

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

PART I PART II

August 20, 1996 December 5, 1996

Prepared by the

**Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
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and

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NOTE: This document is a combination of two separate documents developed by the U.S. Environmental Protection Agency and the U.S. Department of Housing and Urban Development.

Part I was issued on August 20, 1996 and includes questions 1-28.

Part II was issued on December 5, 1996 and includes questions 29-53.

The two documents should be read together, because some of the questions in Part II cover the same topics and provide additional clarification of questions discussed in Part I.

The Interpretive Guidance documents and other lead information can 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>.

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TABLE OF CONTENTS

<u>TOPIC</u>	<u>QUESTION #</u>
INTRODUCTION	
EFFECTIVE DATE OF RULE	
General	1, 2
Sale Transactions	3
Rental Agreements	4, 5
APPLICABILITY	
Housing - Pre-1978	6
0-Bedroom Dwellings	7
Disabilities	8
Daycare	9
DISCLOSURE	
Co-ops and Condos	10
Authorized Representatives and Agents	11, 12
Type of Documents	
Summary vs. Reports	13, 14
Unit vs. Whole Building	15
Timing of Disclosure for Lessors	16, 17
Signatures on Disclosure Forms	18
LEAD-BASED PAINT FREE	19, 20, 21, 22
PAMPHLET ISSUES	
Approval	23
Empty Space	24
Reproduction	25, 26, 27
STATE PROGRAMS	28

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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 are 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 have developed this "Interpretive Guidance" document to supplement the information presented in the final rule. This guidance will be expanded and updated as necessary.

To assist the general public, EPA and HUD made the document, "EPA and HUD Real Estate Notification and Disclosure Rule: Questions and Answers" available when they published the final rule. This document, EPA-747-F-96-001, March, 1996, and others 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.

EFFECTIVE DATE OF RULE

General

1. Q: What part of a sale or rental transaction must occur on or after the effective date for the rule to apply?

A: The rule generally applies if the buyer or renter becomes obligated under a contract to purchase or lease target housing on or after the effective date of the

rule (September 6, 1996 or December 6, 1996, depending on the number of dwelling units owned).

2. Q: What is the effective date for sale or rental transactions involving cooperatives ("co-ops") and condominiums ("condos")?

A: EPA and HUD recognize that both the individual unit "owner" and the corporation or homeowner association may have an ownership interest in co-ops and condos (see answer to question # 10). However, EPA and HUD believe that when a co-op or condo unit is sold or rented, the focus of the transaction is the single unit. Therefore, as a matter of policy, EPA and HUD have determined that the effective date will be based on the number of dwellings "owned" (meaning in some cases, the number of co-op shares or condo units owned) by the individual seller or lessor as opposed to the number of units that comprise the co-op or condo. Where co-ops or condos are being directly sold or leased by the corporation (as in a renovated building being newly offered), however, the applicable date would depend on the number of units owned by the corporation.

Sale Transactions

3. Q: Is the rule effective for sales agreements entered into before the effective date, where closing occurs after the effective date?

A: The rule will not apply to target housing transactions where the sales agreement is signed and all contingencies have been removed before the effective date, even if closing occurs after the effective date.

Rental Agreements

4. Q: What is the effective date of the rule for the following situation? A real estate or property management firm represents 40 property owners who own four units each. Each of the 40 property owners' effective date would clearly be December 6, 1996 (four or less units) if they were managing their own properties. However, because the real estate or property management firm is managing 160 rental units (40x4) on behalf of the owners, would they be subject to the September 6, 1996 effective date ?

A: The effective dates in the rule refer specifically to the number of residential dwellings owned. Although the property manager is managing more than four properties, each individual owner only owns four properties. Therefore, the effective date for property managers of properties with four units each per owner would be December 6, 1996.

5. Q: In some cases, as in the New York City Rent Stabilization Law, owners must offer renewal leases to rent-stabilized tenants 120 to 150 days before their current leases expire. This 120-150 day period may occur prior to the September 6 effective date, but the renewal lease could start after the September 6 effective date. Must an owner include the disclosure forms with the 120-150 day offer of renewal, even though this occurs before the effective date?

A: The rule applies to obligations made on or after the effective date. Thus, the date upon which a renewal lease is offered is not particularly relevant under the rule. It is the date that the offer is accepted, if such acceptance constitutes an obligation to rent, that determines whether or not the rules apply. For written leases, this would mean that regardless of when the renewal leases are offered to the tenant, the rule would apply to all renewal leases signed by the tenant (and any contingencies have been removed) on or after the effective date. The rule does not apply to cases where the renewal leases have been signed by tenants (and contingencies removed) prior to the effective date, even if the lease does not begin until after the effective date.

APPLICABILITY

Housing - Pre-1978

6. Q: Target housing is housing built before 1978. Does this include or exclude housing that was started in 1977, but not completed until 1978?

A: EPA and HUD consider "housing constructed before 1978" to mean housing for which a construction permit was obtained (or if no permit was obtained, housing in which construction was started) before January 1, 1978.

0-Bedroom Dwellings

7. Q: Would "0-bedroom dwellings" include college fraternity and sorority houses, dormitory suites, married student housing, and university-owned apartments?

A: The rule excludes "0-bedroom dwellings." The definition of "0-bedroom dwelling" includes "rentals of individual rooms in residential dwellings," and EPA and HUD believe that rentals of rooms in fraternity and sorority houses generally fit that model and would be exempt. The definition of "0-bedroom dwelling" also specifically includes dormitory housing, which would encompass typical dormitory suites. However, married student housing and university-owned apartments typically are not "0-bedroom dwellings" and would be covered by the rule if they meet the other criteria for target housing set out in the rule.

Disabilities

8. Q: What is the definition of housing for persons with disabilities?

A: Housing for persons with disabilities means communities or similar types of housing specifically designed for one or more persons with a physical or mental impairment which substantially limits one or more major life activities at the time of initial occupancy (HUD, Fair Housing Accessibility Guidelines, 56 FR 9472, 3/6/91). However, the exclusion for persons with disabilities from the definition of "target housing" does not cover housing in which any child who is less than 6 years of age resides or is expected to reside.

Daycare

9. Q: Are daycare centers included in the scope of the final rule?

A: Section 1018 of Title X focusses specifically on residential housing. As such, the rule does not apply to commercial facilities such as daycare centers and nurseries, except where such facilities are part of a residential dwelling.

DISCLOSURE

Co-ops and Condos

10.Q: Who is responsible for disclosure in the case of co-ops or condos? What about common areas?

A: EPA and HUD recognize that co-ops and condos can be structured in a variety of ways. For example, in the case of co-ops, a corporation may be established and this corporation would own all the units and common areas comprising the co-op; individual unit "owners" would own shares in the corporation and might also own occupancy rights or lease a unit from the corporation. In the case of condos, individual condo unit owners may own their unit; all condo unit owners may jointly own the common areas and a homeowners association may be established to represent the interests of all the unit owners.

Under this rule, a person selling or leasing a co-op or condo unit (whether the unit owner owns the unit in its entirety or owns shares in a corporation) would be responsible for complying with disclosure requirements both with respect to the unit itself and to any associated interest in common areas that is transferred. In the case of a corporation or homeowner association owning an interest in all the units or common areas, the corporation or association would be responsible for disclosing information regarding those areas when their interest in them is sold or

leased. Additionally, in the case of a corporation or homeowner association which does not have an ownership interest in the co-op or condo but represents the joint interests of all the unit owners, the corporation or association, acting as legal representative of the owners (see also question #11), would be responsible for disclosing information regarding the areas subject to the transaction. In such a case, an individual seller or lessor is responsible for timely notifying the corporation or association before a buyer or lessee becomes obligated, so that the corporation or association has an opportunity to comply with disclosure requirements.

Where the corporation or association is not a seller or lessor and is not a legal representative of the owners, the corporation or association has no disclosure responsibilities. However, in this case, the individual seller or lessor must obtain any information held by the corporation or association and include it in the disclosure to ensure compliance with this rule. Parties with the disclosure responsibilities must also sign the disclosure form certifying accuracy.

Authorized Representatives and Agents

11.Q: May a seller or lessor authorize a representative or agent to discharge the seller's or lessor's responsibilities under the rule, including signing the certification of accuracy required in the contract?

A: Yes. The seller or lessor may authorize a representative or agent to fulfill the seller or lessor's requirements under this rule; however, the seller or lessor is ultimately responsible for full compliance with the requirements of this rule. The representative must disclose the presence of lead-based paint or lead-based paint hazards if known by either the representative or the seller or lessor and disclose and provide records available to the representative and the seller or lessor. The designated representative or agent may sign on behalf of the seller or lessor. If the representative or agent acting on behalf of the seller or lessor is also functioning as an Agent, as defined under 24 CFR 35.86 and 40 CFR 745.103, they are also required to carry out those duties and to sign the certification in that capacity.

12.Q: Given that the selling agent in real estate transactions may be prohibited by State or local law from direct communication with the seller, how can they inform the seller of his or her responsibilities under this rule?

A: Where State or local laws prohibit direct contact, EPA and HUD have determined that the selling agent may inform the listing agent of the seller's responsibilities under this rule and may sign the disclosure form to that effect. Regardless of the

actions or involvement of the selling agent, however, the listing agent is still responsible for informing the seller of his or her duties under this rule.

Type of Documents

Summary vs. Reports

13.Q: The rule states that lessors must give each lessee copies of all records or reports relating to lead-based paint hazards in the target housing. But in some cases it may be impractical to give each lessee his or her own report -- the document's length may make copying costs prohibitively high. In such situations, what steps may a lessor take to make the document available to a lessee without actually giving the lessee his or her own copy? For example, may the lessor give the lessee a summary of the document and give the lessee an opportunity to read a copy of the full document in the lessor's office?

A: The rule requires lessors to provide lessees with available records or reports pertaining to lead-based paint and/or lead-based paint hazards. However, EPA and HUD recognize that in some cases, the actual transfer of multiple voluminous technical documents may be burdensome for both lessors and lessees.

For lengthy court documents and construction documents, EPA and HUD have determined that these documents may be excerpted, provided that all information regarding lead-based paint and lead-based paint hazards is included along with sufficient background information, so that the context of the excerpt is clear.

For paint inspection and risk assessment reports, EPA and HUD have determined that lessors may provide lessees with a summary of all paint inspection and risk assessment reports, provided that the summary is prepared by a certified paint inspector or risk assessor. Where information about specific units is inconsistent with the conclusions as a whole, this information should be included along with the summary of general conclusions.

In situations where documents are excerpted or summarized, they must be accompanied by a list of all complete records and reports available to the lessee. If the lessor chooses to provide excerpts or summaries and document lists in lieu of complete copies, the lessor must provide the lessee with the opportunity to review the complete documents in a central location on the premises, if feasible, and the opportunity to receive copies of any documents not provided, upon request, and at no cost to the lessee.

In the case of sales transactions, the seller must provide complete documents to the buyer. In order to assure that future buyers have access to complete records and reports, EPA and HUD believe that complete document transfer, rather than excerpts or summaries, is necessary.

14.Q: What methods of distribution are available to a seller or lessor when providing copies of relevant materials to a purchaser or lessee? May records and reports be provided via the Internet?

A: While EPA and HUD recognize that electronic transfer may be acceptable to some purchasers and lessees, the Agencies are concerned that relying exclusively on electronic distribution may deny some purchasers or lessees access to the information, due to the lack of access to the necessary technology. Therefore, EPA and HUD would deem electronic transfer of documents acceptable only if the purchaser or lessee agrees in writing to accept the documents in that format.

Unit vs. Whole Building

15.Q: In cases where there have been building-wide evaluation or reduction activities, must the contents of the reports be disclosed to every prospective purchaser or lessee of individual units that may not have been specifically addressed?

A: EPA and HUD believe that information and reports on other units in the target housing are directly relevant to prospective purchasers and lessees, if the information results from evaluation or reduction efforts in the target housing as a whole. In large multifamily properties, evaluations do not necessarily examine every dwelling unit in the housing. Rather, inspectors or risk assessors examine a representative sample of the dwelling units and apply the findings to the housing as a whole. While such evaluations might not include data on a specific unit, the fact that the evaluation was designed to provide information on the housing as a whole makes the report's findings relevant. If there is unit-specific information that was not part of a building-wide evaluation, such information must be disclosed only during sales or rentals of the specific units that were evaluated.

Timing of Disclosure for Lessors

16.Q: If a renter has a month-to-month lease arrangement, what is the responsibility of the owner (lessor) with respect to providing copies of the booklet and disclosure forms?

A: The rule excludes from its requirements short-term leases of 100 days or less, where no lease renewal or extension can occur. If both parties wish to extend a

previously exempted short-term lease beyond the 100-day limit, all provisions of this rule must be satisfied in full before any such "extension" occurs.

In an "open-ended" month-to-month lease arrangement (i.e., an arrangement with no specified termination date), whether written or unwritten, the rule applies at the time of the initial lease agreement, since the parties have not limited the lease term to 100 days or less.

In some cases, leasing arrangements switch to "open-ended" month-to-month arrangements after an initial period of occupancy and may continue indefinitely. Under such circumstances, EPA and HUD interpret renewal to occur at the point when the lessee becomes obligated to this change in the rental period. Another significant change in the lease agreement constituting lease renewal would be a rental rate adjustment. Following any such alteration of terms, either an initial disclosure would be required if no disclosure had been made, or disclosure would be required of any new information obtained subsequent to an initial disclosure.

17.Q: Can an owner send the disclosure forms to all existing tenants at one time, without waiting for the tenants to renew their leases or must the owner wait for each tenant's renewal to come up?

A: Disclosure may be made any time before the lessee becomes obligated under a new lease (see response to question #18). However, if disclosure is made in advance of lease renewal and the owner subsequently obtains new information relevant to disclosure, this new information must be disclosed before the lessee becomes obligated under a new lease.

Signatures on Disclosure Forms

18.Q: Is an original signature required on the disclosure form?

A: No. The signature does not have to be original for purposes of the Federal rule. It may be reproduced, for example, by photocopy, facsimile, autopen or rubber stamp. EPA and HUD note that use of a reproduced signature does not relieve the signatory from its responsibility for compliance with this rule. Sellers and lessors are advised to ascertain whether original signatures are required under State law governing the execution of documents associated with sales or rental transactions.

LEAD-BASED PAINT FREE

19.Q: Can inspectors certified in one State perform inspections for the lead-based paint free exemption in another State?

- A:** Currently yes. An inspector certified to perform inspections in a State with its own certification and training requirements may perform inspections for the lead-based paint free exemption in that State and in other States. Inspectors are advised, however, that separate State laws may also apply to their activities. Within two years, a Federal program or authorized State program will be in place to certify inspectors. After such Federal or authorized State program takes effect, all inspections for purposes of the lead-based free exemption must be performed by an inspector certified in the Federal or Federally-authorized program applicable in the State where the inspection will take place.
- 20.Q:** What sampling is required to support a determination of lead-based paint free? What sampling criteria should be used when conducting a "surface-by-surface investigation" in multi-family housing? Does Chapter 7 of the HUD Guidelines provide adequate criteria regarding how many and what type of samples need to be taken, or are the criteria to be used established by the State where the individual is certified?
- A:** The rule defines inspection as a (1) a surface-by-surface investigation to determine the presence of lead-based paint, and (2) the provision of a report explaining the investigation. Before EPA implements the Federal training and certification program and the State authorization program under TSCA, certified inspectors should use the sampling methodology provided by their certifying State for determining what number of units must be inspected to have a representative sample. If the State in which the inspector is certified does not provide a sampling protocol, the inspector should either sample every unit in multi-family housing or use the sampling guidelines provided in Chapter 7 of the HUD's "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," (HUD Guidelines), June, 1995 or subsequent updates.
- 21.Q:** Do the States have the authority to alter the definition of lead-based paint in the rule that will be used to apply the lead-based paint free exemption?
- A:** No. The rule, at 24 CFR 35.86 and 40 CFR 745.103, states that a lead-based paint free finding must demonstrate that the building is free of "paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or 0.5 percent by weight." The State standards are not applicable, whether more or less stringent, since a State cannot amend Federal requirements.
- 22.Q:** Will lead-based paint free findings carry over once the EPA section 402/404 rule is implemented or will reinspections be required in States that do not have programs?
- A:** Prior to Federal or State implementation of section 402/404, reinspections will not be required for target housing that was already inspected and found to be lead-based paint free by a certified inspector. An inspection conducted prior to Federal

or State implementation of section 402/404 requirements by a non-certified inspector is acceptable if the past inspection report has been reviewed and approved in writing by a certified inspector.

Once the Federal or authorized State programs take effect, all new inspections for purposes of the lead-based free exemption must be performed by an inspector certified in the Federal or Federally-authorized State program applicable in the State where the inspection will take place. An inspection conducted prior to Federal or State implementation of section 402/404 requirements by a non-certified inspector will be acceptable, if the past inspection report has been reviewed and approved in writing by an inspector certified in the Federal or Federally-authorized State program applicable in the State where the inspection took place.

PAMPHLET ISSUES

Approval

23.Q: Can private groups seek approval under section 1018 for use of alternatives to the Federal pamphlet?

A: The rule provides flexibility for States to obtain EPA approval for use of alternative State information materials in lieu of the Federal Pamphlet "Protect Your Family From Lead in Your Home." However, this pamphlet approval process does not apply to private groups that seek to develop lead hazard information materials.

EPA and HUD specifically included these State pamphlet provisions to minimize the overlap between the Federal program and State laws and regulations that may already require the distribution of State information materials during sales or leasing transactions. While EPA and HUD cannot approve materials developed by a private group as a national alternative to the Federal pamphlet, private groups may ask States to consider using their pamphlets as a State alternative. States interested in developing an alternative pamphlet should contact their EPA regional offices.

Empty Space

24.Q: The back page of the booklet contains an empty rectangular space at the bottom. Is it permissible for an individual or private party, i.e. real estate firm, to place their name, address, company logo or advertising material in this space?

A: In the Notice of Availability for the final pamphlet (60 FR 39168, August 1, 1995), EPA indicated that to encourage private reproduction of the pamphlet, space was

added on the pamphlet's back cover for names and contact information of organizations that reprint and distribute the pamphlet.

Reproduction

25.Q: Do pages 12 (State Health and Environmental Agencies) and 13 (EPA Regional Offices and CPSC Regional Offices) of the Federal pamphlet have to be included? When the pamphlet is developed for use only in one State, the information on pages 12 and 13 may not be necessary.

A: Provided that the State and Federal regional information on the State developing the pamphlet is retained, the printer can reformat the information on page 12 and 13 to omit information on other State and regional offices.

26.Q: If a private-sector party or association wishes to reproduce the pamphlet at its own expense, do the graphic illustrations have to be included?

A: The pamphlet reproduced by a private organization must include all graphics provided in the original.

27.Q: Can the pamphlet be provided in an 8-1/2 x 14 inch format as an attachment to the sale or rental contract?

A: EPA has developed and made available an alternative format of the pamphlet on 8-1/2 x 14 inch legal paper to accommodate sellers or lessors who wish to provide the pamphlet as part of the contract. The attachment includes EPA's and HUD's sample disclosure and acknowledgement forms. Provided that the seller or lessor adds the appropriate regional and state contacts in the space provided, the legal size format may be used as an alternative to the 5-1/2 x 8-1/2 inch version of the pamphlet. The public may also revise the included sample disclosure and acknowledgement forms provided that the forms contain all the elements set out in the content requirements in 24 CFR 35.92 and 40 CFR 745.113. These materials may be obtained from the NLIC (see Information section of this document).

STATE PROGRAMS

28.Q: Can States obtain authorization to administer and enforce their disclosure programs in lieu of the Federal program?

A: No. EPA and HUD have determined that Title X does not provide authority to delegate the administration and enforcement of the section 1018 disclosure requirements to State programs. However, EPA and HUD believe that Title X provides flexibility to EPA to approve State alternatives to the Federal pamphlet.

Additionally, the rule does not require the use of a Federal disclosure form as an attachment to sales and leasing contracts. States, sellers, landlords, and agents have flexibility to draft disclosure and acknowledgement attachments to fit their needs, provided that the attachments address the content requirements laid out in 24 CFR 35.92 and 40 CFR 745.113.

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TABLE OF CONTENTS

<u>TOPIC</u>	<u>QUESTION #</u>
INTRODUCTION	
EFFECTIVE DATE OF RULE	29
APPLICABILITY	
Trusts	30
Gifts	31
Housing in Lieu of Compensation	32
Mobile Homes	33
Rehabilitated Property	34
DISCLOSURE	
Who Must Disclose	35, 36, 37
What Must Be Disclosed	38, 39, 40, 41, 42
Disclosure Process	43, 44, 45, 46, 47
LEAD-BASED PAINT FREE HOUSING	48, 49
INSPECTIONS	
Auctions	50
Certified Inspectors	51
PAMPHLET ISSUES	52, 53

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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**