

## Don't Get Brushed Away by the New Federal Lead Paint Rule

By Josh Sarett

On April 22, 2010 a new federal Environmental Protection Agency (EPA) lead based paint rule, called "The Renovation, Repair, & Painting Rule", will take effect. The new rule requires owners to follow lead safe work practices when disturbing a painted surface (sanding, demolition, renovation, repair, etc.) in pre-1978 housing ("target housing") and child occupied facilities. The rule will change the way property managers, renovation and remodeling contractors, maintenance workers, painters and other specialty trades do business in housing built before 1978 and child occupied facilities. It includes new training requirements, additional notifications and disclosures, new work practices, new clearance requirements and expanded records requirements. Property managers and owners should be diligent in making sure their building staff and outside contractors thoroughly understand their obligations under the new EPA rule.

### New Training Requirements

The rule requires individual renovators/contractors to complete a state or EPA accredited course and obtain certification. This includes building employees who do work that disturbs lead based paint. Owners and contractors can get a list of accredited trainers at [www.epa.gov/lead/pubs/training-providers.htm](http://www.epa.gov/lead/pubs/training-providers.htm). The rule also requires firms that employ workers to have a company license issued by the EPA. In the past, the EPA rules for lead based paint only governed activities for abatement. Workers who have already been trained under Local Law 1 and who already have a Lead Safe Work Practices Certificate can be grandfathered in by taking a 4 hour refresher course given by a certified training firm.

Owners who use outside contractors should make sure they are properly trained in Lead Safe Work Practices under the new rule and should ask to see their certificates.

### Notifications and Disclosures:

The new rule requires contractors to notify tenants before disturbing any painted services by giving them a hand out called the "Renovate Right" pamphlet. This pamphlet, replaces the "Protect Your Family from Lead" pamphlet previously required. You can get a copy of a pamphlet by going to the EPA Web site, <http://www.epa.gov/lead/pubs/rrp.htm>. Contractors must also give tenants a disclosure form informing them of the nature and timing of renovation activity and the potential of lead hazards. The EPA has a sample for contractors and owners can use <http://www.epa.gov/lead/pubs/rrp.htm>. In addition, workers (including your building staff) are required to post warning signs around the affected areas.

If the owner's employee is acting as the contractor for the work, the owner must give the pamphlet and disclosure form to the tenants. Owners who are using an outside contractor should be certain that the contractors have a copy of the "Renovate Right" pamphlet and a proper disclosure form.

### Safe Work Practices

Like the city's lead based paint law (Local Law 1), the new EPA rule requires safe work practices. Workers are required to cover all HVAC ducts, remove or cover loose objects, cover floor surfaces and doors. Upon completion, the work area is required to be properly cleaned using a HEPA vacuum or wet mopping. These work practices are very similar to the ones required by Local Law 1. So owners should easily be able to come into compliance.

### Clearance Requirements

Upon completion of the work, the certified renovator must perform the post-renovation cleaning verification by using the EPA provided post verifi-

cation "check card" to determine if clearance is met. This will be done by using disposable cleaning cloths to wipe various surfaces in the work area. The color of the cloth is then compared to the color of the verification check card—if the cloth matches or is lighter than the card, the surface will pass the cleaning verification. Surfaces that do not pass the first attempt must be re-cleaned. **It is important to note that the post verification check card does not supersede the need for third party clearance dust testing under Local Law 1.** Property managers and owners in New York City will still need a certified lead inspection firm and lead inspector to perform clearance testing per Local Law 1 guidelines.

### Records Requirements

Owners and contractors must maintain documents demonstrating compliance with the new rule must be maintained for three years. These include the signed disclosure form, any owner opt-out forms and documentation that safe work practices and clearance requirements, as described above, were used.

### Exemptions

The rule allows for exemptions from these requirements. The new rule doesn't cover minor repair (defined as work disturbing less than 6 square feet inside the building or 20 square feet outside the building) and maintenance activities (for example, the rule wouldn't cover the painting of an apartment if the owner did not do any surface preparation that would cause dust to be released). Also, the rule doesn't apply to areas found free of lead based paint by a certified inspector or risk assessor, and work performed by an owner in an owner-occupied residence. Owners who got an exemption under Local Law 1 where no lead based paint was found to be present will be exempt from the new EPA rule. And, the rule doesn't apply when you're doing a lead paint abatement job to remove known lead paint. This type of abatement job is covered by existing EPA rules.

### New EPA Rule and Local Law 1

The new EPA rule does not supersede previous EPA regulations or Local Law 1. In general, work done in pre-1960 rental units will remain governed by Local Law 1 with certain exceptions. For instance, owners will need to hand out the new "Renovate Right" pamphlet to tenants. In addition, Local Law 1 covers a broader amount of work (work disturbing two or more square feet inside the building) than the new EPA rule (work disturbing six or more square feet inside the building). So owners of New York City who make smaller repairs will still need to comply with Local Law 1, even though they are not covered by the new EPA rule. Any other issues or conflicts that arise will need to be reviewed on a case by case basis.

Owners who hire contractors to do work in their buildings that may disturb lead paint should ask for references. The best way to insure that your contractors are achieving compliance with the various rules is to use a qualified lead paint consultant.

ALC will be holding free learning seminars starting with the CHIP® Seminar on January 21, 2009. We will also be offering the training course in English and Spanish at our facility or yours.

As clarifications become available we will update our clients and the CHIP® membership. Remember, a clear understanding of the regulation will prevent fines and even more headaches down the road.

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