided on 11" paper",
in English or Spanish

(4) B&W, 8.5 x 14", "quad version", in English or Spanish
(includes sample disclosure forms for rental & sales)

SAMPLE LEAD DISCLOSURE FORMS

(5) 8.5 x 11", for rental leases, in English or Spanish

(6) 8.5 x 11", for home sales, in English or Spanish

SOURCE

Single copies of (1) available free from:

National Lead Information Clearinghouse (NLIC)
Phone: 800-424-LEAD
Fax: 202-659-1192

Multiple copies of (1) available from:

U.S. Government Printing Office
Phone: 202-512-1800
\$26.00 for 50 copies

Printable electronic files of (3) through (6) available from:

Internet at Internet address: <http://www.epa.gov/lead-pm>

Available for loan to public from the U.S. EPA:

Color separated negatives of (1)
B&W camera ready copy of (2), (4)-(6)
FAX to U.S. EPA at 202-260-0770
Attention: 1018 Lead Document Control Officer