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TITLE 40--PROTECTION OF ENVIRONMENT

CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY (CONTINUED)

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

STRUCTURES--Table of Contents

**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.

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.

Sec. 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

Sec. 745.107 and where no new information described in Sec. 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.

Sec. 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.

Sec. 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.

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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:

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(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.

Sec. 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

Sec. 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.

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(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.

Effective Date Note: At 61 FR 9087, March 6, 1996, Sec. 745.107 was

added. This section contains information collection requirements and

will not become effective until approval has been given by the Office of

Management and Budget.

Sec. 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) Not withstanding paragraph (a) of this section, a purchaser may

waive the opportunity to conduct the risk assessment or inspection by so

indicating in writing.

Effective Date Note: At 61 FR 9087, March 6, 1996, Sec. 745.110 was

added. This section contains information collection requirements and

will not become effective until approval has been given by the Office of

Management and Budget.

Sec. 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 Sec. 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

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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.

Effective Date Note: At 61 FR 9087, March 6, 1996, Sec. 745.113 was

added. This section contains information collection requirements and

will not become effective until approval has been given by the Office of

Management and Budget.

Sec. 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

Secs. 745.107, 745.110, and 745.113.

(2) Ensure that the seller or lessor has performed all activities

required under Secs. 745.107, 745.110, and 745.113, or personally ensure

compliance with the

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requirements of Secs. 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.

Effective Date Note: At 61 FR 9088, March 6, 1996, Sec. 745.115 was

added. This section contains information collection requirements and

will not become effective until approval has been given by the Office of

Management and Budget.

Sec. 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 Sec. 745.107 (disclosure

requirements for sellers and lessors), Sec. 745.110 (opportunity to

conduct an evaluation), Sec. 745.113 (certification and acknowledgment

of disclosure), or Sec. 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 not be more than $11,000 for all

violations occurring after July 28, 1997; all violations occurring on or

prior to that date are subject to a penalty not more than $10,000.

[61 FR 9085, Mar. 6, 1996, as amended at 62 FR 35041, June 27, 1997]

Effective Date Note: At 62 FR 35041, June 27, 1997, Sec. 745.118 was

amended by revising paragraph (**f**), effective July 28, 1997. For the

convenience of the user, the superseded text is set forth as follows:

Sec. 745.118 Enforcement.

\* \* \* \* \*

(**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.

Sec. 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.