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Title 24—HOUSING AND URBAN DEVELOPMENT

Subtitle A—Office of the Secretary,
Department of Housing and Urban
Development

(Section No. 2-75-318)

PART 35—PROHIBITION AGAINST USE OF LEAD-BASED PAINT IN FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

Regulations implementing section 401 of the Lead-Based Paint Poisoning Prevention Act (Public Law 91-601, 81 Stat. 2078) were promulgated by the Secretary of Health, Education, and Welfare by publication in the *Federal Register* on March 7, 1972 (37 F.R. 4816). Those regulations (42 CFR Part 35) were applicable to all Federal agencies and prohibited the use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance in any form.

As this part implements provisions of the Code of Federal Regulations already promulgated by another agency, it is unnecessary to provide for notice and public procedure thereon, and procedures for placing it to become effective immediately.

Accordingly, HUD is adopting a new Part 35 as follows:

75a.
35.1 Part 35.
35.2 Subtitle A.
35.3 Applicable.

Authority: The provisions of this Part 35 are promulgated under Public Law 91-601, 81 Stat. 2078; 42 U.S.C. section 4351, et seq.

§ 35.1 Purpose.

This Part 35 implements the provisions of 42 CFR Part 35, which are applicable to Federal agencies and which prohibit use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with Federal assistance.

§ 35.2 Definitions.

(a) "Lead-based paint," as defined in section 301(3) of the Lead-Based Paint Poisoning Prevention Act (81 Stat. 2080; 42 U.S.C. 4351(3)), means any paint containing more than 1 per centum lead by weight (calculated as lead metal) in the total nonvolatile content of liquid paints or in the dried film of paint already applied.

(b) "Residential structure" means any house, apartment, or structure intended for human habitation including any institutional structure where persons reside, such as an orphanage, boarding school dormitory, day care center or extended-care facility (42 CFR 90.2(f)), and including nursing homes and intermediate care facilities.

(c) "Applicable surfaces" means all interior surfaces and those exterior surfaces, such as stairs, docks, porches, railings, windows, and doors, which are readily accessible to children under 7 years of age (42 CFR 90.2(g)).

(d) "Federally assisted" includes any kind of Federal financial assistance whether by grant, loan, advance, loan guarantee, or mortgage insurance.

(e) "Rehabilitation" or "rehabilitated" includes routine maintenance which is federally assisted.

§ 35.3 Applicability.

(a) No office of the Department of Housing and Urban Development shall, in the construction or rehabilitation of any residential structure, use or permit the use of lead-based paint on applicable surfaces.

(b) Each Assistant Secretary of the Department of Housing and Urban Development shall take such actions as in his judgment are necessary to prohibit the use of lead-based paint on applicable surfaces of any residential structures constructed or rehabilitated under any federally assisted program under his jurisdiction. Such actions 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 any necessary provisions for enforcement of that prohibition.

Effective date. This regulation shall become effective upon publication in the *Federal Register* (2-22-72).

Glenn R. Roney,
Secretary of Housing and
Urban Development.

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