

## EPA Issues New Lead-Based Paint Rule

Lois Godfrey Wye



On June 23, 2008, EPA's new final rule known as the Renovation, Repair, and Painting Program (the "program") went into effect. The program is published at 40 C.F.R. Part 745 and establishes new requirements for the following:

- training renovators, other renovation workers and dust sampling technicians
- certifying renovators, dust sampling technicians and renovation firms
- accrediting providers of renovation and dust sampling training
- renovation work practices
- recordkeeping

The program, authorized by section 402 of the Toxic Substances Control Act, 15 U.S.C. § 2682, applies to renovations<sup>1</sup> done for compensation on "target housing" and "child-occupied facilities" unless an inspector certifies that no lead-based paint is present. Target housing includes any housing constructed prior to 1978, with limited exceptions, and a "child-occupied facility" is any facility built prior to 1978 that is regularly visited by the same child under 6-years-old for certain lengths of time.<sup>2</sup> The program is based on EPA's finding, after consideration of various studies, that *all* renovation, repair and painting activities that disturb lead-based paint create lead-based paint hazards. However, EPA did not simply apply the existing lead-paint abatement regulations to renovation, repair and painting. Instead, EPA developed this new program, combining training, containment, cleaning and cleaning verification requirements to minimize exposure to lead-based paint. States and Tribes may be authorized by EPA to implement the program. The program is expected to be fully implemented, that is, training providers must be accredited; renovation firms, renovators and dust sampling technicians must be certified; and work practices must be followed, within 24 months of the publication date.

### Informational Requirements

Unlike requirements involving lead-based paint notification where the sale or lease of property is concerned, these requirements are not imposed directly on the owner of the building. Instead, the program imposes notification requirements on those performing the renovations. Renovators must provide notice of renovations to potentially exposed individuals, in most instances 60 days prior to beginning renovations. The requirements vary depending on the type of structure being renovated. For dwellings, the renovator must obtain written acknowledgement from an adult occupant that EPA's new lead information pamphlet for renovations, *Renovate Right: Lead Hazard Information for Families, Child Care Providers and Schools* ("Renovate Right"), has been received, or must certify that the pamphlet was delivered and the renovator was unable to obtain a written acknowledgement.<sup>3</sup> For common areas, notice must be provided in one of two ways.

- 1) A renovator may provide written notice to each affected dwelling unit, describing the general nature and locations of the planned renovation activities and the expected starting and ending dates, and stating how the occupant can obtain the pamphlet, at no charge, from the firm performing the renovation.
- 2) Alternatively, informational signs, together with a copy of *Renovate Right* or information how to get a free copy of the pamphlet, may be posted during the renovation work where all affected residents are likely to see the information. For child-occupied facilities, notice must be provided through means specified in the rule to both the owner of the facility and parents and guardians using the facility.

### Work Practices

Renovations must be performed by certified firms using certified renovators.<sup>4</sup> Firms must post signs clearly identifying the work area and warning others to stay outside the work area. Signs must be posted before work begins and remain in place until after cleanup has been verified. The firm must isolate the work area so that no dust or debris leaves the work area. The program specifies several steps that must be taken for both interior and exterior renovations to ensure the work area is properly isolated, as well as several prohibited activities. In addition, the program has a variety of requirements to contain waste and ensure it is properly disposed of. Finally, the

program sets forth instructions for how to clean the work area after completion of the renovation and how to take verification samples to ensure that lead dust has been adequately removed.

### Recordkeeping and Reporting

The program requires firms performing renovations to retain and, if requested, make available to EPA “all records necessary to demonstrate compliance with this subpart” for three years following completion of the renovation. 40 C.F.R. § 745.86. The program sets forth a list of such documents, including any certification that no lead-based paint is present, all acknowledgements of receipt of *Renovate Right*, documentation that the work was performed by a certified renovator and others.

### What’s Next?

Reaction to this program was mixed when it was first made available to the public in March 2008. Activist groups claimed the program did not go far enough and did not require practices already required by HUD in public housing projects. They assert that it could give residents a false sense of security. In addition, Senator Barbara Boxer (D-CA), chairwoman of the Senate Environment Committee and House Oversight Committee Chairman Henry Waxman (D-CA), have both expressed concerns about the rule. It remains to be seen whether the program will face legal challenges or whether additional legislation will be introduced to further address potential exposure to lead-based paint.

### For more information, contact:

**Lois Godfrey Wye**

202.457.7062

*lois.wye@hkllaw.com*

*toll free: 1.888.688.8500*

<sup>1</sup> “Renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in 40 CFR 45.223. “Renovation” does not include “minor repair and maintenance activities,” such as work that disrupts six square feet or less of painted surface or areas certified to be free of lead-based paint.

<sup>2</sup> Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child occupied facilities may be located in public or commercial buildings or in target housing. See 40 C.F.R. 745.83.

<sup>3</sup> Single copies of the pamphlet may be obtained by calling the National Lead Information Clearinghouse (NLIC) at 1-800-424-LEAD or TDD: 1-800-526-5456, or the EPA Public Information Center at 202-260-2080. Multiple copies are available through the Government Printing Office (GPO). The public may order by calling the GPO Order Desk at 202-512-1800, faxing 202-512-2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Request the publication by title, *Renovate Right: Lead Hazard Information for Families, Child Care Providers and Schools*. The pamphlet is also available on EPA’s Web site at <http://www.epa.gov/lead>. The pamphlet may be reproduced by an individual or corporation without permission from EPA. See 73 Fed. Reg. 21769 (April 22, 2008).

<sup>4</sup> Certifications are granted by EPA to firms meeting specified requirements. Renovators and dust samplers may be certified after completing a course approved by EPA or an authorized state or Tribe. Certification must be obtained by April 22, 2010, and be renewed every five years. The program spells out specific on-site responsibilities for certified firms and renovators.