

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.

(Approved by the Office of Management and Budget under control number 2070-0151)

[61 FR 9082, Mar. 6, 1996, as amended at 64 FR 14382, Mar. 25, 1999]

§ 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.

(Approved by the Office of Management and Budget under control number 2070-0151)

[61 FR 9082, Mar. 6, 1996, as amended at 64 FR 14382, Mar. 25, 1999]

§ 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.

§ 35.98

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.

Subpart B—General Lead-Based Paint Requirements and Definitions for All Programs.

SOURCE: 64 FR 50202, Sept. 15, 1999, unless otherwise noted.

§ 35.100 Purpose and applicability.

(a) *Purpose.* The requirements of subparts B through R of this part are promulgated to implement the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 *et seq.*), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*).

(b) *Applicability*—(1) *This subpart.* This subpart applies to all target housing that is federally owned and target housing receiving Federal assistance to which subparts C, D, F through M, and R of this part apply, except where indicated.

(2) *Other subparts*—(i) *General.* Subparts C, D, and F through M of this part each set forth requirements for a specific type of Federal housing activity or assistance, such as multifamily mortgage insurance, project-based rental assistance, rehabilitation, or tenant-based rental assistance. Subpart R of this part provides standards and methods for activities required in subparts B, C, D, and F through M of this part.

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(ii) *Application to programs.* Most HUD housing programs are covered by only one subpart of this part, but some programs can be used for more than one type of assistance and therefore are covered by more than one subpart of this part. A current list of programs covered by each subpart of this part is available on the internet at www.hud.gov, or by mail from the National Lead Information Center at 1-800-424-LEAD. Examples of flexible programs that can provide more than one type of assistance are the HOME Investment Partnerships program, the Community Development Block Grant program, and the Indian Housing Block Grant Program. Grantees, participating jurisdictions, Indian tribes and other entities administering such flexible programs must decide which subpart applies to the type of assistance being provided to a particular dwelling unit or residential property.

(iii) *Application to dwelling units.* In some cases, more than one type of assistance may be provided to the same dwelling unit. In such cases, the subpart or section with the most protective initial hazard reduction requirements applies. Paragraph (c) of this section provides a table that lists the subparts and sections of this part in order from the most protective to the least protective. (This list is based only on the requirements for initial hazard reduction. The summary of requirements on this list is not a complete list of requirements. It is necessary to refer to the applicable subparts and sections to determine all applicable requirements.)

(iv) *Example.* A multifamily building has 100 dwelling units and was built in 1965. The property is financed with HUD multifamily mortgage insurance. This building is covered by subpart G of this part (see § 35.625—Multifamily mortgage insurance for properties constructed after 1959), which is at protectiveness level 5 in the table set forth in paragraph (c) of this section. In the same building, however, 50 of the 100 dwelling units are receiving project-based assistance, and the average annual assistance per assisted unit is \$5,500. Those 50 units, and common areas servicing those units, are covered by the requirements of subpart H of