

**§ 30.85 Complaint.**

(a) *General.* Upon the expiration of the period for the respondent to submit a response to the prepenalty notice, the official designated in subpart B of this part, or his or her designee (or the Mortgagee Review Board in actions under § 30.35) shall determine whether to seek a civil money penalty. Such determination shall be based upon a review of the prepenalty notice, the response, if any, and the factors listed at § 30.80. A determination by the Mortgagee Review Board to seek a civil money penalty shall be by a majority vote of the Board.

(b) If a determination is made to seek a civil money penalty, the official or his or her designee, or the Mortgagee Review Board, shall issue a complaint to the respondent. The complaint shall state the following:

(1) The factual basis for the decision to seek a penalty;

(2) The applicable civil money penalty statute;

(3) The amount of penalty sought;

(4) The right to submit a response in writing, within 15 days of receipt of the complaint, requesting a hearing on any material fact in the complaint, or on the appropriateness of the penalty sought;

(5) The address to which a response must be sent;

(6) That the failure to submit a response may result in the imposition of the penalty in the amount sought.

(c) A copy of this part and of 24 CFR part 26, subpart B shall be included with the complaint.

(d) *Service of the complaint.* The complaint shall be served on the respondent by first class mail, personal delivery, or other means. In cases of violations by mortgagees and lenders of 12 U.S.C. 1735f-14(b) (1)(D) or (1)(F), or by GNMA issuers or custodians of 12 U.S.C. 1723i(b) (1)(G) or (1)(I), a copy of the complaint shall be provided to the Attorney General.

**§ 30.90 Response to the complaint.**

(a) *General.* The respondent may submit to HUD a written response to the complaint within 15 days of its receipt. The response shall be considered a request for a hearing. The response should include the admission or denial

of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the civil money penalty is not warranted or should be less than the amount sought in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Chief Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.37 of this title. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.39 of this title.

**§ 30.95 Hearings.**

Hearings under this part shall be conducted in accordance with the procedures at 24 CFR part 26, subpart B.

**§ 30.100 Settlements.**

The officials listed at subpart B of this part, or their designees (or the Mortgagee Review Board for violations under § 30.35), are authorized to enter into settlement agreements of civil money penalty claims. Settlement agreements may be executed at any time prior to the issuing of a notice of final determination under § 26.50 of this title, and may include sanctions for failure to comply with the terms of the agreement.

**PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES****Subpart A—Notifications to Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1978 of the Hazards of Lead-Based Paint Poisoning**

Sec.

35.1 Purpose and scope.

35.3 Definitions.

35.5 Requirements.

**Subpart B—Prohibition Against the Use of Lead-Based Paint in HUD-Associated Housing**

35.10 Purpose and scope.

35.12 Definitions.

35.14 Requirements.

§ 35.1

**Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing**

- 35.20 Purpose and scope.
- 35.22 Definitions.
- 35.24 Requirements.

**Subpart D—Local Codes and Regulations**

- 35.40 Compliance with local laws.
- 35.42 Requirements.

**Subpart E—Elimination of Lead-Based Paint Hazards in Federally-Owned Properties Prior to Sale for Residential Habitation**

- 35.50 Purpose and scope.
- 35.52 Applicability.
- 35.54 Definitions.
- 35.56 Requirements.

**Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures**

- 35.60 Scope.
- 35.61 Definitions.
- 35.62 Federal construction; prohibition against use of lead-based paint.
- 35.63 Federally assisted construction; prohibition against use of lead-based paint.
- 35.64 Reports to the Secretary.
- 35.65 Authority for subpart B of these regulations.

**Subpart G—[Reserved]**

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

- 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.

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

SOURCE: 41 FR 28878, July 13, 1976, unless otherwise noted.

**Subpart A—Notification to Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1978 of the Hazards of Lead-Based Paint Poisoning**

**§ 35.1 Purpose and scope.**

This subpart A establishes procedures to assure that purchasers and tenants of all HUD-associated housing constructed prior to 1978 are notified of the hazards of lead-based paint which may exist in such housing, of the symptoms and treatment of lead-based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards.

[51 FR 27787, Aug. 1, 1986]

**§ 35.3 Definitions.**

*Act.* The Lead-Based Paint Poisoning Prevention Act, Pub. L. 91-695, 84 Stat. 2078, as amended by Pub. L. 93-151 and Pub. L. 94-317 (42 U.S.C. 4821-4846).

*Assistant Secretaries.* The Assistant Secretaries in the Department of Housing and Urban Development.

*HUD-associated housing.* Any residential structure that is the subject of an application for mortgage insurance under the National Housing Act or is proposed for the receipt of housing assistance payments under a program administered by the Secretary. For purposes of this subpart A, *HUD-associated housing* also includes any existing residential structure—

(1) Acquired by the Secretary pursuant to any provision of law which, prior to such acquisition, was insured under the National Housing Act or was subject to a loan under section 312 of the Housing Act of 1964,

(2) Sold by the Secretary following any such acquisition and subject to any requirements regarding its use or operation under an agreement with, or condition imposed by, the Secretary, or

(3) That is currently covered by mortgage insurance or a contract for housing assistance payments.

*Residential structure.* Any house, apartment or structure intended for human habitation, including any non-dwelling facility operated by the owner and commonly used by children under

seven years of age, such as a child care center.

*Secretary.* The Secretary of Housing and Urban Development or a HUD official delegated the Secretary's authority with respect to the Act.

[51 FR 27787, Aug. 1, 1986, as amended at 61 FR 5204, Feb. 9, 1996]

### §35.5 Requirements.

(a) Purchasers and tenants of HUD-associated housing constructed prior to 1978 shall be notified:

(1) That the property was constructed prior to 1978;

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning; and

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards).

Prospective purchasers or renters shall receive the above notifications prior to purchase or rental.

(b) Each Assistant Secretary shall take necessary actions to implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Such actions shall include providing the required notification (prepared by the Secretary after consultation with the National Institute of Building Sciences) and establishing procedures to:

(1) Provide evidence that the required notification has been received by purchasers and tenants of HUD-associated housing constructed prior to 1978, and

(2) Require the inclusion of appropriate provisions in contracts of sale, rental or management of HUD-associated housing to assure that purchasers and tenants receive the required notification.

(c) Any requirement of this section, except use of the required notification, shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated pursuant to the authorization granted in this section and supersedes, with respect to programs within its defined scope, the notification requirements

prescribed by this section. *Sec. e.g.*, 24 CFR 570.680(b) (Community Development Block Grants).

[51 FR 27787, Aug. 1, 1986, as amended at 53 FR 20798, June 6, 1988]

## Subpart B—Prohibition Against the Use of Lead-Based Paint in HUD-Associated Housing

### §35.10 Purpose and scope.

This subpart implements the provisions of 42 CFR part 90 issued by the Secretary of Health and Human Services pursuant to section 401 of the Act which are applicable to Federal agencies and which prohibit the use of lead-based paint on applicable surfaces of residential structures constructed or rehabilitated by the Federal Government or with Federal assistance and establishes procedures to prohibit the use of lead-based paint on applicable surfaces in all HUD-associated housing.

[41 FR 28876, July 13, 1976, as amended at 50 FR 9269, Mar. 7, 1985]

### §35.12 Definitions.

The definitions contained in §35.3 of subpart A of this part shall apply to this subpart B and in addition the following definition is applicable to this subpart B:

(a) *Lead-based paint* as defined in section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801, et seq), the National Consumer Information and Health Promotion Act of 1976, means: (1) Any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or (2) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

[41 FR 28876, July 13, 1976, as amended at 42 FR 5043, Jan. 27, 1977]

**§ 35.14 Requirements.**

(a) No office of the Department shall use or permit the use of lead-based paint on applicable surfaces of HUD-associated housing.

(b) Each Assistant Secretary shall implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Implementation shall include the establishment of procedures to require the inclusion of appropriate provisions in contracts and subcontracts involving HUD-associated housing prohibiting the use of lead-based paint on applicable surfaces of such HUD-associated housing and shall include provisions necessary for enforcement of the prohibition.

**Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing**

**§ 35.20 Purpose and scope.**

This subpart C implements the provisions of section 302 of the Act with respect to establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing HUD-associated housing which may present such hazards.

[51 FR 27787, Aug. 1, 1986]

**§ 35.22 Definitions.**

As used in this subpart:

*Applicable surface* means all intact and nonintact interior and exterior painted surfaces of a residential structure.

*Defective paint surface* means an applicable surface on which the paint is cracking, scaling, chipping, peeling, or loose.

*HUD-associated housing* shall have the meaning ascribed in § 35.3.

*Residential structure* shall have the meaning ascribed in § 35.3.

[51 FR 27787, Aug. 1, 1986, as amended at 53 FR 20798, June 6, 1988]

**§ 35.24 Requirements.**

(a) Each Assistant Secretary shall establish procedures with respect to programs involving HUD-associated hous-

ing within his or her administrative jurisdiction to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to housing that may present such hazards.

(b) Subject to the provisions of separate regulations promulgated with respect to any program by the Assistant Secretary having jurisdiction over that program, the following minimum requirements shall apply to all programs:

(1) All applicable surfaces of HUD-associated housing constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist.

(2)(i) Treatment necessary to eliminate immediate hazards shall, at a minimum, consist of the covering or removal of defective paint surfaces found in HUD-associated housing constructed prior to 1978.

(ii) Covering may be accomplished by such means as adding a layer of wall-board to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment.

(3) Appropriate provisions for the inspection of applicable surfaces and elimination of hazards shall be included in contracts and subcontracts involving HUD-associated housing to which such requirements may apply.

(4) Any requirements of this section shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated under the authorization granted in this section and supersedes, with respect to programs within its defined scope, the requirements prescribed by this section. *See, e.g.,* 24 CFR part 200, subpart O (Mortgage Insurance and Property

Disposition); § 570.608 (Community Development Block Grant); § 882.109(i) (Section 8 Existing Housing); part 965, subpart H (Public Housing); part 905, subpart K (Indian Housing).

[52 FR 1890, Jan. 15, 1987, as amended at 53 FR 20798, June 6, 1988; 56 FR 920, Jan. 9, 1991; 56 FR 15172, Apr. 15, 1991]

### Subpart D—Local Codes and Regulations

#### § 35.40 Compliance with local laws.

(a) HUD, as owner of federally-owned housing, will comply with State or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement.

(b) Nothing in this part 35 is intended to relieve an owner or tenant of HUD-associated housing of any responsibility for compliance with State or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement.

(c) HUD does not assume any responsibility with respect to inspection, enforcement, interpretation or determination of compliance with such State or local requirements, except that the Federal standard for lead content in paint supersedes any State or local requirement, prohibition, or standard, as provided in section 506 of the Act.

#### § 35.42 Requirements.

Each Assistant Secretary shall take necessary actions to implement the intent of § 35.40.

### Subpart E—Elimination of Lead-Based Paint Hazards in Federally-Owned Properties Prior to Sale for Residential Habitation

#### § 35.50 Purpose and scope.

This subpart E implements the provisions of section 302 of the Act which directs the Secretary to establish and implement procedures to eliminate the hazards of lead-based paint poisoning in all federally-owned properties prior to the sale of such properties when their use is intended for residential habitation.

#### § 35.52 Applicability.

The requirements established by this subpart E are applicable to all federally-owned properties prior to their sale by a Federal agency when their use is intended for residential habitation.

#### § 35.54 Definitions.

The definitions contained in §§ 35.3 and 35.22 shall apply to this subpart E. The following definitions are also applicable to this subpart E:

*Federal agency.* The United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

*Federally-owned properties.* Any properties owned by a federal agency as defined in this section.

*Use for residential habitation.* The use of a property as a residential structure as defined in § 35.3.

[51 FR 27788, Aug. 1, 1986]

#### § 35.56 Requirements.

(a) Prior to occupancy of a federally-owned property where its use subsequent to sale is intended for residential habitation, the Federal agency selling the property shall assure that the following steps are taken:

(1) All applicable surfaces of residential structures constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist. For this purpose all defective paint surfaces shall be assumed to be immediate hazards; and

(2) Treatment necessary to eliminate hazards of lead-based paint shall consist of covering or removal of defective paint surfaces. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns)

§ 35.60

or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment.

(3) Prospective purchasers are provided all notifications described in § 35.5(a).

(b) The provisions of this subpart E shall be binding upon all Federal agencies as provided by section 302 of the Act; however, nothing contained in this part 35 shall preclude any Federal agency from promulgating such other procedures or additional requirements as may be necessary to implement the provisions of the Act.

[41 FR 28878, July 13, 1976, as amended at 51 FR 27789, Aug. 1, 1986; 52 FR 1891, Jan. 15, 1987; 53 FR 20799, June 6, 1988]

**Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures**

SOURCE: 42 FR 5043, Jan. 27, 1977, unless otherwise noted. Correctly designated at 42 FR 13112, Mar. 9, 1977.

**§ 35.60 Scope.**

The regulations of this subpart are promulgated to implement section 401 of the Lead-Based Paint Poisoning Prevention Act, as amended, which directs the Secretary of Housing and Urban Development to take such steps and impose such conditions as may be necessary or appropriate to prohibit the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance in any form. The regulations are applicable to all Federal agencies.

**§ 35.61 Definitions.**

The definitions contained in § 35.3 shall apply to this subpart F and in addition the following definitions are applicable to this subpart F:

24 CFR Subtitle A (4–1–97 Edition)

(a) *Federal Agency* means the United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalities.

(b) *Agency Head* means the principal official of a Federal Agency and includes those persons duly authorized to act in his behalf.

(c) *Lead-based paint* as defined in section 501(3) of the Act as amended by Pub. L. 94-317 (42 U.S.C. 4801 et seq), the National Consumer Information and Health Promotion Act of 1976, means: (1) Any paint containing more than five-tenths of 1 per centum lead by weight (calculated as lead metal) in the total non-volatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both; or (2) with respect to paint which is manufactured after June 22, 1977 lead-based paint means any paint containing more than six one-hundredths of 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied.

**§ 35.62 Federal construction; prohibition against use of lead-based paint.**

No Federal agency shall, in any residential structure constructed or rehabilitated by such agency, use or permit the use of lead-based paint on applicable surfaces.

**§ 35.63 Federally assisted construction; prohibition against use of lead-based paint.**

(a) Each Agency Head shall issue regulations and take such other steps as in his or her judgment are necessary to prohibit the use of lead-based paint on applicable surfaces of any residential structures constructed or rehabilitated by such agency under any federally assisted program.

(b) Such regulations shall require the inclusion of appropriate provisions in contracts and subcontracts pursuant to

which such federally assisted construction or rehabilitation is performed, prohibiting such use of lead-based paint, and shall include provisions for enforcement of that prohibition.

**§35.64 Reports to the Secretary.**

(a) To assist the Secretary in fulfilling her responsibilities under the Act, each Federal agency shall furnish to the Secretary, not later than 3 months after the effective date of these regulations, a report of the steps it has taken to comply with this subpart F, part 35.

(b) Each Federal agency shall submit such additional reports on its activities in the implementation of this part as may be deemed necessary by the Secretary.

**§35.65 Authority for subpart B of these regulations.**

On or after the effective date of these amended regulations, subpart F will serve as the authority for subpart B of these regulations.

**Subpart G—[Reserved]**

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

SOURCE: 61 FR 9082, Mar. 6, 1996, unless otherwise noted.

**§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.

EFFECTIVE DATE NOTE: At 61 FR 9082, Mar. 6, 1996, subpart H was added, effective March 6, 1996, with the exception of § 35.88 which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). A notice will be published in the FEDERAL REGISTER once approval has been obtained.

**§ 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.

EFFECTIVE DATE NOTE: At 61 FR 9082, Mar. 6, 1996, subpart H was added, effective March 6, 1996, with the exception of § 35.90 which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). A notice will be published in the FEDERAL REGISTER once approval has been obtained.

**§ 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.

EFFECTIVE DATE NOTE: At 61 FR 9082, Mar. 6, 1996, subpart H was added, effective March 6, 1996, with the exception of §35.92 which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). A notice will be published in the FEDERAL REGISTER once approval has been obtained.

#### §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

## § 35.96

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.

EFFECTIVE DATE NOTE: At 61 FR 9082, Mar. 6, 1996, subpart H was added, effective March 6, 1996, with the exception of § 35.94 which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). A notice will be published in the FEDERAL REGISTER once approval has been obtained.

### § 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

## 24 CFR Subtitle A (4-1-97 Edition)

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.

## PART 40—ACCESSIBILITY STANDARDS FOR DESIGN, CONSTRUCTION, AND ALTERATION OF PUBLICLY OWNED RESIDENTIAL STRUCTURES

Sec.

- 40.1 Purpose.
- 40.2 Definition of "residential structure".
- 40.3 Applicability.
- 40.4 Standards.
- 40.5 [Reserved]
- 40.6 Records.
- 40.7 Availability of Accessibility Standards.

AUTHORITY: 42 U.S.C. 3535(d), 4153.

SOURCE: 36 FR 24437, Dec. 22, 1971, unless otherwise noted.

### § 40.1 Purpose.

This part prescribes standards for the design, construction, and alteration of publicly owned residential structures to insure that physically handicapped persons will have ready access to, and use of, such structures.

### § 40.2 Definition of "residential structure".

(a) As used in this part, the term *residential structure* means a residential structure (other than a privately owned residential structure and a residential structure on a military reservation):

- (1) Constructed or altered by or on behalf of the United States;
- (2) Leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or
- (3) Financed in whole or in part by a grant or loan made by the United