

HELP CLIENTS COMPLY WITH THE EPA LEAD-PAINT RULE

by SALLY LONGROY

The U.S. Environmental Protection Agency is enforcing a rule that requires contractors paid to perform renovation, repair and painting projects that disturb lead-based paint in older housing, schools and day care centers to be trained and certified by the EPA and follow strict lead-safe work practices.

While the EPA promulgated the rule in 2008, its effective date and training deadline occurred in 2010. In light of the potentially steep penalties for violations, lawyers must ensure their clients know the rule's requirements and help them obtain required training and certification.

The rule applies to renovation contractors; maintenance workers in multifamily housing and children's hospitals; painters; window or door replacement professionals; and other specialty trades that disturb lead-based paint in pre-1978 construction.

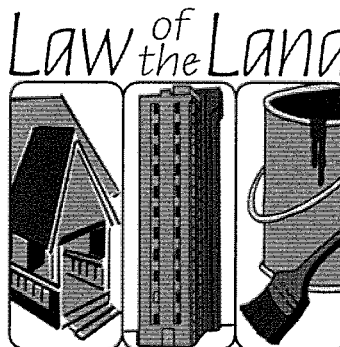
Congressional amendments to the Toxic Substances Control Act in 1992 require the EPA to issue regulations to protect adults and children against hazardous lead dust and chips created by common renovation, repair and painting activities. In 1996, the EPA promulgated

rules governing lead-based paint inspections, lead-hazard screens, risk assessment and lead abatement activities. In 1998, the EPA promulgated regulations requiring renovators to provide lead-hazard information pamphlets to owners and occupants of homes being renovated.

Notification requirements were added in 2004 to help the EPA monitor compliance with training and certification provisions and abatement work practice standards.

After conducting an extensive study on lead exposure to workers conducting renovation and remodeling activities, the EPA issued the Lead Renovation, Repair and Painting Rule, 40 C.F.R. Part 745, on April 22, 2008. It requires that work performed after April 22, 2010, be done in accordance with the rule's requirements. It further requires all contractors to have been trained by Dec. 31, 2010.

While there have been several revisions to the rule since its first promulgation, the most significant revision became effective July 6, 2010, when the EPA removed



exempt unless a child under age 6 resides or is expected to reside there.

Dwellings with a single combined sleeping and living area also are exempt from the rule. Other exempt dwellings may include efficiencies, studio apartments, military barracks and rentals of individual rooms in residential dwellings.

Housing is not subject to the rule if renovation work is performed by the homeowner or another person receiving no compensation for the work.

The rule regulates child-occupied facilities built before 1978 if they are visited frequently by the same child under 6 years of age for the minimum time periods the rule details. Such facilities typically would include child-care facilities, preschools and kindergarten classrooms, and certain hospital rooms occupied regularly by young children.

Regulated facilities also encompass common areas routinely used by children under age 6, such as restrooms and cafeterias, and the exterior sides of buildings immediately adjacent to the regulated building.

Firms performing renovations must provide a copy of an EPA pamphlet to homeowners, building managers and child-occupied-facility occupants. Businesses also must keep detailed records of efforts made to deliver the pamphlet and notify parents and guardians of intended renovation activities.

During the performance of the work, renovators must post informational and warning signs.

Certification Matters

A certified renovator must:

- perform or direct renovation projects covered by the rule;
- perform or direct certain critical tasks, such as posting warning signs, containing the work area and cleaning the work area after the renovation is complete;
- perform post-renovation cleaning verification; and
- certify or train workers performing the work.

Businesses performing regulated renovations must retain and, if requested, make available to the EPA records demonstrating compliance with the rule.

A business applying for certification to conduct renovations, repairs or painting activities in a single state must complete an EPA application form and pay a \$300 fee. Further certification for lead abatement, inspection or risk assessment in a single state requires a combined application fee of \$550. Certification also may be obtained in multiple states for additional fees.

The EPA will approve a business' application upon determining that the business and its principals have an environmental compliance history suggesting willingness and ability to maintain compliance with the rule. Renovators must be re-certified by the EPA every five years.

To minimize lead hazards, lawyers should ensure that owners and operators of affected properties are aware of the need to use properly certified and trained workers.

The rule applies in all states, including Texas, that do not have their own EPA-authorized program under the act. Those who fail to comply with the rule can face fines up to \$37,500 per day.

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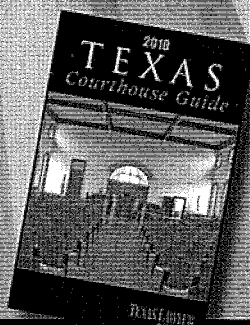
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the exemption for projects where the renovation firm obtained a certification from the owner of the home that no children under age 6 or pregnant women reside in the home and no children regularly occupy the premises.

Everything that follows comes from the 2008 rule and is in effect. The rule applies in all states, including Texas, that do not have their own EPA-authorized program under the act. Those who fail to comply with the rule can face fines up to \$37,500 per day.

The rule does not apply to minor maintenance and repair projects. It also does not apply if a certified inspector or risk assessor has made a written determination — or a certified renovator's tests show — that no lead-based paint is present in the components affected by the renovation.

The rule applies to work performed in all housing built before 1978, including privately owned homes. However, housing for the elderly and disabled expressly is



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