

§ 35.94

24 CFR Subtitle A (4-1-98 Edition)

(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 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 mone-

tary penalties in accordance with the provisions of 42 U.S.C. 3545 and 24 CFR part 30.

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

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

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

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

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

§35.98 Impact on State and local requirements.

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

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 States after August 12, 1968, if such residential structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

(b) As used in this part, *residential structure* includes the following:

- (1) Any residential structure which, in whole or in part, is intended for occupancy by the physically handicapped or designed for occupancy by the elderly;
- (2) All elevator residential structures;
- (3) Any residential structure that contains 15 or more housing units, unless otherwise specifically prescribed by the Uniform Federal Accessibility Standards contained in appendix A to this part.

(4) Nonresidential structures appurtenant to a residential structure covered under this part.

[36 FR 24437, Dec. 22, 1971, as amended at 49 FR 31620, Aug. 7, 1984]

§ 40.3 Applicability.

(a) The standards prescribed in § 40.4 are applicable to residential structures designed after the effective date of this part. If the design of a structure commenced prior to that date, the standards shall be made applicable to the maximum extent practicable, as determined by the head of the department, agency, or instrumentality of the United States concerned. If no design stage is involved in the construction or alteration of a residential structure, the standards of § 40.4 shall be applicable to construction or alteration for which bids are solicited after the effective date of this part.

(b) The standards prescribed in § 40.4 are not applicable to:

- (1) Any portion of a residential structure or its grounds which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;
- (2) The alteration of an existing residential structure to the extent that the alteration does not involve work which is related to the standards of this part; or
- (3) The alteration of an existing building, or of such portions thereof, to which application of the standards is not structurally feasible.

§ 40.4 Standards.

Residential structures subject to this part shall be designed, constructed or altered to ensure that physically handicapped persons have access to, and use of, these structures. This requirement is satisfied by using the specifications contained in appendix A to this part, the Uniform Federal Accessibility Standards (UFAS).

[49 FR 31621, Aug. 7, 1984]

§ 40.5 [Reserved]

§ 40.6 Records.

The administering agency's file on each contract, grant, or loan involving the design, construction, or alteration

§ 40.7

of a residential structure shall include appropriate documentation indicating: (a) That the standards prescribed in §40.4 are applicable to and have been or will be incorporated in the residential structure, or (b) that the grant or loan has been or will be made subject to the requirement that the standards are applicable and will be incorporated in the residential structure. The file should also indicate any modification or waiver of the standards which has been issued by the Secretary of HUD.

§40.7 Availability of Accessibility Standards.

Copies of the Uniform Federal Accessibility Standards are available from the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5404 (this is not a toll-free number). Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-0113 or 1-800-877-8399 (Federal Information Relay Service TDD). (Other than the "800" number, these are not toll-free numbers.)

[61 FR 5204, Feb. 9, 1996]

PART 41—POLICIES AND PROCEDURES FOR THE ENFORCEMENT OF STANDARDS AND REQUIREMENTS FOR ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED

Sec.

- 41.1 Applicability.
- 41.2 Definitions.
- 41.3 Assurance and declaration required.
- 41.4 Waiver or modification of standards.
- 41.5 Achieving compliance.
- 41.6 Matters involving the Architectural and Transportation Barriers Compliance Board.

AUTHORITY: Architectural Barriers Act of 1968, as amended by Pub. L. 90-480, 42 U.S.C. 4151 *et seq.*

SOURCE: 44 FR 62806, Oct. 31, 1979, unless otherwise noted.

§41.1 Applicability.

This part sets forth policies and procedures for the enforcement of standards and requirements for accessibility by the physically handicapped imposed:

24 CFR Subtitle A (4-1-98 Edition)

(a) For nonresidential buildings or facilities by regulations issued by the General Services Administration at subchapter D of the Federal Property Management Regulations, subpart 101-19.6—Accommodations for the Physically Handicapped, or

(b) By regulation or contract under any other program of the Department, except a program subject only to standards or requirements at 24 CFR part 8 imposed pursuant to section 504 of the Rehabilitation Act of 1973.

The policies and procedures of this part shall apply after the effective date of these regulations to all complaints received, and/or findings of noncompliance made, regarding buildings or facilities subject to such regulatory or contractual requirements.

§41.2 Definitions.

As used in this part, the term Secretary means the Secretary of Housing and Urban Development, or to the extent of any delegation of authority by the Secretary to act under this part, any other Department Official to whom authority has been delegated.

§41.3 Assurance and declaration required.

(a) Each Assistant Secretary shall, as a condition for approval of any contract or application for assistance under a program imposing standards and/or requirements for accessibility which are subject to this part, require an assurance of compliance with those standards and requirements. Such assurance shall be in a form acceptable to the Secretary.

(b) For each project covered under this part, except a project subject to Departmental examinations and inspections as set forth in §41.5(a), the responsible Assistant Secretary shall require a declaration as to project drawings, specifications, and other construction documents. The declaration shall be signed by the licensed, or registered, architect or engineer, or by such other responsible official as designated by HUD, who has prepared such construction documents. The declaration shall affirm that the proposed project, to the best knowledge and belief of the declarer, conforms to applicable accessibility design standards