

# EPA Lead Based Paint Renovation, Repair and Painting Rule Effective April 22, 2010

*By Bradley S. Dornish*

The EPA promulgated in June 2008 a new “Lead Based Paint Renovation, Repair and Painting Program Rule” which affects renovation work done on rental housing units, child care facilities and schools (Covered Properties) built prior to 1978. We first reported on the rule shortly thereafter, since notice requirements to residents went into effect at that time. However, because contractors, including painters, plumbers, electricians and others doing covered renovation work were required by the Rule to receive special EPA approved training and certification to continue to do that work, the rest of the rule was delayed until April 22, 2010 to allow those contractors to obtain that certification without interrupting their businesses.

The day of reckoning is at hand, and it appears that out of sight has been out of mind for many contractors and investors. Right now, my next renovation project is sitting completely gutted with no painted surfaces remaining in the interior of the property, so I didn't have to use an EPA certified contractor to do the demolition work. If you are reading this article before April 22, you still have the opportunity to do the same thing. If you are reading this after April 22, that option is no longer available.

The Rule applies to any remodeling, repair or maintenance of Covered Properties, BUT DOES NOT INCLUDE:

1. Work on housing for elderly or disabled persons, unless children under 6 years of age are expected to reside there;
2. Work on zero bedroom dwellings like studio apartments or dormitories;
3. Work on housing previously declared by a certified lead inspector or risk assessor to be lead free;
4. "MINOR REPAIR" on Covered Properties, which is defined as work which disturbs six square feet or less of painted surface per room inside or 20 square feet or less on the exterior of the property. Before you get too relieved, the Minor Repair exception does NOT include any window replacement or projects involving demolition or "Prohibited Practices," and those practices include use of power tools without HEPA filters.

Owners of Covered Properties have certain obligations under the Rule, even before the renovation work begins. There is a special EPA Lead Pamphlet which must be distributed to occupants of units where work is being done. For work in common areas, signs may be posted in lieu of distributing pamphlets. The pamphlets in beautiful full color are available online at: <http://www.hud.gov/offices/lead/library/lead/renovaterightbrochure.pdf>. Owners must also make sure that the contractors employed to perform applicable work on Covered Properties after April 22 are EPA certified. Owners may request that areas being disturbed be tested by the contractor using an EPA approved test kit, which the contractor will be trained to use. After covered renovations, both contractors and owners are required to keep records of compliance, which include reports that lead is not present, records of distribution of the lead pamphlets and documentation that the Rule has been complied with, including a checklist signed by the certified renovator, which form is available at <http://www.epa.gov/lead/pubs/samplechecklist.pdf>.

Some of you may already be thinking this procedure adds unnecessary burden to your rehab and repair work on rental properties, and wondering who will ever know if you skip compliance with the Rule. Before you go down that path, know that the EPA has a hotline number for lead 1-800-424-LEAD that state agencies are also empowered to enforce the EPA Rule, and that penalties for violation of these rules can be up to \$32,500 PER VIOLATION, PER DAY. I don't know about you, but that sounds like plenty of incentive for me to take the ounce of prevention instead of the pound of cure.

Some of the practices you may already follow in your renovations may reduce the chances you will disturb the trigger amount of painted surface for the Rule. For example, we use lamination, putting thin, new wallboard over old walls, and new MDF trim below the new wallboard, over old trim. That way, repainting later, even with sanding, won't disturb lead painted surfaces. You get clean, smooth and more stable walls, and a fresher look as a bonus.

If you have already gutted and completely rehabbed pre-1978 units, you may want to have the lead inspection and get your property declared lead free. If your units were built in 1978 or later, you don't need the inspection and declaration. Let your prospective tenants in any lead free building, and all contractors bidding to work on the lead free building know that they

don't have to be certified or use lead safe practices under the Rule, and you don't expect to pay for those practices.

And while you are grumbling about extra costs and extra recordkeeping requirements, remember that every other landlord in the country is facing the same rules. Maybe we should add a regulatory compliance fee to our leases, like other types of businesses do.