(C) The risk assessor shall take selected dust samples and have them analyzed. Dust samples shall be collected and analyzed in accordance with §35.1320(b). At least two composite samples, one from floors and the other from interior window sills, shall be taken in each dwelling unit and common area selected. Each composite sample shall consist of four individual samples, each collected from a different room or area. If the dwelling unit contains both carpeted and uncarpeted living areas, separate floor samples are required from the carpeted and uncarpeted areas. Equivalent single-surface sampling may be used instead of composite sampling.

(7) The risk assessor shall provide the designated party with a written report documenting the presence or absence of lead-based paint hazards, the current status of any hazard reduction and standard treatment measures used previously and any newly-conducted evaluation and hazard reduction activities. The report shall include the information in 40 CFR 745.227(d)(11), and shall:

(i) Identify any lead-based paint hazards previously detected and discuss the effectiveness of any hazard reduction or standard treatment measures used, and list those for which no measures have been used.

(ii) Describe any new hazards found and present the owner with acceptable control options and their accompanying reevaluation schedules.

(iii) Identify when the next reevaluation, if any, must occur, in accordance with the requirements of paragraph (b)(4) of this section.

(c) Response to the reevaluation. (1) Hazard reduction omission or failure found by a reevaluation. The designated party shall respond in accordance with paragraph (b)(6)(iii)(A) of this section to a report by the risk assessor of a hazard reduction control that has not been implemented or is failing, or that deteriorated lead-based paint is present.

(2) Newly-identified lead-based paint hazard found by a reevaluation. The designated party shall treat each:

(i) Dust-lead hazard or paint lead hazard by cleaning or hazard reduction measures, which are considered completed when clearance is achieved in accordance with §35.1340.

(ii) Soil-lead hazard by hazard reduction measures, which are considered completed when clearance is achieved in accordance with §35.1340.

Effective Date Note: At 64 FR 50201, Sept. 15, 1999, subpart A was removed, subpart H was redesignated as subpart A, subparts B through G were revised and subparts H through R were added, effective Sept. 15, 2000. For the convenience of the user, the superseded text is set forth as follows:

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

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35.1 Purpose and scope.
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Subpart B—Prohibition Against the Use of Lead-Based Paint in HUD-Associated Housing

35.10 Purpose and scope.
35.12 Definitions.
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Subpart C—Elimination of Lead-Based Paint Hazards in HUD-Associated Housing

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Subpart D—Local Codes and Regulations

35.40 Compliance with local laws.
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35.60 Scope.
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35.64 Reports to the Secretary.
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§ 35.1 Purpose and scope.

This subpart 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.


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 requirement 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.

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

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

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

§ 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 570.680b (Community Development Block Grants).


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 403 of the Act which are applicable to Federal agencies and which prohibit the use of lead-based paint on applicable surfaces of

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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 non-volatile 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 5013, 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]
§ 35.52 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.
Subpart F—Prohibition Against the Use of Lead-Based Paint in Federal and Federally-Assisted Construction or Rehabilitation of Residential Structures

§ 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:

(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 nonvolatile 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]