

105 CMR 651.000: PROGRAM FOR AIR TESTING AND REMEDIAL MEASURES FOR RESIDENTIAL DWELLINGS INSULATED WITH UREA FORMALDEHYDE FOAM INSULATION (UFFI).

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651.001: Purpose

The purpose of 105 CMR 651.00 is to implement St. 1985, c. 728, which provides for the creation of a program for testing the air of residential dwellings containing UFFI and for payment of the reasonable cost of remedial relief, including removal of UFFI, in certain circumstances, and for certain disclosures in connection with the sale of dwellings containing UFFI.

651.002: Definitions

For the purpose of 105 CMR 651.000, the following terms shall have the following meanings:

Air Testing means testing of the ambient air in residential dwellings in accordance with the Department's specifications.

Commissioner means the Commissioner of Public Health.

Component ingredients of UFFI means urea formaldehyde resin and foaming agent.

Department means the Massachusetts Department of Public Health.

Distributor means any person, including any person who would otherwise be considered a dealer or installer, who sold UFFI or component ingredients of UFFI at wholesale.

Industry member means an installer, distributor, or manufacturer of UFFI or its component ingredients, or its attorney or other authorized representative.

Installer means any person who made a retail sale of UFFI.

Manufacturer means any person who manufactured UFFI or component ingredients of UFFI for distribution or sale, including importers for resale. In the case of UFFI or component ingredients of UFFI distributed or sold under a name other than that of the actual manufacturer, the term "manufacturer" also includes any person under whose name the UFFI was distributed or sold.

Repurchase regulations means the regulations promulgated by the Department entitled Repurchase of Urea-Formaldehyde Foamed-In-Place Insulation (UFFI), 105 CMR 650.222.

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Residential dwelling or dwelling means every building or shelter, including but not limited to rooming houses and temporary housing, used or intended to be used for living and sleeping purposes by human beings.

Seller means any person offering for sale a residential dwelling by any means, including, without limitation, advertising in newspapers or otherwise, posting a sign or signs or a notice or notices on the premises or elsewhere; listing with a broker or any other means of public offering.

UFFI means urea formaldehyde foam insulation.

UFFI Trust Fund means the fund created from contributions by industry members to pay for the UFFI Program, including air testing and the reasonable cost of remedial relief for dwellings determined to be eligible for such measures.

651.003: Air Testing

(1) Primary Testing. The primary test shall be conducted by means of passive dosimetry, with analysis by a chronotropic acid method. Dosimeters shall be approved and distributed by the Department. Sampling and analysis shall be conducted in accordance with the Department's specifications as set forth in a document entitled Protocol for Primary Testing of Air in Massachusetts Dwellings Insulated with Urea Formaldehyde Foam, a copy of which shall be available upon request from the Department. Analysis of the dosimeter or set of dosimeters shall be performed by a laboratory accredited by the American Industrial Hygiene Association. The Department shall pay the costs of primary testing from funds available in the UFFI Trust Fund.

(2) Retesting.

(a) All dwellings with passive dosimeter results greater than 0.075 parts per million (ppm) shall be retested using the secondary test in accordance with 105 CMR 651.003(3). In addition, the Department may require retesting of a dwelling at its discretion.

(b) Any person who elects to have a secondary test conducted in lieu of a primary test, or when primary test results are 0.075 or less, may do so at his or her own expense, and shall not be reimbursed by the Department.

(3) Secondary Testing (Retesting). The secondary test shall be conducted by means of an impinger-chronotropic acid method based on a modification of the NIOSH Formaldehyde Test Method 3500. Air sampling and analysis shall be conducted in accordance with the Department's specifications as set forth in a document entitled Protocol for Secondary Testing of Air in Massachusetts Dwellings Insulated with Urea Formaldehyde Foam, a copy of which shall be available upon request from the Department. For secondary testing performed either at the Department's discretion, or where primary test results fell within the retest range, the Department shall pay the costs of such testing from funds available in the UFFI Trust Fund.

(4) Laboratory/Tester Certification for Primary and Secondary Testing. Sample collection for secondary testing shall be conducted only by a certified industrial hygienist or an individual supervised by a certified industrial hygienist. Sample analysis for both primary and secondary testing shall be conducted only by a laboratory accredited by the American Industrial Hygiene Association.

(5) Multiple Tests. In the event that both primary and secondary testing are conducted in the same dwelling, only the secondary test results shall be considered valid for purposes of compliance with St. 1985, c. 728.

(6) Use of Air Testing Results. Once a dwelling has been tested in accordance with the Department's regulations, that dwelling need not be retested in the event of a subsequent sale or rental, provided that the earlier air testing results are disclosed.

651.004: Application by Owner for Air Testing, Remedial Measures and/or Reimbursement for Reasonable Cost of Removal of UFFI

An owner of a dwelling located in Massachusetts and insulated with UFFI before December 31, 1980 may apply for air testing, remedial measures and/or reimbursement for removal of UFFI by completing and signing under the penalties of perjury an application containing the following:

- (1) A statement by the applicant stating:
 - (a) the address of the dwelling;
 - (b) that the applicant is the owner of the dwelling, and the date the applicant became an owner;
 - (c) that UFFI was installed in the dwelling, the date of installation, if known, and the name and address of the person who originally purchased the UFFI, if known;
 - (d) the applicant's present mailing address and daytime telephone number;
 - (e) the names and addresses, if known, of the manufacturer, distributor and installer of the UFFI; and
 - (f) a copy of all documents in the applicant's possession or control relating to the purchase and installation of the UFFI, including all contracts, correspondence and invoices between the applicant, or between the purchaser of the UFFI, and the installer, distributor or manufacturer of the UFFI.

- (2) For those applicants seeking air testing, the application shall also contain a request by the applicant that the dwelling be tested and assessed for eligibility to receive remedial measures.

- (3) For those applicants seeking remedial relief based on adverse health effects, the application shall also contain:
 - (a) a statement signed under the penalties of perjury from each occupant who suffered adverse health effects, or from the person legally responsible for such occupant, containing:
 1. the name of the person who suffered adverse health effects;
 2. certification that to the best of his or her knowledge the occupant suffered adverse health effects from the presence of UFFI in the dwelling;
 3. the address of the dwelling where the adverse health effects occurred and the name of the owner of the dwelling at the time they occurred;
 4. a description of the adverse health effects and the time when they were first noted;
 5. a description of how the adverse health effects relate to occupancy of the dwelling; and
 6. documentation of evaluation or treatment by a physician for the adverse health effects, including relevant medical records.

- (4) For those applicants seeking reimbursement for the reasonable cost of removal of UFFI completed prior to July 1, 1986, the application shall also contain:
 - (a) from all such applicants:
 1. the date the UFFI was removed;
 2. the cost of removal and copies of all contracts, canceled checks and other relevant documents verifying removal;
 3. a description of the removal procedure used and of any structural work required for removal;
 4. the name and address of the removal contractor;
 5. the cost of installing new insulation after removal of the UFFI;
 6. a description of the dwelling, including:
 - a. the size of the dwelling (square feet and number of stories);
 - b. the type of exterior finish;
 - c. the location(s) of the removed UFFI; and
 7. a statement signed under the penalties of perjury that:
 - a. the applicant has not received and does not expect to receive payment for the cost of removal of the UFFI from any other source; or

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- b. the applicant has received or expects to receive partial payment for the cost of removal, in which case the applicant shall state the amount received or expected and the circumstances of the partial payment.
- (b) All applicants seeking reimbursement for the reasonable cost of removal of UFFI based on adverse health effects shall also provide the information required in 105 CMR 651.004(3).
- (c) All applicants seeking reimbursement for the reasonable cost of removal of UFFI based on air test results shall also provide:
 - 1. a description of the test method and protocol used;
 - 2. a report of the location of samples and the date of testing and the formaldehyde levels measured;
 - 3. the name and address of the testing company;
 - 4. if recorded, the indoor and outdoor temperature and humidity measurements at the time of the test.
- (d) All applicants seeking reimbursement for the reasonable cost of removal of UFFI based on economic necessity shall also provide:
 - 1. a brief description of the economic conditions which necessitated removal; and
 - 2. copies of all documents which verify the economic necessity of removal, such as statements from banks, realtors or prospective buyers documenting:
 - a. the inability to secure a mortgage;
 - b. the inability to secure a buyer;
 - c. that without the removal of UFFI, the dwelling would have sold at substantially less than fair market value; or
 - d. any other valid economic reason for removal.

651.005: Application by Former Owner for Reimbursement for Reasonable Cost of Removal of UFFI

A former owner of a dwelling located in Massachusetts and insulated with UFFI before December 31, 1980 who removed all or part of the UFFI may apply for reimbursement of the reasonable cost of removal by completing, and signing under the penalties of perjury, an application containing the following:

- (1) For all applicants, the same information required of an owner pursuant to 105 CMR 651.004(1) and (4)(a), except that the applicant shall state that he or she is a former owner of the dwelling;
- (2) For those applicants seeking reimbursement for removal of UFFI based on adverse health effects, the same information required of an owner pursuant to 105 CMR 651.004(3).
- (3) For those applicants seeking reimbursement for removal of UFFI based on air test results, the same information required of an owner pursuant to 105 CMR 651.004(4)(c).
- (4) For those applicants seeking reimbursement for removal of UFFI based on economic necessity, the same information required of an owner pursuant to 105 CMR 651.004(4)(d).

651.006: Waiver of Rights and Assignment of Claims

Any person or entity that obtains payment for relief from the UFFI Trust Fund shall, as a condition of such payment:

- (1) Waive all private rights of action against industry members, including actions for damage to health if the cause or consequence of such damage was reasonably discoverable at the time payment was received; and
- (2) Assign to the Department all claims under the repurchase regulations against industry members who have not contributed a reasonable amount, as determined by the Commissioner of the Department, to the UFFI Trust Fund. Filing an application for, or obtaining, air testing by the Department shall not constitute a waiver of any private rights of action or an assignment of any claims to the Department.

651.007: Processing of Applications Requesting Air Testing

The Department shall process all applications to the UFFI Program as expeditiously as possible.

(1) Insofar as possible, the Department shall process applications in the numerical order assigned to each application at the time of receipt. Any application previously received and assigned a number pursuant to the repurchase regulations shall retain its number, provided that the applicant fills out a new application form and provides all relevant information pursuant to 105 CMR 651.004 or 651.005 that has not been previously provided.

(a) The Department may process any application out of numerical order based on hardship or special circumstances.

(b) Incomplete applications shall be returned to the applicants by the Department with a request that they be completed. The Department may at its discretion assign higher numbers to such applications.

(2) The Department shall provide, between the months of April through October inclusive, a set of dosimeters for each dwelling unit for which air testing has been applied for, including instructions to the applicant for use of the dosimeters and where to return the dosimeters after air sampling has been completed.

(3) For dwellings in which a secondary test is required pursuant to 105 CMR 651.003(2)(a), the Department, or its agents, shall schedule sample collection and analysis after consultation with the applicant.

(a) Applicants who are placing their homes on the market for sale and who seek air testing between the months of November through March inclusive shall be provided with an appointment for a secondary test pursuant to 105 CMR 651.003(2)(a). In addition to the routine home preparation required for secondary testing, the owner shall maintain the interior temperature at 70°F or above and the interior humidity at 50% or above for at least 24 hours prior to testing.

(b) Applicants who elect to have a secondary test conducted at their own expense pursuant to 105 CMR 651.003(2)(b) shall be responsible for the scheduling of such sampling and analysis. Such testing shall be conducted as specified in 105 CMR 651.003(4).

(4) Results of the sample analysis for all testing conducted by the Department shall be provided to the Department by the accredited laboratory that conducted the analysis. The Department shall then provide the applicant with a written statement of test results.

651.008: Applicants Requesting Remedial Measures and/or Reimbursement for Reasonable Cost of Removal of UFFI

(1) Applications Based on Air Test Results. When air testing conducted in accordance with 105 CMR 651.003, or conducted prior to July 1, 1986 by a laboratory using a reasonable test method, shows the level of formaldehyde in any part of the dwelling to be greater than 0.10 ppm and the applicant has requested remedial measures or payment for the reasonable cost of removal of UFFI, the Department shall approve the application, shall so notify the applicant in writing, and shall arrange for the removal of UFFI or for other remedial relief in accordance with 105 CMR 651.009, or arrange for reimbursement of the reasonable cost of a prior removal of UFFI pursuant to 105 CMR 651.009(8).

(2) Applications Based on Adverse Health Effects. Applications requesting remedial measures or reimbursement for the reasonable cost of removal of UFFI because an occupant of a dwelling has suffered adverse health effects caused by the presence of UFFI shall be reviewed by the panel in accordance with the following:

(a) The applicant's file shall be reviewed at a meeting of the panel. If any member of the panel desires additional information to render a decision, the Department shall so notify the applicant in writing and shall specify the necessary information. The applicant shall provide the information within 30 days of the date of receipt of the notice, after which time the panel shall convene to review the application.

(b) The review by the panel shall be confined to the applicant's written file, and no live testimony shall be taken.

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(c) The panel shall attempt to reach consensus as to whether or not the application is to be approved or denied. If consensus is not possible, the panel shall render a decision by majority vote.

(d) Adverse health effects shall be deemed to have been demonstrated if the panel concludes that:

1. an occupant, after exposure to UFFI in the dwelling in question, has experienced health effects of a type which may occur in people exposed to formaldehyde or UFFI, and has presented sufficient evidence of medical evaluation or treatment relative to such health effects, and there is no objection from a majority of the panel; or
2. an occupant presents evidence of medical evaluation or treatment for health effects which his or her physician reasonably believes are related to exposure to UFFI in the dwelling in question, and there is no objection from a majority of the panel.

(e) If the panel concludes that adverse health effects related to UFFI have been demonstrated, it shall approve the application and the Department shall so notify the applicant in writing and shall arrange for the removal of UFFI or other remedial relief pursuant to 105 CMR 651.009, or arrange for reimbursement of the reasonable cost of a prior removal of UFFI pursuant to 105 CMR 651.009(8).

(f) If the panel concludes that adverse health effects related to UFFI have not been demonstrated, the Department shall so notify the applicant in writing and shall at the same time notify the applicant of his or her right to request a hearing before the panel. The letter of denial shall provide an explanation of the grounds upon which the application was denied sufficient to give the applicant a reasonable opportunity to prepare and present evidence and argument at the hearing, and the time within which such hearing must be requested.

1. An applicant shall request a hearing by filing a request for hearing with the Department within 21 days after receipt of the notice of a right to request a hearing. If the applicant does not request a hearing within this time limit, the application shall be denied.
2. If a request for hearing is timely filed, the Department shall schedule a hearing and shall mail a notice of hearing to the applicant. The hearing shall take place not less than 15 days from the mailing date of the notice of hearing.
3. Hearings shall be conducted according to the Standard Adjudicatory Rules of Practice and Procedure, Informal Rules, 801 CMR 1.02. The presiding officer shall be either a member of the panel chosen by it or such other person as the panel shall designate. All members of the panel shall be present at any hearing.
4. At the hearing, the applicant may present any evidence bearing on the alleged adverse health effects and their relationship to UFFI, including oral testimony, expert witnesses, and documentary evidence.
5. If after the hearing the panel again concludes that adverse health effects have not been demonstrated, the panel's decision shall be a final agency decision and shall be reviewable pursuant to M.G.L. c. 30A, § 14.

(3) Applications Based on Economic Necessity of Removal. Applications requesting reimbursement for the reasonable cost of removal of UFFI prior to July 1, 1986 because of economic necessity as defined in 105 CMR 651.004(4)(d) shall be reviewed by the Department in accordance with the following:

- (a) The applicant's file shall be reviewed by the Department. If the Department desires additional information to render a decision, the Department shall so notify the applicant in writing and shall specify the necessary information. The applicant shall provide the information within 30 days of receipt of the notice, after which time the Department shall review the application.
- (b) The review by the Department shall be confined to the applicant's written file, and no live testimony shall be taken.
- (c) If the Department concludes that the UFFI was removed because of economic necessity, it shall approve the application and arrange for reimbursement of the reasonable cost of the prior removal of UFFI pursuant to 105 CMR 651.009(8).

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(d) If the Department concludes that the UFFI was not removed because of economic necessity, it shall so notify the applicant in writing and shall at the same time notify the applicant of his or her right to request a hearing before a hearing officer designated by the Commissioner. The letter of denial shall provide an explanation of the grounds upon which the application was denied sufficient to give the applicant a reasonable opportunity to prepare and present evidence and argument at the hearing, and the time within which such hearing must be requested.

(e) The hearing shall be scheduled and conducted in the same manner as the adverse health effect hearings pursuant to 105 CMR 651.008(2)(f)1. through 5., except that a hearing officer will preside and the evidence that may be presented shall bear on the economic necessity of removal of the UFFI.

651.009: Removal of UFFI and Payment for the Reasonable Cost of Removal

The Department shall reimburse from available funds all of the reasonable costs for the removal of UFFI or the installation of an HRV, as appropriate, to all persons who are found eligible for such payment in accordance with 105 CMR 651.000.

(1) Reasonable Cost of Removal. Reasonable cost of removal shall include all labor and materials required by the UFFI removal specifications as set forth in the Massachusetts Department of Public Health's *Training Manual on Corrective Measures for Homes Insulated with Urea Formaldehyde Foam Insulation*, a copy of which is available at the Department, and shall include the cost of any required building permit. Reasonable cost also shall include the following:

- (a) the cost of air testing conducted by a laboratory using a reasonable test method for removals completed before July 1, 1986 not to exceed \$250.00;
- (b) the cost of changing the exterior siding to a different kind of siding if the cost of new siding is less than replacing the original;
- (c) the cost of painting new exterior wooden siding with a primer and one finish coat of paint;
- (d) the cost of finishing interior trim and walls with a primer and one coat of paint;
- (e) the cost of reinsulation, not to exceed 75¢ per square foot; and
- (f) the amount of \$5.00 per square foot of exterior wall surface for applicants who removed UFFI themselves.

Reasonable cost of removal shall not include:

- (g) the repair of pre-existing structural defects or structural alterations needed to meet the current Massachusetts building code;
- (h) upgrading of exterior siding material where the cost is greater than the cost of reinstalling the original type of siding;
- (i) interest incurred on loans for removal costs;
- (j) damage to landscaping or structure due to UFFI removal;
- (k) restoration, residing or refinishing portions of the dwelling not directly involved in the removal process unless these existing surfaces cannot be matched by exterior siding presently available;
- (l) relocation of occupants or their possessions during removal;
- (m) replacement of gutter and downspouts unless made necessary because of the removal process; and
- (n) the provision or installation of a separate vapor barrier such as "Tyvek" or other products used for a similar purpose.

(2) Reasonable Cost of HRV. Reasonable cost of the installation of an HRV in masonry homes shall include the cost of design and all labor and materials required by the specifications set forth in the Massachusetts Department of Public Health's *Training Manual on Corrective Measures for Homes Insulated with Urea Formaldehyde Foam Insulation*.

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(3) Remedial Measures in Multi-Unit Dwellings.

- (a) In any multi-unit dwelling of three units or less, in which any unit or units is eligible for removal or the installation of an HRV, remedial measures shall be provided for the entire building.
- (b) In any multi-unit dwelling containing more than three units, remedial measures shall mean:
 - 1. removal of UFFI from the entire exterior wall or walls of the building which comprise the eligible unit; or
 - 2. installation of an HRV in the eligible unit, whichever in the Department's discretion is more appropriate.

(4) Initiating Removal Work.

- (a) Upon receipt of notification of eligibility for reimbursement for removal of UFFI the owner shall obtain and provide to the Department at least two estimates for removal and restoration from contractors certified by the Department as removal contractors pursuant to 105 CMR 651.009(6). The estimates shall specify:
 - 1. a detailed description of the work to be done;
 - 2. a detailed description and itemized costs of
 - a. reimbursable materials and/or labor
 - b. non-reimbursable materials and/or labor;
 - 3. the name and address of the contractor submitting the estimate; and
 - 4. the expected duration of the removal/restoration project.
- (b) The Department shall review the estimates provided by the owner, and approve the one that, in the Department's discretion, is the most suitable. If the Department finds that none of the estimates is suitable, the Department may require the owner to seek additional estimates.
- (c) Upon approval by the Department of an estimate by a removal contractor, the owner shall enter into a contract with that contractor. The Department shall issue a check made out to the owner and the approved contractor in the amount of 33% of the estimated reasonable cost of removal or of other remedial relief as defined in 105 CMR 651.009(1) and (2).

(5) Inspections During Removal.

- (a) The owner shall inform the Department of the commencement of the removal process.
- (b) Department staff may make on-site inspections during the removal process to ensure quality workmanship and compliance with removal specifications.

(6) Approval of Contractors for Removal.

- (a) Removals conducted prior to July 1, 1986 shall not be subject to contractor approval specifications as set forth below.
- (b) Contractors seeking to conduct UFFI removals funded by the UFFI Trust Fund shall:
 - 1. Attend the Department training program on UFFI removal, and pass the examination given.
 - a. A certificate of attendance and Department approval shall be given to each contractor who completes the training program and passes the examination.
 - b. UFFI removal training programs shall be held periodically.
 - c. The Department may require contractors to participate in refresher courses as it deems necessary.
 - d. The Department's approval may be denied or withdrawn if three or more valid complaints are received, or if the contractor does not comply with the Department's removal specifications.
 - 2. Provide the Department with verification of appropriate liability insurance.
- (c) At least one trained supervisor must directly supervise UFFI removal and must be on the premises during all phases of removal.

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(7) Completion of Remedial Measures.

- (a) Upon completion of the removal and restoration work, or of the installation of an HRV, the contractor shall present to the owner an itemized final bill, together with either a signed certificate of removal of UFFI or a signed certificate of installation of an HRV. The owner shall notify the Department that the work has been completed.
- (b) Upon receiving notice from the owner that the work has been completed, and, at the Department's discretion, upon satisfactory inspection of the completed work by the Department, the Department shall send the owner a release to be signed by the owner in the presence of any witness, and the witness shall also sign the release. The owner shall send the original, executed release and an original, itemized final bill to the Department, together with a copy of the certificate of removal of UFFI or certificate of installation of an HRV, whichever is appropriate.
- (c) Upon receipt of the original executed release, the original, itemized final bill and a copy of the appropriate certificate, the Department shall issue a check from available funds made out to the owner and the approved contractor for the balance of the reasonable cost of removal or other remedial relief. The release executed by the owner shall become effective upon endorsement by the owner of the Department's check.

(8) Payment for Prior Removals. Upon approval by the Department of an application for reimbursement of the reasonable cost of removal of UFFI prior to July 1, 1986, the Department shall issue a check from available funds made out to the owner who paid for the prior removal, so long as that owner has not previously received payment for such removal from any other source.

(9) Payment When Owner Has Commenced A Lawsuit Against An Industry Member. Payment to an owner who is otherwise eligible for reimbursement for the reasonable cost of removal or other remedial relief, but who has commenced a lawsuit against one or more UFFI industry members to recover damages caused by UFFI, shall be denied or reduced as follows:

- (a) If the lawsuit is tried to conclusion and a judicial decision or jury verdict is reached, then there shall be no payment made to the owner, regardless of the outcome of the trial or any subsequent appeal.
- (b) If the owner enters into a settlement agreement with the industry member or members for any amount, the Department shall pay the owner from available funds the reasonable cost of removal or of other remedial relief, less ½ of the settlement amount; provided, however, that the owner has not released his or her repurchase rights under the repurchase regulations against an industry member who has failed to make a reasonable contribution to the UFFI Trust Fund.

651.010: Obligation of Seller or Landlord to Determine Presence of UFFI

A seller or landlord of a residential dwelling shall take reasonable steps to determine whether UFFI is present in the dwelling. A landlord shall make this determination on or before February 1, 1987. Reasonable steps shall consist of the following:

- (1) For dwellings purchased before January 1, 1970 and which have not had insulation installed since January 1, 1970:
 - (a) The seller or landlord shall examine or cause to be examined all records in his or her possession, custody or control relating to the purchase, construction, and/or insulation of the dwelling to determine whether UFFI was ever installed in the dwelling.

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(2) For dwellings purchased on or after January 1, 1970:

(a) The seller or landlord shall examine or cause to be examined all records in his or her possession, custody or control relating to the purchase, construction, and/or insulation of the dwelling to determine whether UFFI was ever installed in the dwelling. If the seller or landlord locates among such records documentation that the insulation in the dwelling is not UFFI, or a written statement by a former owner, signed during the former owner's period of ownership, to the effect that, after having taken reasonable steps as defined by the Department of Public Health to determine whether UFFI is present in the dwelling, to the best of the former owner's knowledge UFFI is not present in the dwelling, then the seller or landlord shall have complied with his or her obligation to determine whether UFFI is present in the dwelling. If no records exist, or if, after examining these records the seller or landlord is unable to determine whether UFFI was installed in the dwelling, then he or she shall follow the provisions in 105 CMR 651.010(2)(b).

(b) The seller or landlord shall visually inspect or cause to be visually inspected each of the exterior walls of the dwelling in order to determine whether any walls contain insulation and if so, what kind. This visual inspection can be conducted by:

1. viewing exposed insulation in the attic, cellar or elsewhere; or
2. cautiously removing and viewing behind electrical switch or outlet plate covers or other similar devices on exterior walls; or
3. by any other suitable means of viewing the existing insulation in the dwelling.

If, upon visual inspection any of the insulation contained in the dwelling is foam-like or otherwise appears to be UFFI, then the seller or landlord shall follow the provisions in 105 CMR 651.010(2)(c).

(c) The seller or landlord shall have a sample of the insulation that is foam-like or otherwise appears to be UFFI analyzed by any private testing laboratory able to perform such analysis.

651.011: Disclosure of Presence of UFFI in Dwelling

(1) Disclosure by Seller. A seller of a dwelling containing UFFI shall disclose or cause to be disclosed to a prospective buyer the presence of UFFI in the dwelling. A seller shall make the disclosure before either accepting a deposit from a buyer, receiving a written offer to purchase the dwelling from a buyer, executing a purchase and sale agreement with a buyer or accepting the purchase price from a buyer, whichever occurs first. The disclosure shall be made in writing, shall be in the form of the disclosure set forth in 105 CMR 651.011(3), and shall be signed by the seller and the buyer. The seller shall keep a copy or second original of the signed disclosure as proof of its delivery to the buyer. As part of the disclosure, the seller shall also deliver or cause to be delivered to the buyer at the time of the disclosure the current UFFI Information Sheet developed by and available at the Department. A seller who, before July 1, 1986, has either accepted from a buyer a deposit or a written offer to purchase a dwelling or who has executed a purchase and sale agreement with a buyer, any of which results in the sale of the dwelling, is exempt from the disclosure requirements of 105 CMR 651.011(1).

(2) Disclosure by Landlord. A landlord of a residential dwelling containing UFFI shall disclose or cause to be disclosed to all prospective tenants and to all existing tenants the presence of UFFI in the dwelling. In the case of a prospective tenant, a landlord shall make the disclosure before entering into a lease or rental agreement with the tenant. In the case of an existing tenant, a landlord shall make the disclosure on or before February 1, 1987. The disclosure for both a prospective and an existing tenant shall be made in writing, shall be in the form of the disclosure set forth in 105 CMR 651.011(3), and shall be signed by the landlord or its agent as well as by the prospective or existing tenant. The landlord shall keep a copy or a second original of the signed disclosure as proof of its delivery to the prospective or existing tenant. As part of the disclosure, the landlord shall also deliver or cause to be delivered to the prospective tenant or existing tenant at the time of the disclosure the current UFFI Information Sheet developed by and available at the Department.

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(3) Form of UFFI Disclosure.

UFFI DISCLOSURE

The dwelling located at _____
(Number and Street)

MA

(City/Town) (State) (Zip Code)

contains urea formaldehyde foam insulation (UFFI). The Commonwealth of Massachusetts has established a program to promote a healthier living environment by identifying the presence of formaldehyde emissions from UFFI in residential dwellings and by facilitating the removal of UFFI from those dwellings where either the formaldehyde level in the air is greater than 0.10 parts per million (ppm), or where an occupant of the dwelling has suffered adverse health effects from the presence of UFFI. Any seller or landlord of a residential dwelling containing UFFI has an affirmative obligation to determine the presence of UFFI and to disclose both its presence and the formaldehyde levels in the dwelling to buyers, tenants or prospective tenants.

UFFI is located in this dwelling in the following places (where checked):

- ___ exterior walls (which)
- ___ interior walls (which)
- ___ floor/ceiling space (where)
- ___ attic
- ___ other

The date that the UFFI was installed is _____

The air in this dwelling has been tested in accordance with procedures established by the Massachusetts Department of Public Health. A copy of the laboratory report is attached.

651.011: continued

The test results were as follows:

Location (room)	Formaldehyde level measured in parts per million (ppm)
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____

By law, no real estate agent, broker or salesperson, and no bank, lending institution or mortgagee doing business in Massachusetts may discriminate in any manner against a dwelling Massachusetts containing UFFI, or against its owner, when the formaldehyde level in the air of the dwelling is 0.10 ppm or below. I/We attest that all the information provided by me/us in this Disclosure is true and accurate to the best of my/our knowledge.

Date: _____Signature of Seller(s) or Landlord:

FOR BUYER(S):

I/We received this UFFI Disclosure and accompanying current UFFI Information Sheet before giving a deposit on, or signing an Offer to Purchase or a Purchase and Sale Agreement for, the dwelling referred to in this Disclosure.

Date: _____Signature of Buyer(s): _____

FOR TENANT(S):

Prospective Tenant(s): I/We received this UFFI Disclosure and accompanying UFFI Information Sheet before entering into a lease or rental agreement for the dwelling referred to in this Disclosure.

Date: _____Signature of Prospective Tenant(s): _____

Existing Tenant(s): I/We received this UFFI Disclosure and accompanying UFFI Information Sheet on or before February 1, 1987.

Signature of Existing Tenant(s):

651.011: continued

For additional information please read the Massachusetts Department of Public Health's current UFFI Information Sheet, which by law must be distributed to you with this Disclosure. You may also call the Department of Public Health's UFFI Hotline: 1-800-222-UFFI.

651.012: Air Testing and Disclosure Not Required for Certain Types of Financing or when UFFI Not Present in Dwelling

- (1) Air testing and disclosure as prescribed in these regulations shall not be required for a dwelling offered for sale or rent that does not contain UFFI.
- (2) Air testing and disclosure as prescribed in these regulations are not required for dwellings containing UFFI in the case of a non-purchase money loan or mortgage, such as when the owner of a dwelling containing UFFI seeks to obtain a home equity loan, a home improvement or similar loan, or a second mortgage on that dwelling, or seeks to refinance that dwelling. Nothing in 105 CMR 651.000, however, prevents a bank, lending institution or mortgagee from requiring this air testing and disclosure as a condition of such financing.

651.013: Relief from Liability for Bank, Lending Institution or Mortgagee

- (1) All banks, lending institutions or mortgagees shall be relieved of all liability resulting from the presence of UFFI in a dwelling if the seller, buyer or mortgagor of that dwelling discloses, in accordance with 105 CMR 651.000, the presence of UFFI in the dwelling and the formaldehyde level in the ambient air of the dwelling, to the bank, lending institution or mortgagee.
- (2) If at the time of sale, financing or refinancing of a dwelling and for the purpose of obtaining relief from all liability resulting from the undisclosed presence of UFFI in a dwelling, a bank, lending institution or mortgagee elects to require from a seller, buyer or mortgagor a statement that there is no UFFI in a particular dwelling, such relief from liability shall be afforded upon receipt of a signed statement from the buyer or mortgagor to the effect that, after having taken reasonable steps as defined by the Department of Public Health to determine whether UFFI is present in the dwelling, to the best of his or her knowledge, UFFI is not present in the dwelling.

651.014: Waiver Provision

The Commissioner or his designee may waive the application of any provision of 105 CMR 651.000 with respect to a particular case when, in his/her opinion, the enforcement thereof would do manifest injustice, provided that:

- (1) the party requesting a waiver shall submit written documentation supporting its request; and
- (2) the decision of the Commissioner to grant a waiver shall not conflict with the spirit of 105 CMR 651.000.

REGULATORY AUTHORITY

105 CMR 651.000: M.G.L. c. 111, § 5; c. 112, § 87AAA ½; c. 167, § 47; c. 225, § 12I; St. 1985, c. 728, § 14.

NON-TEXT PAGE