

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 35**

RIN 2501-AB58

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 745**

[OPPTS-62130A; FRL-5347-9]

RIN 2070-AC75

Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing

AGENCIES: Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As a result of past Federal, State, and local efforts to reduce lead in the environment, the percentage of children with elevated levels of lead in their blood has declined considerably over the last 20 years. Approximately 1.7 million children, however, still have blood-lead levels high enough to raise health concerns. Studies suggest that lead exposure from deteriorated residential lead-based paint, contaminated soil, and lead in dust are among the major existing sources of lead exposure among children in the United States. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directs EPA and HUD to jointly issue regulations requiring disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. Under that authority, EPA and HUD are establishing the following requirements: (1) Sellers and lessors of most residential housing built before 1978 must disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing; (2) sellers and lessors must provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; (3) sellers and lessors must provide purchasers and lessees with a federally approved lead hazard information pamphlet; (4) sellers must provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; (5) sales and leasing contracts must include certain

disclosure and acknowledgment language; and (6) agents must ensure compliance with these requirements. These provisions ensure that families receive both specific information on the housing's lead history and general information on lead exposure prevention. With this information, consumers can make more informed decisions concerning home purchase, lease, and maintenance to protect their families from lead hazard exposure.

DATES: Effective date: March 6, 1996 except for 24 CFR 35.88, 35.90, 35.92, and 35.94 and 40 CFR 745.107, 745.110, 745.113, and 745.115 which contain information collection requirements that have not been approved by OMB. Once OMB has approved these information collection requirements, EPA and HUD will publish a document giving notice of the effective date and adding the OMB approval number to 24 CFR part 35 and 40 CFR part 9.

The requirements in this final rule are applicable in the following manner: (1) For owners of more than four residential dwellings, the requirements are applicable on September 6, 1996 and (2) For owners of one to four residential dwellings, the requirements are applicable on December 6, 1996.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the final rule, pamphlet, or background materials, contact the National Lead Information Clearinghouse (NLIC), toll free, at (800) 424-LEAD or fax requests to the NLIC at (202) 659-1192. Copies of the final rule, a brief question-and-answer document, and the pamphlet *Protect Your Family From Lead In Your Home*, are available on the Internet at the National Safety Council's gopher at cais.com and on the World Wide Web at <http://www.nsc.org/nsc/ehc/ehc.html>. For technical information: At HUD, contact Conrad C. Arnolts, Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410, Telephone: (202) 755-1810, E-mail: conrad-c-arnolts@hud.gov (use underscore characters), or John B. Shumway, Office of General Counsel, Telephone: (202) 708-9988, E-mail: John-B-Shumway@hud.gov (use underscore characters). Persons who are hearing impaired may access these telephone numbers by calling the Federal Information Relay Service at 1-800-877-TDDY.

At EPA, contact Charles Franklin, Chemical Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401

M St., SW., Washington, DC 20460, Telephone: (202) 260-1781, E-mail: franklin.charles@epamail.epa.gov.

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Copies of the final rule, a brief question-and-answer document, and the pamphlet *Protect Your Family From Lead In Your Home*, are available on the Internet at the National Safety Council's gopher at cais.com and on the World Wide Web at <http://www.nsc.org/nsc/ehc/ehc.html>.

SUPPLEMENTARY INFORMATION:**I. Authority**

This final rule is issued under the authority of section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d). The Residential Lead-Based Paint Hazard Reduction Act is Title X of the Housing and Community Development Act of 1992, Pub. L. 102-550.

II. Background**A. Legal Background**

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (hereafter referred to as Title X or the Act) to address the need to control exposure to lead-based paint hazards. In addition to amending the Toxic Substances Control Act (TSCA) and the Lead-Based Paint Poisoning Prevention Act (LBPAPA), Title X established the infrastructure and standards necessary to reduce lead-based paint hazards in housing. Within this law, Congress recognized lead poisoning as a particular threat to children under age 6 and emphasized the needs of this vulnerable population (section 1003 of Title X).

Section 1018 of Title X requires EPA and HUD to promulgate joint regulations for disclosure of any known lead-based paint or any known lead-based paint hazards in target housing offered for sale or lease. (Target housing is defined in section 1004(27) of Title X, section 401(17) of TSCA, and is discussed in Unit IV.C. of this preamble.) Specifically, section 1018 requires the following activities before a purchaser or lessee is obligated under a contract to purchase or lease target housing: (1) Sellers and lessors must provide purchasers and lessees with a lead hazard information pamphlet, as developed under section 406(a) of TSCA; (2) sellers and lessors must

disclose the presence of known lead-based paint and/or lead-based paint hazards in such housing and provide purchasers and lessees with any lead hazard evaluation report available to the seller or lessor; (3) sellers must permit purchasers a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint hazards; and (4) sales contracts must include an attached Lead Warning Statement and acknowledgment, signed by the purchaser.

Violation of section 1018 may result in civil and criminal penalties and potential triple damages in a private civil suit.

Section 1018 mandated that EPA and HUD promulgate these requirements no later than 2 years after the date of enactment of Title X (October 28, 1994), to take effect 3 years after enactment of Title X (October 28, 1995). Due to promulgation delays, EPA and HUD have revised the effective date provisions for this rule.

This rule represents one of a broad range of interrelated lead exposure reduction activities mandated under Title X. Many of these other activities support and affect the development of the section 1018 rule. Several of the activities most closely related to the disclosure requirements are briefly discussed below.

The statutory provision most closely tied to section 1018 is section 406(a) of TSCA. Section 406(a) directs EPA to develop and publish, after notice and comment, a lead hazard information pamphlet on lead-based paint hazards in the home. EPA developed the pamphlet in consultation with HUD, the Centers for Disease Control and Prevention (CDC), and the Consumer Product Safety Commission (CPSC), which has joined as a co-sponsor of the pamphlet. EPA issued a notice of availability in the Federal Register of August 1, 1995 (60 FR 39167), to announce the pamphlet's completion. As mandated under section 1018 of Title X, this lead hazard information pamphlet must be given to purchasers and lessees of target housing.

Under section 403 of TSCA, EPA is charged with issuing regulations that identify lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil, based on the definitions provided in section 401 of TSCA. In July 1994, EPA released an interim guidance document to provide public and private decisionmakers with guidance on identifying and prioritizing lead-based paint hazards for control before the issuance of the final section 403 standards. EPA subsequently issued the interim guidance document in the

Federal Register of September 11, 1995 (60 FR 47248). EPA is in the process of developing the proposed section 403 standards.

Section 402 of TSCA directs EPA (in consultation with HUD, the Department of Labor (DOL), and the Department of Health and Human Services (HHS)) to promulgate regulations on accreditation of training programs and training and certification of individuals and contractors engaging in lead-based paint evaluation and reduction activities. This section also requires that EPA, in consultation with the above agencies, develop standards for performance of such lead-based paint evaluation and reduction activities. EPA issued the proposed section 402 rule on September 2, 1994 (59 FR 45872), and expects to issue the final rule shortly. Under the section 1018 disclosure requirements issued today, available reports resulting from such evaluation and reduction activities must be provided to the purchaser or lessee.

Pursuant to sections 1012 and 1013 of Title X, HUD is drafting regulations setting out procedures for all federally owned residential property and housing receiving Federal assistance. These procedures concern occupant notification as well as evaluation (such as inspection and risk assessment) and reduction (such as interim controls and abatement) of lead-based paint and/or lead-based paint hazards. The regulations implementing sections 1012 and 1013 will not address the provision of a lead hazard information pamphlet to new purchasers and lessees of target housing, nor any of the other requirements under section 1018. HUD will release these regulations in proposed form as soon as possible for public comment.

Pursuant to section 1015 of Title X, HUD and EPA established a Task Force on Lead-Based Paint Hazard Reduction and Financing, made up of private and public organizations representing the spectrum of interests affected by the lead-based paint issue. The Task Force developed recommendations on evaluating and reducing lead-based paint hazards in private housing. The Task Force released its recommendations on July 11, 1995, in a report entitled *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing*. A copy of this report has been entered into the public record for this rule.

Pursuant to section 1017 of Title X, HUD and EPA, in cooperation with other Federal Agencies, have revised HUD's guidelines for lead-based paint hazard evaluation and reduction activities. These revised guidelines,

entitled *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (hereafter referred to as the "HUD Guidelines"), were released to the public in June 1995. A copy of the HUD Guidelines is included in the public record for this rule.

B. Lead Poisoning in the United States

Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure can be especially damaging to children, fetuses, and women of childbearing age. As recent studies have identified previously unrecognized effects, there has been increasing concern about blood-lead levels once thought to be safe. Since 1978, CDC has lowered the blood-lead level of concern from 60 µg/dL (micrograms per deciliter) to 10 µg/dL (Ref. 2).

Lead poisoning has been called "the silent disease" because its effects may occur gradually and imperceptibly, often showing no obvious symptoms. Blood-lead levels as low as 10 µg/dL have been associated with learning disabilities, growth impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system. In large doses, lead exposure can cause brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also alter fetal development and cause miscarriages.

In 1991, the Secretary of HHS characterized lead poisoning as the "number one environmental threat to the health of children in the United States" (Ref. 1). Although the percentage of children with elevated blood-lead levels has declined over the last 20 years, millions of U.S. children still have blood-lead levels high enough to threaten their health (Ref. 1). The Third National Health and Nutrition Examination Survey (NHANES III) indicates that over the past two decades, the average child's blood-lead level has decreased from 12.8 µg/dL to 2.8 µg/dL (Ref. 8). NHANES III also indicates, however, that in 1991 approximately 1.7 million U.S. children under the age of 6 still had blood-lead levels that exceeded the CDC 10 µg/dL level of concern (Ref. 8).

C. Hazards from Past Uses of Lead-Based Paint

Efforts to reduce exposure to lead from sources like gasoline and food cans have played a large role in the past reductions of blood-lead levels in the United States. Despite these successes, a significant human health hazard remains from improperly managed lead-based paint. From the turn of the

century through the 1940's, paint manufacturers used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 1960's, as largely lead-free latex paints became more popular. Although the CPSC banned lead-based paints from residential use in 1978 (currently, paints may not have greater than 0.06 percent lead by weight (Ref. 3)), EPA and HUD estimate that 83 percent of the privately owned housing units built in the United States before 1980 contain some lead-based paint. By these estimations, approximately 64 million homes may contain lead-based paint that may pose a hazard to the occupants if not managed properly (Ref. 4).

Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create a hard-to-see film over surfaces in a house. In some cases, cleaning and renovation activities can increase the threat of lead-based paint exposure by dispersing fine lead dust particles in the air and over accessible household surfaces. If managed improperly, both adults and children can receive hazardous exposures by inhaling the fine dust or by ingesting paint dust during hand-to-mouth activities. Children under age 6 are especially susceptible to lead poisoning (Ref. 2).

III. Summary of Proposed Rule and Public Comments

Under the authority of Title X, EPA and HUD issued a proposed rule in the Federal Register of November 2, 1994 (59 FR 54984). The proposed rule described the basic approach for implementing the requirements under section 1018, including draft regulatory text, definitions, and standardized form language for use in all transactions. In many cases, EPA and HUD also included a range of options for implementing the rule along with requests for comment on specific implementation issues.

In response to the proposed rule, identified by docket number OPPTS-62130A, EPA and HUD received responses from 198 commenters during the 60-day comment period. The largest number of responses (approximately 25 percent) came from the real estate industry. Other commenter groups included representatives from the banking/financial industry (9 percent), letters from State and local officials involved with public health or environmental protection (8 percent),

comments from advocacy groups (8 percent), letters from attorneys representing various groups (9 percent), and concerned private citizens (23 percent). Approximately 10 percent of the responses came from education officials, housing authorities, and groups involved with real estate development and construction. The paragraphs that follow briefly describe some of the key areas that were addressed by the commenters.

A number of comments addressed the scope and applicability of the rule. Commenters discussed a range of transaction types for specific exclusion or inclusion.

While numerous comments addressed the various definitions contained in the rule, most suggestions involved revisions and modifications to existing terms as opposed to requests that additional terms be defined. A prevalent theme was consistency of terminology across different rules such as those for sections 402, 404, and 406 of TSCA.

Comments concerning the disclosure requirement targeted issues such as the scope of disclosed information; the precise stage at which disclosures should be made; recordkeeping parameters; and the ways in which common areas of multi-unit buildings will be affected by disclosure.

The lead hazard information pamphlet requirements generated comments in the following three categories: strategies for States and tribes (hereafter, all references to States include Indian tribes) with their own notification materials; making the pamphlet available in other languages; and requests for more varied and active distribution strategies.

The proposed disclosure and acknowledgment form generated requests for simplification and availability in non-English languages. Some suggestions involved revising portions of the Lead Warning Statement.

The section of the proposed rule that received the most comments concerned the proposed 10-day evaluation period. Of particular concern were the commencement and length of the evaluation period; the practical availability of certified inspectors or risk assessors to do the testing; and the practicality and logistics of obligating purchasers to provide a report to sellers.

Other topics that elicited some comment included the role of the agent, the effective date of the rule, and potential penalties for noncompliance.

A more complete summary of the comments received, along with EPA's and HUD's responses, is available in the public record for this rulemaking.

IV. Final Rule Provisions and Key Comments Addressed

EPA and HUD have revised the proposed rule to reflect the Agencies' desire to maximize the rule's clarity, flexibility, consistency with other Federal activities, and consistency with existing real estate practice. These goals are important considerations to ensure quick and widespread implementation of the rule.

In particular, many of the changes to the final rule fall into five general categories. These areas include: (1) Clarifications of the rule's applicability, (2) modification of key definitions, (3) establishment of a clear and common sense disclosure process, (4) development of a concise disclosure record, and (5) development of a flexible framework for the 10-day evaluation period.

Throughout the preamble for this final rule, there are citations to 24 CFR part 35 and 40 CFR part 745. These references reflect the location that the final regulatory text will occupy in the *Code of Federal Regulations* (CFR) following the rule's promulgation. EPA and HUD are adding this final joint EPA/HUD regulation to both titles to ensure that the public can easily locate the requirements. Where the preamble references the actual rule language, therefore, it will regularly include references to the requirements as they appear in each title. While the requirements are identical, in some cases the nomenclature for the two titles may be slightly different.

A. Clarifying the Rule's Scope and Applicability

Section 1018 mandated that the rule apply to sales and leases of target housing. The proposed rule also discussed certain unique types of housing transactions that deserved special attention in implementing the regulations. For example, the preamble of the proposed rule explained the rule's exclusion of the following from the statutory definition of target housing: housing built after 1977, housing for the elderly, housing for the disabled, 0-bedroom dwellings, and commercial lodging. Many commenters recommended that the regulatory text of the final rule clearly designate types of transactions that are included and excluded.

EPA and HUD have expanded the scope and applicability section of the regulatory text to better define the rule's impact on certain types of transactions. Below is a brief discussion of the unique transactions addressed under the scope and applicability section and the

rationale for including or excluding them.

1. *Transactions to sell properties at foreclosure.* The final rule retains the exclusion for foreclosure sales presented in the proposed rule. While some commenters opposed exempting foreclosure transactions due to the lack of protection for the purchaser, EPA and HUD believe that the circumstances typically surrounding foreclosure transactions make pre-sale disclosure and evaluation unworkable and impractical. Access to properties during foreclosure proceedings is often limited, making evaluations impossible. Such properties typically are sold on an "as is" basis with regard to all structural and environmental factors. Further, these transactions do not necessarily involve direct interaction between the property owner and the purchaser, and the mortgage holder or trustee is unlikely to have information on the presence of lead-based paint and/or lead-based paint hazards. In light of these circumstances, EPA and HUD believe that it would be inappropriate to extend Federal disclosure and evaluation requirements to foreclosure transactions.

This exclusion does not apply, however, to the sale of housing originally acquired through a foreclosure sale and subsequently resold (an expansion of the exclusion recommended by some commenters). In such cases, EPA and HUD believe that the rule's provisions can be incorporated into the sales process since many of the extenuating circumstances of foreclosure sales no longer apply.

2. *Rental housing found to be free of lead-based paint.* The final rule exempts from coverage leasing transactions involving target housing that is free of lead-based paint, as determined by a certified inspector. For the purposes of this rule, EPA and HUD have defined "lead-based paint free" as the absence of paint with lead levels above those provided in Title X.

In addition to receiving support by many public commenters, this exclusion was recommended by the Task Force on Lead Hazard Reduction and Financing. EPA and HUD strongly encourage the concept of lead-based paint evaluation in rental housing. Evaluations can help lessors to detect the presence of lead-based paint and to determine whether certain management practices and occupant education efforts are necessary. Where evaluations discover lead-based paint, such results will provide lessors and/or lessees with the information necessary to take appropriate hazard reduction steps. EPA and HUD also believe that the

exemption will provide a valuable incentive to building owners to conduct inspections and remove lead-based paint where present.

Under the provisions of the regulation, disclosure during rental transactions is limited to the disclosure of known lead-based paint and/or lead-based paint hazards, provision of available records and reports, provision of a lead hazard information pamphlet, and creation and retention of lead warning and acknowledgment language. These activities provide substantially fewer benefits in cases where reliable information indicates that the housing is lead-based paint free. At the same time, EPA and HUD expect that the exemption for lead-based paint free units will not dissuade many lessors from providing their inspection reports to prospective lessees on a voluntary basis. Given the value that lead-safe housing would have to an informed consumer, EPA and HUD expect that owners will see a great benefit in informing lessees of the housing's lead-based paint free status.

Because of the distinct disclosure obligations the statute imposes on sellers, obligations that purchasers assume upon purchase of the housing, EPA and HUD are not allowing the lead-based paint free exemption for sales transactions. Unlike lessees, purchasers take on new obligations to comply with the disclosure provisions during all subsequent sales or leasing transactions. Exempting sales transactions could disrupt the flow of information from owner to owner regarding the status of the target housing and the purchaser's potential disclosure obligations. Further, Title X guarantees purchasers more than just known information and available reports. Title X guarantees each purchaser the opportunity to conduct an evaluation for lead-based paint and/or lead-based paint hazards, regardless of the information disclosed by the seller. Exempting sales transactions based on the information in the possession of the seller would deny the purchaser that evaluation right. While many purchasers will accept the seller's information and waive their evaluation opportunity (especially if the seller provides an evaluation by a certified inspector), some purchasers may prefer to have their own evaluation performed.

Because the Federal training and certification program will not take effect until some time after the effective date of this rule, EPA and HUD recognize the need for a process to allow property owners to seek exclusions for lead-based paint free housing in States without federally authorized certification

programs. In the interim period before the Federal certification program (to be issued under subpart L of 40 CFR part 745) takes effect, inspectors qualified under any existing State certification program, and using State-approved methods, are considered qualified to conduct inspections for the purpose of determining whether housing is lead-based paint free. In States without existing certification programs, lessors may use the services of inspectors certified in other States. Once the Federal or federally authorized State certification program has taken effect in a particular State, however, this interim provision will expire and subsequent inspections for the purposes of this exclusion will have to be performed by inspectors with Federal or federally authorized State certification.

Some commenters asked whether lessors hoping to meet the lead-free exemption could correct for possible false (or outdated) positive findings during lead-based paint inspections. The lessor always retains the option of having additional tests performed by certified inspectors. Nothing in either the law or the regulation is intended to revoke or restrict that right. An additional test can sometimes clarify whether or not lead-based paint is present. For example, if a lessor believed that a previous inspection had rendered a false-positive result (all measurement techniques involve some small degree of sampling and analytical error), the lessor could choose to have a certified inspector retest the area in question. If the additional testing by a certified inspector indicated that the initial positive results were false (i.e., that there was in fact no lead-based paint present), then the lessor would qualify for the lead-based paint free exemption. Similarly, suppose a lessor first had a test done in 1982 using an X-ray fluorescence (XRF) device that indicated the presence of lead-based paint. Because testing procedures were less reliable at that time (standard practice often failed to consider the effect of the substrate underneath the paint on the accuracy of the measurement and instrument calibration checks were often deficient), the lessor might choose to conduct a new test using the improved methodology available today. If this second test indicated that lead-based paint was not present, then the lessor would qualify for the lead-based paint free exemption. As a third example, a lessor who had all lead-based paint removed from a rental property following an earlier inspection could choose to have a new inspection or

clearance examination conducted on the abated property. If the new information indicated that lead-based paint was no longer present, then the lessor would qualify for the lead-based paint free exemption. In all three cases, if the second test confirmed the original findings, or if the test was not conducted by a certified inspector, the exemption would not be available.

3. *Short-term leases of 100 days or less.* Many commenters recommended that the final rule clarify the distinction between short-term lodgings and longer term residential housing. The final rule addresses these comments by excluding housing transactions involving leasing agreements of 100 days or less, where no lease renewal or extension can occur. This time period is intended to capture all leasing transactions of 3 months or less, while providing several additional days to allow flexibility in the transaction. Building upon the logic discussed in the proposed rule, the final rule's short-term lease exclusion captures most seasonal vacation rentals and hotel and motel transactions, as well as other forms of short-term lodging. During such transactions, which are typified by short stays and quick occupant turnover, EPA and HUD believe that the disclosure provisions are impractical and counter to Congressional intent. The notification requirements of this rule would apply to vacation rentals in cases where the stay extends beyond a 100-day period. Under such circumstances, EPA and HUD believe that the potential for occupant exposure to lead-based paint and/or lead-based paint hazards merits the disclosure of information required by the rule, regardless of whether the stated purpose of the lease is temporary or permanent housing.

In addition, EPA and HUD have placed a limitation on extensions and renewals of such short-term leases to ensure that month-to-month leasing transactions remain covered by the final rule. Commenters noted that many rental transactions incorporate an open-ended month-to-month leasing agreement. These transactions will still be covered by the final rule unless the parties establish in advance that the term of rental will be no longer than 100 days. In an open-ended month-to-month lease arrangement, for example, the rule still applies since the leasing agreement fails to limit the lease term to 100 days or less, i.e., the lease agreement could possibly be extended beyond 100 days. 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.

4. *Lease renewals.* The final rule does not require repeated disclosure during the renewal of existing leases in which the lessor has previously disclosed all information required under 24 CFR 35.88 and 40 CFR 745.107 and where no new information has come into the possession of the lessor. As stated in the proposed rule, EPA and HUD do not believe that duplicative disclosure provides significant benefits.

Several commenters noted that in many residential leasing transactions, leasing arrangements switch to month-to-month "at-will" arrangements after an initial period of occupancy. In such cases, the leasing arrangement may continue indefinitely without any "renewal process." Under such circumstances, EPA and HUD interpret renewal to occur at the point when the parties agree to a significant written change in the terms of the lease, such as a rental rate adjustment. Following such alteration of terms, the disclosure requirements apply to any new information obtained subsequent to the original disclosure.

5. *The purchase, sale, or servicing of mortgages.* The final rule does not cover, and was never intended to cover, the purchase, sale, or servicing of mortgages. During the comment period, many commenters expressed concern that the proposed rule could be interpreted to hold liable persons involved in the purchase, sale, or servicing of mortgages where the title of the housing does not change hands as part of the transaction.

6. *The sale or lease of 0-bedroom dwellings.* The final rule does not apply to transactions involving 0-bedroom dwellings, in keeping with the definition of "target housing" provided in section 1004 of Title X. This definition, at the heart of the section 1018 provisions, specifically excludes 0-bedroom dwellings of all types.

7. *Informal rental agreements.* In the proposed rule, EPA and HUD proposed excluding "informal rental agreements which do not involve a lease" (a phrase meant to capture oral leases) because "such arrangements, by virtue of their informality, make the administration and enforcement of these requirements extremely difficult." EPA and HUD have removed any implied exclusion for oral leases. In deciding not to exclude such leases, EPA and HUD drew heavily upon the public comments. Many of these comments suggested that the absence of a written lease may not have bearing on the "formality" of the housing arrangement. Commenters noted that oral leases make up a significant portion of the housing

arrangements in certain areas, especially those that lack rental housing codes.

Further, although the absence of a written lease provides challenges for certain Federal enforcement and compliance monitoring approaches, EPA and HUD now believe that enforcement is possible. Other evidence may exist, for example, to demonstrate that a leasing agreement exists between two parties. Congress also provided lessees with opportunities for redress under its civil penalty provisions at section 1018(b)(3). These safeguards are not dependent upon Agency actions and therefore should not be constrained by EPA and HUD limitations.

EPA and HUD have also considered policy reasons for not excluding oral leases. First, EPA and HUD are sympathetic to commenter concerns that an explicit exclusion for oral leasing transactions could create incentives for lessors to avoid written leases. If the rule's exclusion were to indirectly discourage the use of written leases, lessees would lose both their right to information on lead-based paint poisoning prevention and the many other protections afforded by written leases. Commenters also noted that a disproportionate number of oral transactions occur in low-income, disadvantaged communities. These communities are already at greater risk of exposure to lead-based paint hazards.

Nevertheless, while the final rule does not provide an explicit exclusion for oral leasing arrangements, EPA and HUD expect that many oral lease transactions may be excluded for other reasons (length of arrangements, rental of 0-bedroom dwelling, etc.).

B. Effective Date

In the proposed rule, EPA and HUD requested comment on the issue of extending the effective date for the final rule beyond October 28, 1995, in light of the promulgation delays. EPA and HUD noted Congress' inclusion of a 1-year window between the statutory promulgation deadline and the statutorily mandated effective deadline. EPA and HUD received comments in support of and in opposition to an extension.

Commenters opposed to delaying the effective date generally argued that any delay in implementation would increase the number of preventable exposures to lead-based paint hazards. According to these commenters, given the importance of educating consumers about their options for reducing lead hazards, the positive effects of early implementation outweigh the practical difficulties.

While agreeing that this rule addresses an important consumer

protection and empowerment goal, EPA and HUD believe that the rule's effective implementation requires an informed and prepared general public and regulated community. EPA and HUD believe that a phase-in period is necessary to provide adequate time for the real estate industry, private lessors, and independent housing sellers and lessors to become familiar with the rule requirements and to set up procedures for compliance.

Sellers and lessors who own more than four residential dwellings will have 6 months from the final rule's promulgation to implement full disclosure during sales and leasing transactions. This phase-in schedule ensures that all such property owners, sellers, lessors, and agents will have adequate notice of the new requirements before they take effect. Believing that property owners with four or fewer dwellings are more likely to be non-professional sellers and lessors, EPA and HUD are providing a 9-month phase-in period for such owners. EPA and HUD encourage all sellers and lessors to begin voluntary disclosure in advance of their relevant effective date.

EPA and HUD also received comments recommending delaying the effective date until after EPA issues its standards for lead hazards in paint, dust, and soil. These commenters stated that the regulated community would be unable to disclose adequately the presence of lead-based paint and lead-based paint hazards in the absence of Federal standards.

EPA and HUD do not believe that this rule requires Federal lead hazard standards to be effective. In section 1018, Congress mandated that sellers and lessors disclose not just lead-based paint hazards but also the presence of lead-based paint, a far more inclusive mandate (since not all lead-based paint is necessarily a hazard).

Further, EPA and HUD expect that records will likely provide purchasers and lessees with information on lead-based paint and, where they exist, lead-based paint hazards. Accordingly, if records pertaining to lead-based paint are fully disclosed, disclosure of lead-based paint hazards should also be accomplished.

The statute and now this rule provide a clear definition for the levels of lead in paint that constitute lead-based paint. The statute also provides a qualitative definition of lead-based paint hazard, including certain exposures to lead-based paint that is peeling or chipping; lead-based paint that is on friction, impact, or chewable surfaces; and lead-contaminated dust and soil.

EPA and HUD have augmented these definitions by providing guidance on identifying lead hazards in paint, dust, and soil (60 FR 47248).

Regarding the need for guidance to help prospective purchasers and lessees with the interpretation of disclosed information, EPA and HUD believe that the statutory definition of "lead-based paint hazard," combined with EPA's lead hazard guidance and the HUD Guidelines, provides sellers, purchasers, lessors, and lessees with valuable information for interpreting any disclosed information.

Some commenters have also recommended delaying the effective date of the final rule until after the activation of the Federal standards for training and certifying lead workers, being developed under section 402 of TSCA. After considering the comments and reexamining the statute, EPA and HUD have determined that such a delay is unnecessary. EPA and HUD believe that the HUD Guidelines will provide adequate interim guidance for the evaluation and management of lead-based paint hazards in target housing, prior to the release of the section 402 training and certification standards.

C. Definitions

EPA and HUD received comments on many of the proposed definitions. Below is a brief discussion of the significant definitions being promulgated under this final rule.

1. *Agent* means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

EPA and HUD initially defined "agent" to be "any party who enters into a contract with a seller or lessor to represent the seller or lessor for the purpose of selling or leasing target housing." Several commenters stated that the language in this definition was needlessly vague. Listing agents typically enter into a contract with the seller and represent the seller. "Buyer" agents, however, often enter into a contractual relationship with a seller or the seller's agent but may represent both the seller and the purchaser in the real estate transaction. EPA and HUD have revised this definition so that any party entering into a contractual relationship directly with the seller or lessor (or indirectly with a representative of the seller or lessor) for the purpose of selling or leasing the target housing, is

an "agent" for the purposes of this rule. As a consequence, listing agents, selling agents, and buyer agents (if paid by the seller or through a cooperative brokerage agreement with the listing agent), are "agents" and are responsible for ensuring compliance under the rule. Since section 1018 refers only to agents having entered into a contract with the seller or lessor, buyer's agents paid entirely by the purchaser are not considered "agents" under this rule.

2. *Available* means in the seller's or lessor's possession or reasonably obtainable by the seller or lessor at the time of the disclosure.

Section 1018(a)(1) requires that sellers and lessors provide the purchasers and lessees with "any lead hazard evaluation reports available to the seller or lessor." EPA and HUD interpret available lead hazard evaluation reports to mean records and reports that pertain to lead-based paint and/or lead-based paint hazards in the target housing and that are in the possession of the seller or lessor or that are reasonably obtainable by the seller or lessor at the time of the disclosure.

EPA and HUD expect that most sellers and lessors will retain copies of relevant information in their possession along with other important housing files (title, outstanding leases, etc.). In some cases, however, the seller or lessor may no longer have possession of the records but may have reasonable access to the information. Examples of "reasonably obtainable" records include records retained by a separate or outside entity on behalf of the seller or lessor and copies of reports retained by the original inspector or risk assessor that would be available to the owner in cases where the original records were destroyed or lost. The term "reasonably obtainable" is not intended to impose an obligation on the seller or lessor to conduct further evaluation of the housing.

3. *Common area* means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

This definition is unchanged from the proposed rule. The term "common area" will be used in other TSCA Title IV regulations, some of which may require a broader interpretation of common area. The final rule provides one broadly interpreted term applicable under all of the TSCA rules, to avoid the confusion of multiple rule-specific definitions. Though several commenters recommended minor changes to adjust the scope of the definition, EPA and HUD believe that other regulatory

provisions adequately clarify the relevant scope of the term "common area" as it relates to target housing.

4. *Foreclosure* means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

EPA and HUD added this definition in response to requests that the final rule include a regulatory definition of the term. EPA and HUD believe that this definition will help property owners determine the applicability of the foreclosure exemption to their transactions. Recognizing that different jurisdictions may have differing interpretations of what constitutes "foreclosure," EPA and HUD have developed a general definition that provides flexibility to work within established local laws and customs.

5. *Housing for the elderly* means retirement communities or similar types of housing specifically designed for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

In response to public comments, EPA and HUD have added a definition for this term to the regulatory text. This definition is consistent with the definition used by HUD's Supportive Housing for the Elderly Program (See 24 CFR 277.1(f)). While some commenters recommended the use of a "55 years or older" standard (as used to define "older person" in the Fair Housing Act), HUD believes that the current definition is more consistent with HUD's other programs for the elderly.

6. *Lead-based paint* means 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.

This term has been modified slightly from the language provided in Title X and TSCA to retain consistency with the many HUD programs already using the levels defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act.

7. *Lead-based paint free housing* means 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.

EPA and HUD have added this definition in support of the provision of the rule that allows rental transactions in "lead-based paint free" rental housing to be excluded from the section 1018 requirements. EPA and HUD provide further discussion of this provision in unit IV.A.2. of this preamble.

8. *Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

This term, defined in section 1004 of Title X, is unchanged from the proposed rule. EPA has released guidance on identifying lead hazards in paint, dust, and soil (60 FR 47248) and is currently developing Federal standards. In addition, HUD has released comprehensive guidelines for evaluation and control of lead-based paint hazards in housing (Ref. 7).

9. *Lessee* means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts and subleases.

10. *Lessor* means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts and subleases.

11. *Owner* means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner is considered the mortgagor.

EPA and HUD have revised the definition provided in the proposed rule to clarify its applicability to trusts and to clarify one situation in which mortgage lenders (mortgagees), rather than borrowers (mortgagors), hold title and are therefore owners.

12. *Purchaser* means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts.

13. *Risk assessment* means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including: (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6; (2) visual inspection; (3) limited wipe sampling or other environmental sampling techniques; (4) other activity as may be appropriate; and (5) provision of a report explaining the results of the investigation.

This definition, provided in section 1004 of Title X, is unchanged from the proposed rule. Under section 402 of TSCA, EPA will promulgate separate regulations regarding the conduct of such activities, as well as a program for training and certifying workers engaged in these activities. Under section 404 of TSCA, these regulations will also include a process for authorizing States to implement their own training and certification programs.

14. *Seller* means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes: (1) An entity that transfers shares in a cooperatively owned project, in return for consideration and (2) an entity that transfers its interest in a leasehold in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

EPA and HUD received limited comments on this definition and have made minor revisions to the language of the definition to clarify its applicability to trusts.

15. *Target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

This definition was provided by section 1004 of Title X and is unchanged. Where commenters provided recommendations for revising or clarifying the definition, EPA and HUD have addressed those comments within the scope and applicability section of the final rule. Commenters also noted that the proposed rule

misstated the statutory definition by limiting the 0-bedroom dwelling exception to housing where no children under 6 reside or are expected to reside. EPA and HUD have modified the definition to reflect the statutory language.

16. *0-bedroom dwelling* means any residential dwelling in which the living area is not separated from the sleeping area. Such term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

In the preamble of the proposed rule, EPA and HUD clarified their interpretation of this term by identifying efficiencies, studio apartments, dormitory housing, military barracks, and other such housing in which the living area is unseparated from the sleeping area as types of dwellings that are not covered under the rule. EPA and HUD have added rentals of individual rooms in a residential dwelling to the types of transactions that would involve a 0-bedroom dwelling. All of these clarifications are included in the regulatory definition in the final rule's regulatory text.

D. Changes to the Disclosure Requirements

Section 1018(a)(1)(B) requires that "before the purchaser or lessee is obligated under any contract to purchase or lease the housing, . . . the seller or lessor shall . . . disclose to the purchaser or lessee the presence of any known lead-based paint or any lead-based paint hazards, in such housing, and provide any lead hazard evaluation report available to the seller or lessor."

EPA and HUD received more than 150 comments on their proposed requirements for such information disclosure, addressing both the proposed disclosure process and the issue of what information should be covered. In particular, recurring themes among the comments included: (1) The need for greater specificity regarding the necessary timing for disclosure activities; (2) concerns over which activities should constitute disclosure; and (3) what kinds of information should be disclosed under this rule. The following is a brief discussion of these key points and a summary of the regulatory requirements.

1. *Timing of disclosure events.* In addressing the need for greater clarity regarding the timing of disclosure activities, EPA and HUD have attempted to maximize the parties' flexibility in incorporating these requirements during negotiations. EPA and HUD believe that this flexibility is important given the

many types of transactions covered by these provisions and the existence of distinct local requirements and customs. Therefore, the final rule identifies only the latest point at which full disclosure must occur. Using the statute as a guide, EPA and HUD have identified this point as before the purchaser or lessee becomes obligated under any contract to purchase or lease the housing.

Some commenters raised the concern, however, that without additional clarification regarding how and when information must be disclosed, the final rule could cause unnecessary confusion regarding how the requirements will work in actual practice. After reviewing the framework set out in the proposed rule, EPA and HUD have revised and clarified the requirements in a number of ways. First, the final rule contains numerous minor changes to the wording of definitions and requirements to clarify that the rule does not require mass disclosure to all prospective purchasers, regardless of their degree of interest. Second, the rule requires that certain disclosure and acknowledgment language become part of the final sale or lease contract. In making these changes, EPA and HUD have considered the typical negotiation process involved in leasing and sales transactions.

During sales transactions, for example, purchasers often take the first step toward formalizing a sales agreement by providing a written offer to purchase the housing. If accepted and signed by the seller, this offer typically becomes the sales contract. The statute's mandate that disclosure and notification take place before the purchaser is obligated imposes a requirement on the seller to disclose information before accepting the purchaser's offer, thereby allowing the purchaser an opportunity to review the information and to possibly amend the offer. If a seller were to accept a purchaser's offer and obligate the purchaser before disclosing known information, such a seller would be in violation of Title X and this rule. Of course, the parties can always agree to conduct the disclosure activities in advance of contract discussions, provided that the final contract includes the signed and dated disclosure elements mandated by this rule.

In leasing transactions, the disclosure process is even simpler. While the parties are free to negotiate when the disclosure process occurs, lessors must provide the information and complete the disclosure portions of the lease (or attachment) before the lessee becomes obligated under a contract to lease the housing. By requiring that the disclosure information be included in or as an attachment to the lease, EPA and

HUD seek to ensure that the disclosure process automatically occurs during lease negotiations.

The requirement that the contract or an attachment include disclosure language fulfills two additional functions. First, the process of completing and signing these sections ensures that all parties are aware of their rights and obligations and are able to confirm that the appropriate actions have already occurred. Second, this disclosure language provides a clear record of compliance.

While sections 1018(a)(2) and (3) mandate lead warning language for all sales transactions, the inclusion of such language as an attachment to leases is not specifically mandated by Title X. EPA and HUD, however, believe that it is necessary to include the warning language in leases as well. Further, the completion and retention of disclosure and acknowledgment language is a necessary component of any effective, enforceable disclosure requirement for leasing transactions.

2. *Components of full disclosure.* EPA and HUD consider full disclosure to have occurred when the seller or lessor has provided the following items to the purchaser or lessee.

a. *A lead hazard information pamphlet approved by EPA.* As required by TSCA section 406, EPA has developed a lead hazard information pamphlet, entitled *Protect Your Family from Lead in Your Home*, and has made it available through government channels and private sources. EPA issued the final notice of the pamphlet's availability in the Federal Register of August 1, 1995 (60 FR 39167). In addition to providing detailed information on how to obtain copies (individually, in bulk, and as camera-ready reprints), the notice describes the process of developing the pamphlet, including considerable public review and comment.

The statute also allows States to develop their own lead hazard information pamphlets under section 406, provided that they obtain authorization and approval from EPA. Several States that already have disclosure provisions have expressed their desire to seek approval to use their own pamphlets in lieu of the Federal pamphlet. EPA and HUD encourage States interested in developing their own materials to seek approval of their pamphlets for distribution under the section 1018 regulations.

b. *Notice of the presence of known lead-based paint and/or lead-based paint hazards.* Sellers and lessors must disclose, based on their actual knowledge, whether the target housing

is known to contain lead-based paint and/or lead-based paint hazards. EPA and HUD received many comments on the types of information under consideration for disclosure under these requirements. Many of the commenters expressed concern that the proposed rule was too vague about what constituted "known information." For example, did EPA and HUD intend for the disclosure requirements to distinguish between information already in the possession of the seller or lessor and information that could be obtained only by some further investigation or inference? Several commenters described this distinction in terms of actual knowledge (knowledge stemming from existing facts and information) versus constructive knowledge (knowledge that could be inferred or obtained by further inquiry). An expectation that the property owners meet a constructive standard for knowledge could create an implied testing requirement.

While the Agencies hope to encourage lead hazard evaluation and reduction efforts through all of their regulatory and non-regulatory programs, neither Agency believes that Congress intended to mandate additional lead hazard evaluation activities in private housing. EPA and HUD believe that Congress intended to limit the disclosure obligation to actual knowledge. The final rule, therefore, embraces an actual knowledge standard as well. With this clear standard, property owners and their agents will be able to take affirmative steps to comply fully with the rule and be confident that they have met the requirements of the law and its implementing regulations. EPA and HUD believe that such finality is a necessary part of this regulation, given the diverse makeup of the regulated community.

c. Provision of records and reports on lead-based paint and/or lead-based paint hazards available to the seller or lessor. As mandated by section 1018(a)(1)(B), sellers and lessors must "provide to the purchaser or lessee any lead hazard evaluation report available to the seller or lessor." EPA and HUD have interpreted "available evaluation reports" to mean records and reports that pertain to lead-based paint and/or lead-based paint hazards in the target housing and that are in the possession of the seller or lessor or that are reasonably obtainable by the seller or lessor at the time of the disclosure.

During the proposed rule phase, EPA and HUD requested comment regarding the disclosure of known lead-based paint and/or lead-based paint hazards in other units within target housing. EPA

and HUD received both supporting and opposing comments on this requirement. Opponents argued that distinct dwelling units can have very different painting histories, making information on one unit an unreliable indicator of other units. Proponents argued that regardless of differences that may exist, the painting histories of different units in a building are usually similar enough to provide valuable information for individuals considering whether lead hazard exposure precautions are prudent.

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 stems 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.

The proposed rule also requested comment on whether sellers and lessors should have to disclose information on past elevated blood-lead levels in other occupants of target housing. Based on the comments and further deliberation, EPA and HUD decided against requiring disclosure of medical information for several reasons. As commenters pointed out, lead exposure, elevated blood-lead levels, or lead poisoning may come from sources other than lead-based paint hazards in the housing. Where elevated blood-lead levels were determined to stem from lead-based paint hazards in the housing, the follow-up environmental assessment activities in the affected person's housing will likely generate more germane records regarding lead-based paint exposure hazards in the housing.

Commenters also questioned whether disclosure requires the actual transfer of all documentation from the seller or lessor, or whether simply making the information accessible for the purchaser's or lessee's evaluation is adequate. Based on the mandate in section 1018(a)(1)(B), EPA and HUD believe that Congress clearly intended for purchasers and lessees to receive their own copies of the records and reports available to the seller or lessor. Therefore, the seller or lessor remains obligated to provide copies of all

relevant materials to the purchaser or lessee.

d. Completed Lead Warning Statement and acknowledgment language, attached to the sales or lease contract. This information, set out in 24 CFR 35.92 and 40 CFR 745.113, documents the disclosure and acknowledgment process, and serves as the primary confirmation tool for all parties in ensuring full compliance with the regulatory requirements. This information is especially important in cases where purchasers or lessees conduct contract negotiations through their own representatives (requiring sellers, lessors, or their agents to provide documents to the representative instead of the purchaser or lessee). In such cases, the attachment provides a record that sellers, lessors, and agents can use to confirm that purchasers and lessees have received the necessary disclosure materials.

The proposed rule required the use of disclosure forms as attachments to each contract to purchase or lease target housing. These forms would have served as the key mechanisms for documenting compliance with the requirements. EPA and HUD carefully considered the merits of each element, limiting the rule to information necessary for demonstrating full compliance.

The final rule includes some changes to the information that must be included in the contract. Where the proposed rule required that sellers and lessors use federally developed disclosure forms, the final rule provides greater flexibility for negotiating parties to develop their own language, provided that it contains the mandated elements. EPA and HUD eliminated the requirement that parties use a single form. Instead, the final rule mandates only the information elements that must be included without mandating specific formats or forms.

This flexibility is especially important to States that have developed, or are considering developing, their own disclosure requirements. During the comment period, several States requested that the final rule provide flexibility for States to merge their forms with the Federal form, eliminating unnecessary duplication. Under the final rule, States and jurisdictions will be able to make changes to the format as necessary to retain consistency with State and local laws and customs.

The following is a discussion of the required elements.

(i) Seller, agent, and purchaser requirements. The final rule requires that each contract to sell target housing include an attachment containing specific disclosure and acknowledgment

elements, in the language of the contract (e.g., English, Spanish). The elements required are described below:

(A) The first required element is the Lead Warning Statement, consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Congress mandated this language in section 1018(a)(3) of Title X. While several commenters recommended providing simpler language, EPA and HUD are constrained by the mandate and have retained the statement as proposed.

(B) The second required element is a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller must also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces. The statement must also list all records and reports pertaining to lead-based paint and/or lead-based paint hazards that are available to the seller and that have been provided to the purchaser. If no such records or reports are available to the seller, the statement must so indicate.

(C) The third element is a statement affirming that the purchaser has received the information noted in paragraph (B) above and the lead hazard information pamphlet required under section 406 of TSCA (15 U.S.C. 2696).

The pamphlet described above may be the Federal pamphlet entitled *Protect Your Family from Lead in Your Home* or a State-developed pamphlet that has been approved by EPA.

(D) The fourth required element is a statement that the purchaser has received a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards (unless the parties have mutually agreed to a different period of time), before becoming obligated under the contract to purchase the housing. Alternatively, a purchaser who chooses to waive the risk assessment or inspection opportunity must so indicate in writing.

(E) The fifth required element is a statement by any agent involved in the transaction that the agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and that the agent is aware of his/her duty to ensure compliance with the requirements of this rule.

(F) The sixth required element is the signatures of the seller(s), agent(s), and purchaser(s), certifying the accuracy of their statements on the attachment, along with their dates of signature. These signatures document the acceptance by the parties of the information they have provided on the attachment as a whole and alert the various parties to their respective roles and responsibilities.

(ii) *Lessor, agent, and lessee requirements.* Each contract to lease target housing must include the following elements, as an attachment or within the contract, in the language of the contract (e.g., English, Spanish).

(A) The first required element is a Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

EPA and HUD received a considerable amount of comment regarding the language of the Lead Warning Statement used in the leasing disclosure attachment. EPA and HUD have developed a modified Lead Warning Statement for leasing transactions that uses simpler words and syntax than the

purchase warning statement required by Title X.

(B) The second required element is a statement disclosing the presence of any known lead-based paint and/or lead-based paint hazards in the target housing or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist; the location of the lead-based paint and/or lead-based paint hazards; and the condition of the painted surfaces. The statement must also list any records or reports pertaining to lead-based paint and/or lead-based paint hazards that are available to the lessor and that have been provided to the lessee. If no such records or reports are available to the lessor, the statement must so indicate.

(C) The third required element is a statement affirming that the lessee received the information noted in paragraph (B) above and the lead hazard information pamphlet required under section 406 of TSCA (15 U.S.C. 2686).

(D) The fourth required element is a statement by any agent involved in the transaction that the agent has informed the lessor of the lessor's obligations under the law and that the agent is aware of his/her duty to ensure compliance with the requirements of this rule.

(E) The fifth required element is the signatures of the lessor(s), agent(s), and lessee(s), certifying the accuracy of their statements, along with their dates of signature. These signatures document the acceptance by the parties of the information they have provided as a whole and alert the various parties to the roles and responsibilities of each party.

3. *Sample disclosure attachments.* Recognizing that many parties may prefer having access to a sample format, EPA and HUD have developed sample disclosure formats for sales and leasing contracts for public reference. These samples are not included in the regulatory text itself. Nothing in the rule requires the use of these specific formats if a seller or lessor wishes to develop a separate format that includes all of the required elements.

(Sample Disclosure Format for Target Housing Sales)

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) — Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) — Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) — Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) — Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c) — Purchaser has received copies of all information listed above.

(d) — Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) — Purchaser has (check (i) or (ii) below):

(i) — received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) — waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(f) — Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

| | | | |
|-----------|-------|-----------|-------|
| _____ | _____ | _____ | _____ |
| Seller | Date | Seller | Date |
| _____ | _____ | _____ | _____ |
| Purchaser | Date | Purchaser | Date |
| _____ | _____ | _____ | _____ |
| Agent | Date | Agent | Date |

(Sample Disclosure Format for Target Housing Rentals and Leases)

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**Lead Warning Statement**

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (Check (i) or (ii) below):

(i)—— Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

 (ii)——Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (Check (i) or (ii) below):

(i)—— Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

 (ii)——Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c)——Lessee has received copies of all information listed above.

(d)——Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e)—— Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

| | | | |
|-----------------|---------------|-----------------|---------------|
| _____ Lessor | _____ Date | _____ Lessor | _____ Date |
| _____ Lessee | _____ Date | _____ Lessee | _____ Date |
| _____ Agent | _____ Date | _____ Agent | _____ Date |

4. *Recordkeeping requirements.* EPA and HUD have retained the recordkeeping requirements under this rule largely as proposed. The seller and any agent are required to retain a copy of the completed disclosure and acknowledgment contract attachment (discussed below), required under §§ 35.92(a) and 745.113(a), for 3 years from the completion date of the sale. Similarly, the lessor and any agent are required to retain a copy of the completed lease or attachment, required under § 35.92(b) and § 745.113(b) of this rule for 3 years from the commencement of the leasing period. EPA and HUD have determined that a 3-year period is an appropriate amount of time to ensure compliance with the requirements of Title X and to support Federal compliance monitoring efforts. This recordkeeping requirement is not intended to place any limitations on civil suits under Title X or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of section 1018(b)(3) of Title X.

EPA and HUD requested comment on whether the rule should include an additional recordkeeping provision requiring that property owners retain all records and reports of lead-based paint and/or lead-based paint hazards in the housing for the length of their ownership. Based on the statute's use of the term "available" lead hazard evaluation reports, EPA and HUD have determined that a specific recordkeeping requirement for such reports is beyond the scope of this regulation. EPA and HUD have, however, clarified "available" lead hazard evaluation reports to encompass records and reports in the possession of the seller or lessor or reasonably obtainable by the seller or lessor at the time of the disclosure. This approach recognizes that third parties may in some cases play an independent recordkeeping role for the seller or lessor.

While the Agencies do not mandate the retention of these records, EPA and HUD encourage sellers and lessors to retain relevant records in anticipation of future sale or lease. The information provided can help purchasers and occupants take exposure prevention precautions during later ownership or occupancy. The requirement to disclose the presence of known lead-based paint and/or lead-based paint hazards remains even if the seller or lessor is unable to locate the original reports quantifying the data. Section 1018 requires sellers and lessors to both (1) disclose the presence of known lead-based paint and/or lead-based paint hazards in the housing and (2) provide available

written records and reports to the purchaser or lessee. By mandating that both actions occur, Congress recognized the distinction between the two actions, and the fact that the seller or lessor might have actual knowledge of lead-based paint and/or lead-based paint hazards above and beyond that present in available reports.

5. *Failure to fully disclose before ratification of contracts.* As mandated by Title X, the disclosure of information, the provision of the lead hazard information pamphlet, and the purchaser's opportunity to conduct a risk assessment or inspection must occur before the purchaser or lessee becomes obligated under any contract to purchase or lease the dwelling. Section 1018(c) prohibits regulatory provisions that would "affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan" and states that nothing in the rule "shall create a defect in title." The disclosure requirements contained in this rule must occur prior to contract ratification and, as such, do not affect the validity of the subsequent contract. Nor does failure to conduct full disclosure before sale or lease affect the validity of the sales or leasing contract itself. Rather, purchasers seeking remedy for the non-disclosure may avail themselves of the civil remedies afforded by section 1018 of Title X.

6. *Opportunity to conduct a risk assessment or inspection.* Section 1018(a) requires that sellers provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before becoming obligated under a purchase contract. The length of time may be shortened or lengthened by mutual agreement. In the proposed rule, EPA and HUD offered several approaches for implementing this provision of section 1018: (1) Establishing Federal standards for the implementation of the evaluation period, providing flexibility for adjustment by mutual consent; (2) limiting the regulatory text to the statutory language, thereby maximizing the discretion of the two parties in negotiating the terms; (3) codifying contract contingency language for use in complying with the final rule; and (4) establishing requirements for providing evaluation opportunities before the preparation of contracts.

Recognizing that home inspections for various hazards and housing defects are common occurrences during housing

transactions around the country, EPA and HUD believe that the market can incorporate this requirement into future transactions without detailed regulatory language. The final rule, therefore, steers away from the proposed rule's preferred approach of codifying Federal standards for the performance of the 10-day evaluation period provision.

However, EPA and HUD also recognize that some private sellers may choose to conduct their housing sales without the aid of a trained agent and may lack familiarity with the standard processes for conducting such evaluations in the sales transaction. For such persons, EPA and HUD are providing the following discussion of several likely approaches for implementing this provision.

First, some purchasers may choose to waive the opportunity for a risk assessment or inspection. Purchasers may be especially inclined to waive the opportunity in cases where the seller provides significant amounts of relevant information on the property during the disclosure process, or in cases where no children are expected to reside in the housing. If the purchaser chooses to waive the evaluation opportunity, the purchaser is still obligated to acknowledge receipt of the evaluation opportunity on the attachment, documenting this voluntary decision to waive the opportunity.

EPA and HUD expect that in most cases where the purchaser chooses to exercise his or her evaluation opportunity, the parties will develop and incorporate into the contract mutually agreeable terms for the conduct and completion of the evaluation opportunity. The final rule provides sellers and purchasers with broad flexibility to develop terms for performing the risk assessment or inspection.

As many commenters noted, home inspections are already common aspects of housing transactions. Frequently, these inspections are incorporated into the sales contracts as contingency clauses, providing mutual agreement on the timing, terms, and conduct of the inspection. Common terms addressed in these clauses include: (i) The starting and ending day of the inspection period; (ii) any contingencies and conditions tied to the contract regarding the inspection period; (iii) the process for removing any contingency or condition following the completion of the inspection; and (iv) the disposition of any earnest money provided by the purchaser before the opportunity to inspect. This general framework is one possible approach that parties can consider when developing mutually

agreeable terms for the evaluation period required by section 1018(a) of Title X.

While most commenters stressed the importance of providing flexibility for the parties to develop mutually

agreeable evaluation terms, many also recommended the inclusion of sample language as a reference. For the purpose of providing guidance on creating contract language, EPA and HUD have included the following sample contract

contingency clause for optional use. This language is offered as a sample only, and nothing in this rule imposes a requirement on either party to accept or reject this language in the current or modified form.

Sample Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar-day after ratification [*Insert date 10 days after contract ratification or a date mutually agreed upon*]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the EPA pamphlet *Protect Your Family From Lead in Your Home* for more information.) This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs, or if the Seller makes a counter-offer, the Purchaser shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

E. Agent Responsibilities

Title X specifically addresses the responsibilities of agents, requiring them to ensure compliance with the provisions of the law. Agents fulfill this requirement by informing sellers or lessors of their obligations and by making sure that these activities are completed either by the seller or lessor or by the agent personally. Accordingly, 24 CFR 35.94(b) and 40 CFR 745.107(c) identify the seller's affirmative duty to disclose to the agent any known lead-based paint and/or lead-based paint hazards on the property. Provided that the agent has actually informed the seller or lessor of his/her obligation, the final rule notes that the agent will not be responsible for information withheld from the agent by the seller or lessor.

V. Non-Compliance and Enforcement

EPA and HUD received considerable comment on the enforcement provisions discussed in the statute and the proposed rule. Many commenters requested more guidance regarding the Agencies' plans for enforcement of the provisions, as well as assurances that the Agencies recognize the importance of active education and outreach to the regulated community. As all enforcement authority for EPA and HUD

derives directly from the authorizing statutory language, both the proposed rule and the final rule contain enforcement language that is essentially the same as language provided in Title X and TSCA. The following is a discussion of the general enforcement authority provided by Congress, along with some discussion of the process that EPA and HUD will use in developing a sensible, effective enforcement approach.

A. HUD Authority

Section 1018(b)(1) of Title X authorizes HUD to impose civil monetary penalties on any person who knowingly violates section 1018. This authority applies to violations of this final rule as well. HUD can impose penalties under section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545). These penalties may be up to \$10,000 for each violation. In addition, section 1018(b)(2) of Title X authorizes the Secretary to "take such lawful action as may be necessary to enjoin any violation" of the law's provisions.

B. EPA Authority

1. *Civil.* Section 1018(b)(5) of Title X provides that failure or refusal to comply with section 1018 or its implementing regulations is a violation of TSCA section 409. Violations of TSCA section 409 are subject to TSCA section 16 penalties. Thus, a violator of section 1018 can be subject to the penalty provisions under TSCA section 16 of up to \$10,000 for each violation.

2. *Criminal.* TSCA section 16(b) provides that any person who knowingly or willfully violates section 409 (and thus section 1018) could, in addition to or instead of any civil penalty, be subject, upon conviction, to a fine of not more than \$25,000 for each day of violation or to imprisonment for not more than 1 year, or both. For the purposes of enforcement under section 1018, Congress has modified the application of TSCA section 16, limiting the fine to \$10,000 "for each violation."

C. Enforcement Responses

Because the enforcement provisions of section 1018 are clearly set forth in the statute, the final rule retains largely unchanged the discussion of the enforcement authority.

However, it is EPA's and HUD's intent that outreach and compliance assistance

will be a major component of the section 1018 compliance program so that individuals are fully informed of the new requirements and their obligations. EPA and HUD also intend to bring clarity and predictability to the enforcement process for section 1018, in acknowledgment of the large and diverse population affected by this rule. Concurrent with this rule's release, EPA will issue a short "Statement of Approach" as it relates to ensuring compliance with the requirements of section 1018, for the information of the general public. This informational document will discuss the Agency's approach to the section 1018 compliance assurance program. EPA is also developing a policy for use by EPA enforcement personnel to achieve a common sense result between a particular violation of section 1018 and a particular enforcement response. This policy includes, but is not limited to, issuing notices of warning (without penalties) as appropriate to let people know that they are out of compliance and to give them an opportunity to come into compliance, while maintaining provisions that will ensure that willful and repeat violators are appropriately penalized. This result is reached in the context of an "Enforcement Response Policy" (ERP), which EPA is developing separately for this rule.

Regarding HUD enforcement actions, HUD's civil money penalty procedures are set out in 24 CFR part 30. These procedures include notices of intent to request civil money penalties, civil money penalty panels, administrative hearings and appeals, judicial review, and collection of penalties. A civil money penalty panel develops guidelines to determine the appropriate penalty for a violation of section 1018. These guidelines include the following factors: the gravity of the offense, awareness of procedures, any history of prior offenses, the ability to pay the penalty, the injury to the public, any benefits received by the violator, any potential benefits to other persons, deterrence of future violators, the violator's culpability, and such other matters as justice may require.

D. Civil Liability--Direct Compensation

In addition to the EPA and HUD enforcement authority for the provisions of this final rule, section 1018(b)(3) of Title X states that "[A]ny person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual." This provision allows the

purchaser or lessee to seek direct compensation for any damages incurred based on the seller's or lessor's noncompliance. Section 1018(b)(4) authorizes the court to award court costs, reasonable attorney fees, and expert witness fees to a prevailing plaintiff.

E. Validity of Contracts and Liens

Section 1018(c) provides that nothing in section 1018 (or its implementing rules) "shall affect the validity or enforceability of any sale or contract for the purchase and sale or lease of any interest in residential real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a mortgage loan. . . ." It also provides that nothing in section 1018 (or its implementing rules) shall "create a defect in title."

EPA and HUD have looked at section 1018(c) in the context of other section 1018 provisions, which outline specific clauses that must be attached to contracts for the purchase and sale of target housing and specific procedural protections that must be given to the purchaser or lessee.

The provisions of section 1018 cannot void or nullify the contract after ratification and cannot void any transfer of real estate, even if it can be proven that the seller or lessor violated section 1018 provisions. In such circumstances, the purchaser or lessee is limited to the remedies provided in section 1018. Of course, traditional causes of action under State law would still exist, and possibly could be applied to some section 1018 violations. Also, violations of section 1018 could be subject to civil and criminal penalties administered by EPA and HUD under section 1018(b).

VI. Federal Effect on State and Local Disclosure Requirements

Several commenters noted that some States and municipalities already have requirements for the disclosure of information on lead-based paint in housing. In developing the Federal disclosure requirements, several key questions have been raised regarding such programs: (1) Can States obtain authorization to administer and enforce their programs in lieu of the Federal program? and (2) What effect do the Federal requirements have on the ability of States to run their own programs?

EPA and HUD have determined that Title X does not provide authority to delegate the administration and enforcement of these section 1018 requirements to State programs. Where such authority to authorize State programs was anticipated by Congress

(as in TSCA section 402), Congress provided specific authority.

Where possible, EPA and HUD have developed these requirements to make it possible for State and Federal requirements to complement each other. For example, EPA and HUD had State programs in mind when adding flexibility in the development of disclosure and acknowledgment attachments.

Finally, nothing in this rule is intended to relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint and/or lead-based paint hazards.

VII. Summary of Regulatory Impact Analysis

EPA and HUD have prepared a Regulatory Impact Analysis (RIA) that examines the potential costs, benefits, and impacts of regulations for the disclosure of known lead-based paint hazards in residential property upon the transfer of the property for sale or rental. The analysis is presented in five sections:

- Background and Framework for Analysis
- Profile of Sectors Affected
- Estimated Costs to Private Parties and Government
- Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses—Regulatory Flexibility Analysis
- Assessment of Benefits

A. Background and Framework for Analysis

Those parties directly affected by the rule are the seller, lessor, agent, property manager, purchaser, and lessee. The required activities that impose regulatory burden on the affected parties fall into four categories for cost estimation purposes:

1. Start-up costs, which include learning the rule's requirements and establishing compliance procedures;
2. Disclosure costs, which refer to the costs resulting from the actual transfer of information and obtaining needed signatures;
3. Recordkeeping costs, which result principally from the requirement that signed acknowledgment forms must be retained by the provider of the information; and
4. Materials costs, which are linked primarily to the disclosure requirement, as the lead hazard information pamphlet must be purchased or photocopied (acknowledgment forms must also be duplicated). Costs may also be incurred

for filing where a large number of acknowledgment statements or documents for disclosure are generated (e.g., by agents), though such burden was estimated to be quite modest.

The requirements of section 1018 of the Act fall primarily on the seller or lessor of "target housing," which is defined to be any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. However, if an agent or property manager acts on behalf of the seller or lessor, which EPA and HUD have estimated to be the case in most transfers, responsibilities to ensure compliance fall to such agents or managers as well.

To estimate the impacts of the rule, EPA and HUD sought data pertaining to the number of affected parties in each classification listed above, the frequency with which affected purchase and lease transactions are completed, and the incremental costs, in labor and materials, added to each transaction by the regulations.

B. Profile of Sectors Affected

The larger of the two affected sectors expected to bear the principal effects of

the rule falls within Standard Industrial Classification (SIC) code 651, Real Estate Operators and Lessors. EPA estimates there to be 92,000 establishments potentially affected by the rule. Also affected are business establishments falling within SIC code 653, Real Estate Agents and Managers. An additional 92,000 establishments could be affected by the rule in this sector.

Employment data were obtained for the occupations most likely to be involved in transactions subject to the rule. EPA and HUD estimate that 324,000 real estate agents and 243,000 property managers will be affected.

With regard to transaction volume, 2.9 million sales transactions and 9.3 million rental transactions were estimated to occur annually in target housing.

C. Estimated Costs to Private Parties and Government

Table 1 below summarizes the estimated annual costs associated with the rule. The four costs to private parties, or compliance costs, are discussed briefly below. Costs to government represent rule administration activities.

The first private party cost category, start-up costs, represents about one-

third of overall annual compliance costs. Factors affecting the magnitude of these costs include the number of employees having to familiarize themselves with the regulations, both initially (employees in the existing workforce) and over time (new entrants to the affected sectors); the time required to learn the activities that must be undertaken in order to comply; and the hourly compensation of affected employees.

As Table 1 shows, disclosure event costs constitute the greatest portion of overall compliance costs. Factors affecting the magnitude of these costs include the frequencies of regulated events; the time involved in performing required activities, such as providing to the prospective purchaser/lessee the required information and obtaining the required signatures; and the hourly compensation of all involved parties. EPA and HUD also took into account the fact that a number of States have similar requirements pertaining to information transfer regarding potential lead hazards in the sale of residential property. Thus, an allowance was made in the burden estimates for transactions occurring in such States to reflect a certain level of current compliance.

Table 1—Summary of Annual Costs of the Disclosure Rule for Residential Property Transfer

Estimated Annual Costs to Private Parties - Sales Transactions

| | |
|------------------------|----------------|
| Start-up Costs* | \$25.8 million |
| Disclosure Event Costs | 20.2 million |
| Recordkeeping Costs | 0.6 million |
| Materials Costs | 2.8 million |

Total for Sales Transactions:

\$49.4 million

Estimated Annual Costs to Private Parties - Rental Transactions

| | |
|------------------------|----------------|
| Start-up Costs* | \$ 1.1 million |
| Disclosure Event Costs | \$25.6 million |
| Recordkeeping Costs | \$1.9 million |
| Materials Costs | \$3.4 million |

Total for Rental Transactions:

\$32.0 million

Total Estimated Annual Costs to Private Parties:

\$81.4 million

Costs to Government

| | |
|---------------|---------------|
| Low Estimate | \$2.4 million |
| High Estimate | \$4.3 million |

Total Estimated Annual Costs:

| | |
|---------------------------------------------|----------------|
| Based on Low Estimate of Government Costs: | \$83.8 million |
| Based on High Estimate of Government Costs: | \$85.7 million |

* First-year costs annualized at 3 percent rate over 6 years.

Recordkeeping and materials costs account for a relatively modest share of

overall annual costs. Factors affecting the magnitude of these costs include the

number of affected parties per transaction; the frequency of

transactions, the costs of acquiring/duplicating documents, which include the lead hazard information pamphlet and signed acknowledgment forms; and costs to maintain documents.

Additional, indirect costs resulting from actions taken by consumers in response to the information made available by the rule were not quantified, for reasons detailed in Unit VII.E. of this preamble.

To administer the final regulation, resources will be required to conduct a number of activities, including: inspections; violation case management; establishment and maintenance of cooperative agreements; compliance assistance, development of performance measurement criteria; and management.

D. Effect of the Lead-Based Paint Hazard Disclosure Rule for Real Estate Transfers on Small Businesses--Regulatory Flexibility Analysis

EPA and HUD investigated the potential impacts of the rule on small businesses and have prepared a Regulatory Flexibility Analysis (RFA). Although a large number of small establishments may be affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. The RFA is summarized separately in Unit X.B. of this preamble.

E. Assessment of Benefits

The market imperfection that the rule is intended to correct is the lack of information available to prospective home purchasers and lessees concerning lead-based paint hazards in homes they may be considering for purchase or rent. Under the rule, general information about the risks associated with lead-based paint will be provided through the provision of a brochure. When available, information about the presence of or abatement of lead in the specific unit being considered for purchase or rent must also be disclosed (e.g., information concerning previous testing for the presence of lead-based paint, abatement history, etc.). The failure of the marketplace to provide this information or to provide prospective home purchasers and lessees the opportunity to develop such information means that prospective purchasers and lessees might purchase or lease a property, or make pricing or rental payment decisions regarding properties, without understanding possible lead-related health risks or risk management costs accompanying the transaction.

EPA and HUD expect that this rulemaking will generate benefits by giving prospective home purchasers and

lessees access to information that might otherwise have been unavailable (e.g., information pertaining to abatement activities for a specific residence) or that they might have been able to acquire only through their own effort and at some cost. In addition, EPA believes the information will generate health benefits by leading many purchasers and lessees to modify their behavior in a way that will reduce risks from lead-based paint. For example, purchasers could undertake abatement activities subsequent to taking ownership of a dwelling, change household cleaning practices, or request professional assistance when undertaking renovation activities. The rule may also prompt property owners, due to reluctance on the part of prospective purchasers/lessees to select housing containing lead-based paint, to act to reduce lead-related hazards associated with their residential dwellings. Health benefits resulting from such activities are distinguishable from the more direct benefits of the rule, i.e., the value of improved information. Further, in cases where action is taken to remediate a lead-based paint hazard, additional costs would be incurred, and would have to be subtracted from the expected benefits associated with the remediation.

EPA and HUD note that the regulation does not require actions to reduce lead-based paint hazards in residential housing. Thus, the extent to which lead exposure decreases depends upon how transaction participants (i.e., sellers/lessors and prospective purchasers/lessees) value and respond to the additional information.

The RIA details three approaches that are evolving and that can be seen as a starting point in an effort to expand the level of understanding of how benefits from information products can be valued. However, an information base and the associated accepted analytical methods necessary to predict consumer reaction to information products on lead-based paint hazards are not readily available; thus, quantifying the expected benefits of this rule, either in terms of efficiency gains from improved decisionmaking or risk reduction, would be extremely difficult. Given the high level of uncertainty associated with the results from such a quantitative analysis, and given the prescriptive nature of section 1018 of the Act, EPA and HUD believe that the information provided in the qualitative analysis presented in the RIA served to inform decisionmaking.

VIII. Rulemaking Record

A record for this final rule has been established for both EPA and HUD under docket number "OPPTS-62130." The public version of this record for both agencies (which does not contain any information claimed as Confidential Business Information) is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in EPA's TSCA Nonconfidential Information Center (NCIC), Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

The docket contains reference works that EPA and HUD referred to in developing this regulation. In addition, other documents, including the Regulatory Impact Analysis, Information Collection Request, and copies of all comments on the proposed rule, are included in the docket for public review. The draft of the final rule submitted by EPA and HUD to OMB for review prior to the final rule's promulgation will also be contained in the docket.

IX. References

1. Alliance to End Childhood Lead Poisoning, 1991. *Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report*. Washington, DC.
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3. CPSC, 1977. *Notice Reducing Allowable Levels of Lead in Lead-Based Paint*. Federal Register. September 1, 1977: 42 FR 44199.
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5. HUD, 1995. U.S. Department of Housing and Urban Development, Task Force on Lead-Based Paint Hazard Reduction and Financing, *Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing: Final Report*. Washington, DC: HUD-1542-LBP.
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8. Pirkle, 1994. Pirkle, J.L., D.J. Brody, E.W. Gunter, R.A. Kramer, D.C. Paschal,

K.M. Flegal, T.D. Matte, *The Decline in Blood Lead Levels in the United States*. Journal of the American Medical Association, 272(4): 284-291.

X. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this is a "significant regulatory action" because of potential novel legal or policy issues arising out of the new legal mandates this action implements. This action was submitted to OMB for review, and any comments or changes made during that review have been documented in the public record.

In addition, EPA and HUD have prepared a Regulatory Impact Analysis (RIA) in conjunction with their lead information disclosure rule for real estate transfers. EPA and HUD find that the rule will not have an effect on the economy of \$100 million or more, will not result in major increases in costs or prices, and is not anticipated to have significant adverse effects on competition, employment, investment, or productivity in the relevant sectors.

EPA and HUD estimate the overall costs to affected entities to be \$81.4 million and costs to government to range from \$2.4 to \$4.3 million. These estimates include costs for rule familiarization, information disclosure and obtaining required signatures, recordkeeping, materials costs, and government administration costs. EPA and HUD estimate that the provisions of the rule will add about \$2.00 to \$6.00 to the cost of each transaction.

A copy of the RIA is available in the TSCA Public Docket Office for review and public comment. For information on the public docket, see Unit VIII. of this preamble, entitled Rulemaking Record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires Federal agencies to consider whether a regulatory action will have an adverse economic impact on small entities. Section 605(b) requires the agencies to either certify that the regulatory action will not have a significant economic impact on a substantial number of small entities, or prepare a Regulatory Flexibility Analysis. Under the EPA policy that implements the Regulatory Flexibility Act, EPA performs a Regulatory Flexibility Analysis whenever a regulatory action is anticipated to have any economic impact on any small entities, and will

also seek to involve these small entities in the development of the regulatory action to the extent possible. As such, in an effort to identify and characterize the rule's effects on small business, EPA and HUD have prepared a Regulatory Flexibility Analysis. This assessment has been included as part of the RIA and is summarized below.

In preparing the RFA, EPA and HUD first developed an establishment profile for each major sector (SIC 651 and SIC 653). This profile indicated that approximately 75 percent of all establishments in SIC 651 (Real Estate Operators and Lessors) and approximately 73 percent of all establishments in SIC 653 (Real Estate Agents and Managers) fell within the 1 to 4 employee size class. These proportions increased to 90 percent and 87 percent, respectively, when employee size class 1 to 9 was examined.

To measure the cost impacts of the rule on these small establishments, representative or model establishments were designed. These model establishments corresponded to typical establishments in each affected sector, with respect to number of employees and annual transaction volume. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a real estate sales organization, regulatory costs were found to represent from 0.20 to 0.42 percent of labor and overhead costs. In the case of a rental establishment, impacts were slightly higher, ranging from 0.21 to 0.47 percent. An establishment engaged in both activities was projected to sustain impacts of 0.28 to 0.63 percent.

Thus, while a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been

prepared by EPA (EPA ICR No. 1710.02) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460 or by calling (202) 260-2740. The information requirements are not effective until OMB approves them.

The information collection requirements of this rule apply to sellers, lessors, and agents of target housing. Before selling or leasing target housing, the following information collection activities must occur: (1) Disclosure of known lead-based paint and/or lead-based paint hazards; (2) provision of any available records and reports pertaining to lead-based paint in the housing; (3) provision of a federally approved lead hazard information pamphlet; (4) completion and subsequent retention of disclosure and acknowledgment language for 3 years, and (5) provision of a 10-day evaluation opportunity to purchasers before obligation under purchase contracts (this time period can be adjusted or waived by mutual consent).

These requirements will help to: (1) Ensure that purchasers and renters of older housing make informed housing and maintenance decisions before they become obligated under purchase or lease contracts; (2) ensure that all participants in target housing sales and leasing transactions fully understand their rights and obligations under section 1018 and the implementing regulations; (3) document the completion of all disclosure activities by the responsible parties; and (4) provide a record of compliance for use by EPA and HUD enforcement officials. Under the authority of section 1018 of Title X, the information collection requirements of this rule are mandatory for all applicable sales and leasing transactions.

The annual costs to private parties to comply with the requirements of the rule are estimated to be \$81.4 million, with an associated burden of 7.1 million hours. Annual costs may be broken down into two components: Initialization or start-up costs, estimated to be \$26.9 million (annualized at 3 percent over 3 years); and costs for information disclosure and maintenance of records, estimated to be \$54.5 million. Annual burden is estimated to be distributed among 35.1 million responses, averaging 12.2 minutes per response. The number of respondents is estimated to be 15.5 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal

agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Upon OMB approval, EPA will issue a notice in the Federal Register to announce OMB's approval and to make a technical amendment to include a reference to this approval in 40 CFR part 9.

Send comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, Environmental Protection Agency (2136), 401 M St., SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

D. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19 and 50.20(o)(2) of the HUD regulations, the policies and procedures contained in this final rule relate only to information services and are, therefore, categorically excluded from the requirements of the National Environmental Policy Act.

E. HUD's Regulatory Agenda

This rule was listed as Item No. 1517 in HUD's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424), in accordance with Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of

the Department of Housing and Urban Development Act.

F. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA and HUD have assessed the effects of this regulatory action on State, local, and tribal governments, and the private sector. This action is not an "unfunded mandate" as defined by that statute and will not result in the expenditure of \$100 million or more by any State, local, or tribal government, or by the private sector. Nevertheless, EPA and HUD consulted with several State, local, and tribal governments during the development.

A copy of the RIA is available for public review. For information on the public docket, see Unit VIII. of this preamble, entitled Rulemaking Record.

List of Subjects in 24 CFR Part 35

Environmental protection, Grant programs-housing and community development, Hazardous substances, Lead, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead, Recordkeeping and notification requirements.

Dated: February 29, 1996.
Henry Cisneros,
Secretary, Department of Housing and Urban Development.

Dated: February 29, 1996.
Carol M. Browner,
Administrator, Environmental Protection Agency.

Therefore, 24 CFR subtitle A and 40 CFR Chapter I are amended as follows:
24 CFR Subtitle A

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4821-4846 and 4852d.

2. A new subpart H is added to part 35 to read as follows:

Subpart H—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

| Sec. | |
|-------|--------------------------|
| 35.80 | Purpose. |
| 35.82 | Scope and applicability. |
| 35.84 | Effective dates. |
| 35.86 | Definitions. |

| | |
|-------|--------------------------------------------------|
| 35.88 | Disclosure requirements for sellers and lessors. |
| 35.90 | Opportunity to conduct an evaluation. |
| 35.92 | Certification and acknowledgment of disclosure. |
| 35.94 | Agent responsibilities. |
| 35.96 | Enforcement. |
| 35.98 | Impact on State and local requirements. |

Subpart H—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 35.80 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 35.82 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

- (a) Sales of target housing at foreclosure.
- (b) 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 certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.
- (c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.

(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under § 35.88 and where no new information described in § 35.88 has come into the possession of the lessor. For the purposes of this

paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

§ 35.84 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 35.86 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of

the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means 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 free housing means 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 hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or
(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and

in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

(1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and

(2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

§ 35.88 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 35.82. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information

pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records and reports regarding common areas. This requirement also includes records and reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 35.90 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 35.92 Certification and acknowledgment of disclosure.

(a) *Seller requirements.* Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such

records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under section 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by § 35.90(a); or

(ii) Waived the opportunity.

(6) When any agent is involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist in the housing, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When any agent is involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(c) *Retention of certification and acknowledgment information.*

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

§ 35.94 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §§ 35.88, 35.90, and 35.92.

(2) Ensure that the seller or lessor has performed all activities required under §§ 35.88, 35.90, and 35.92, or personally ensure compliance with the requirements of §§ 35.88, 35.90, and 35.92.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 35.96 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with §§ 35.88 (disclosure requirements for sellers and lessors), § 35.90 (opportunity to conduct an evaluation), § 35.92 (certification and acknowledgment of disclosure), or § 35.94 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than \$10,000.

§ 35.98 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint and/or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

40 CFR Chapter I

1. Part 745 is added to read as follows:

PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

Subparts A—E [Reserved]

Subpart F—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Sec.

| | |
|---------|--------------------------------------------------|
| 745.100 | Purpose. |
| 745.101 | Scope and applicability. |
| 745.102 | Effective dates. |
| 745.103 | Definitions. |
| 745.107 | Disclosure requirements for sellers and lessors. |
| 745.110 | Opportunity to conduct an evaluation. |
| 745.113 | Certification and acknowledgment of disclosure. |
| 745.115 | Agent responsibilities. |
| 745.118 | Enforcement. |
| 745.119 | Impact on State and local requirements. |

Authority: 15 U.S.C. 2615, 15 U.S.C. 2689, and 42 U.S.C. 4852d.

Subparts A—E [Reserved]

Subpart F—Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

§ 745.100 Purpose.

This subpart implements the provisions of 42 U.S.C. 4852d, which impose certain requirements on the sale or lease of target housing. Under this subpart, a seller or lessor of target housing shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.

§ 745.101 Scope and applicability.

This subpart applies to all transactions to sell or lease target housing, including subleases, with the exception of the following:

(a) Sales of target housing at foreclosure.

(b) 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 certification program. Until a Federal certification program or federally accredited State certification program is

in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The lessor has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.

(c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.

(d) Renewals of existing leases in target housing in which the lessor has previously disclosed all information required under § 745.107 and where no new information described in § 745.107 has come into the possession of the lessor. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease.

§ 745.102 Effective dates.

The requirements in this subpart take effect in the following manner:

(a) For owners of more than four residential dwellings, the requirements shall take effect on September 6, 1996.

(b) For owners of one to four residential dwellings, the requirements shall take effect on December 6, 1996.

§ 745.103 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

(1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and

(2) The provision of a report explaining the results of the investigation.

Lead-based paint means 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 free housing means 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 hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for

a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

(1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(2) Visual inspection;

(3) Limited wipe sampling or other environmental sampling techniques;

(4) Other activity as may be appropriate; and

(5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

(1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and

(2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

§ 745.107 Disclosure requirements for sellers and lessors.

(a) The following activities shall be completed before the purchaser or lessee is obligated under any contract to purchase or lease target housing that is not otherwise an exempt transaction pursuant to § 745.101. Nothing in this section implies a positive obligation on the seller or lessor to conduct any evaluation or reduction activities.

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled *Protect Your Family From Lead in Your Home* (EPA #747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

(2) The seller or lessor shall disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) The seller or lessor shall disclose to each agent the presence of any known lead-based paint and/or lead-based paint hazards in the target housing being sold or leased and the existence of any available records or reports pertaining to lead-based paint and/or lead-based paint hazards. The seller or lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(4) The seller or lessor shall provide the purchaser or lessee with any records or reports available to the seller or lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being sold or leased. This requirement includes records or reports

regarding common areas. This requirement also includes records or reports regarding other residential dwellings in multifamily target housing, provided that such information is part of an evaluation or reduction of lead-based paint and/or lead-based paint hazards in the target housing as a whole.

(b) If any of the disclosure activities identified in paragraph (a) of this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, the seller or lessor shall complete the required disclosure activities prior to accepting the purchaser's or lessee's offer and allow the purchaser or lessee an opportunity to review the information and possibly amend the offer.

§ 745.110 Opportunity to conduct an evaluation.

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree, in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by so indicating in writing.

§ 745.113 Certification and acknowledgment of disclosure.

(a) *Seller requirements.* Each contract to sell target housing shall include an attachment containing the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement consisting of the following language:

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

(2) A statement by the seller disclosing the presence of known lead-based paint and/or lead-based paint

hazards in the target housing being sold or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The seller shall also provide any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the seller pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the purchaser. If no such records or reports are available, the seller shall so indicate.

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (a)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) A statement by the purchaser that he/she has either:

(i) Received the opportunity to conduct the risk assessment or inspection required by § 745.110(a); or

(ii) Waived the opportunity.

(6) When one or more agents are involved in the transaction to sell target housing on behalf of the seller, a statement that:

(i) The agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(7) The signatures of the sellers, agents, and purchasers certifying to the accuracy of their statements to the best of their knowledge, along with the dates of signature.

(b) *Lessor requirements.* Each contract to lease target housing shall include, as an attachment or within the contract, the following elements, in the language of the contract (e.g., English, Spanish):

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

(2) A statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint

hazards in the target housing being leased or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards. The lessor shall also disclose any additional information available concerning the known lead-based paint and/or lead-based paint hazards, such as the basis for the determination that lead-based paint and/or lead-based paint hazards exist, the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.

(3) A list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that have been provided to the lessee. If no such records or reports are available, the lessor shall so indicate.

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (b)(3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2696.

(5) When one or more agents are involved in the transaction to lease target housing on behalf of the lessor, a statement that:

(i) The agent has informed the lessor of the lessors obligations under 42 U.S.C. 4852d; and

(ii) The agent is aware of his/her duty to ensure compliance with the requirements of this subpart.

(6) The signatures of the lessors, agents, and lessees, certifying to the accuracy of their statements, to the best of their knowledge, along with the dates of signature.

(c) Retention of Certification and Acknowledgment Information.

(1) The seller, and any agent, shall retain a copy of the completed attachment required under paragraph (a) of this section for no less than 3 years from the completion date of the sale. The lessor, and any agent, shall retain a copy of the completed attachment or lease contract containing the

information required under paragraph (b) of this section for no less than 3 years from the commencement of the leasing period.

(2) This recordkeeping requirement is not intended to place any limitations on civil suits under the Act, or to otherwise affect a lessee's or purchaser's rights under the civil penalty provisions of 42 U.S.C. 4852d(b)(3).

(d) The seller, lessor, or agent shall not be responsible for the failure of a purchaser's or lessee's legal representative (where such representative receives all compensation from the purchaser or lessee) to transmit disclosure materials to the purchaser or lessee, provided that all required parties have completed and signed the necessary certification and acknowledgment language required under paragraphs (a) and (b) of this section.

§ 745.115 Agent responsibilities.

(a) Each agent shall ensure compliance with all requirements of this subpart. To ensure compliance, the agent shall:

(1) Inform the seller or lessor of his/her obligations under §§745.107, 745.110, and 745.113.

(2) Ensure that the seller or lessor has performed all activities required under §§ 745.107, 745.110, and 745.113, or personally ensure compliance with the requirements of §§ 745.107, 745.110, and 745.113.

(b) If the agent has complied with paragraph (a)(1) of this section, the agent shall not be liable for the failure to disclose to a purchaser or lessee the presence of lead-based paint and/or lead-based paint hazards known by a seller or lessor but not disclosed to the agent.

§ 745.118 Enforcement.

(a) Any person who knowingly fails to comply with any provision of this subpart shall be subject to civil monetary penalties in accordance with

the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

(b) The Secretary is authorized to take such action as may be necessary to enjoin any violation of this subpart in the appropriate Federal district court.

(c) Any person who knowingly violates the provisions of this subpart shall be jointly and severally liable to the purchaser or lessee in an amount equal to 3 times the amount of damages incurred by such individual.

(d) In any civil action brought for damages pursuant to 42 U.S.C. 4852d(b)(3), the appropriate court may award court costs to the party commencing such action, together with reasonable attorney fees and any expert witness fees, if that party prevails.

(e) Failure or refusal to comply with § 745.107 (disclosure requirements for sellers and lessors), § 745.110 (opportunity to conduct an evaluation), § 745.113 (certification and acknowledgment of disclosure), or § 745.115 (agent responsibilities) is a violation of 42 U.S.C. 4852d(b)(5) and of TSCA section 409 (15 U.S.C. 2689).

(f) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation. For purposes of enforcing this subpart, the penalty for each violation applicable under 15 U.S.C. 2615 shall be not more than \$10,000.

§ 745.119 Impact on State and local requirements.

Nothing in this subpart shall relieve a seller, lessor, or agent from any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing notice or disclosure of known lead-based paint or lead-based paint hazards. Neither HUD nor EPA assumes any responsibility for ensuring compliance with such State or local requirements.

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