

## § 40.2

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,

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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 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**

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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:

(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 fa-

ilities 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 and requirements. The declaration statement shall be in a form acceptable to the Secretary.

**§ 41.4 Waiver or modification of standards.**

(a) The applicability of standards and requirements for accessibility by the physically handicapped may be waived or modified on a case-by-case basis upon a written request from a recipient of a Departmental grant or loan or from a Departmental agency leasing a building or facility.

(b) For residential buildings or facilities, a waiver or modification may be granted only by the Secretary.