



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 15 2018

**MEMORANDUM**

**SUBJECT:** ICR 1710.08 Renewal, Residential Lead-Based Paint Hazard Disclosure Requirements

**FROM:** *Brian Symmes*  
Brian Symmes, Acting Division Director  
National Program Chemicals Division

**TO:** Angela Hoffman, Director  
Regulatory Coordination Staff  
Office of Chemical Safety and Pollution Prevention

The current Residential Lead-Based Paint Hazard Disclosure Requirements Information Collection Request expires on October 31, 2018. As part of the ICR renewal process, the EPA solicited public comment on the proposed information collection including regulatory compliance and cost burden. This ICR, EPA ICR No. 1710.08, OMB Control No. 2070-0151 was open for public comment from December 20, 2017 to February 20, 2018. During the comment period the National Association of Realtors polled their membership and submitted one comment, which summarized the membership's opinion of the regulation.

Section 1018 of the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §4852d) requires that sellers and lessors of most residential housing built before 1978 disclose known information on the presence of lead-based paint and lead-based paint hazards, and provide an EPA-approved pamphlet to purchasers and renters before selling or leasing the housing. Sellers of pre-1978 housing are also required to provide prospective purchasers with ten days to conduct an inspection or risk assessment for lead-based paint hazards before obligating purchasers under contracts to purchase the property. The rule does not apply to rental housing that has been found to be free of lead-based paint, zero-bedroom dwellings, housing for the elderly, housing for the handicapped, or short-term leases. The affected parties and the information collection-related requirements related to each are described below:

1. Sellers of pre-1978 housing must attach certain notification and disclosure language to their sales/leasing contracts. The attachment lists the information disclosed and a statement of compliance by the seller, purchaser and any agents involved in the transaction.
2. Lessors of pre-1978 housing must attach notification and disclosure language to their leasing contracts. The attachment, which lists the information disclosed and a statement of compliance with all elements of the rule, must be signed by the lessor, lessee and any agents acting on their behalf. Agents and lessors must retain the information for three years from the completion of the transaction.
3. Agents acting on behalf of sellers or lessors are specifically required by Section 1018 to comply with the disclosure regulations described above.

Comments submitted by NAR covered four topics of concern. First, NAR believes that since the last five years the housing market has been considered a seller's market, a buyer's leverage as it relates to inspections and risk assessments were undermined. The agency has no opinion on the status of the real estate market. However, the EPA does not believe this would require an adjustment to its regulatory burden calculations or conclusions.

Second, NAR affirmed that their membership believes that the regulatory compliance cost is minimal; however, NAR recommends that the EPA consider providing additional training opportunities and resources to the real estate community about the law, regulation, and compliance requirements. Although the EPA does not currently offer regulatory compliance training to the real estate community for the Residential Lead-Based Paint Hazard Disclosure Regulation, the agency does offer online resources that assist potential home buyers, renters, home lessors and sellers. These online resources (available at [www.epa.gov/lead/real-estate-disclosure#main-content](http://www.epa.gov/lead/real-estate-disclosure#main-content)) include a copy of the entire regulation, Fact Sheets, Q & A, and Interpretive Guidance.

Third, NAR stated that their membership puts a high value on the ability to provide information through electronic reporting and recordkeeping and encourages the EPA to develop compliance methods that can be completed in a digital or electronic format. In 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act ("E-SIGN") (15 U.S.C. §7001). E-SIGN prohibits denying legal effect or validity to electronic signatures or records solely because of their electronic form. The EPA and the U.S. Department of Housing and Urban Development are concerned about technology access, accuracy, and record integrity issues for purchasers and lessees. Sellers, lessors and their agents should ensure that the use of electronic technology does not inadvertently deny full and complete access to disclosure materials to any purchasers or lessees. In order to ensure successful electronic disclosure, the EPA recommends that organizations interested in electronic reporting and recordkeeping consult the requirements of E-SIGN as well as those of the Disclosure Rule and any other applicable state or federal requirements. It is important to note that E-SIGN provides special consumer protections where a pre-existing statute requires information be provided to a consumer in writing (15 U.S.C. §7001(c)(1)). Section 1018 is such a statute (42 U.S.C. §4852d(a)(1)-(4)).

As a result, the consumer protection requirements of E-SIGN must be met when lead disclosure is performed electronically. For example, these protections include, but are not limited to, the requirement that the purchaser or lessee, prior to consenting to receive disclosure electronically, receive a clear and conspicuous statement of the:

- Right to receive paper documents;
- Procedures to withdraw consent and any consequences of such withdrawal; and
- Hardware and software requirements for accessing and retaining electronic records.

The purchaser or lessee must then provide affirmative consent to using electronic disclosure; this consent must be made electronically in a manner that reasonably demonstrates that they can access the electronic disclosure records. Interested parties may refer to E-SIGN, especially to 15 U.S.C. §7001(c)(1), for more information on these requirements. In addition, please note that the Disclosure Rule requires that disclosure certification and acknowledgment information be retained (24 CFR 35.92(c); 40 CFR 745.113(c)).

Fourth, NAR states that many of their members commented that they believed the rule is somewhat antiquated and out-of-date because most of their potential buyers do not ask to test for lead paint and that most of the housing in their market areas were built after 1978. The EPA disagrees with this

anecdotal perspective. Given survey estimates that 37.1 million housing units in the United States contain lead-based paint, the Residential Lead-Based Paint Hazard Disclosure regulations are still very relevant in the fight to eliminate childhood lead poisoning. As Administrator Pruitt has stated “Lead poisoning is an insidious menace that robs our children of their intellect and their future. For decades, efforts have been underway on many fronts to reduce and respond to lead exposure and contamination.”

In closing, after taking all submitted information into consideration, the EPA found no additional data that would compel a revision to this ICR. Finally, the EPA appreciates NAR’s perspective and their participation in this ICR renewal public comment exercise.

If you have any questions about the ICR renewal package, please contact Michelle Price at (202) 566-0744 or [price.michelle@epa.gov](mailto:price.michelle@epa.gov).



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