



## **Tips to Properly Mitigate Lead Paint**

By Randa Lewis and Scott Dismukes | Friday, January 25, 2019

In light of the recent media attention, do those in construction need to worry about lead paint? The answer is yes. General contractors, electricians, plumbers, property managers and anyone who disturbs a painted surface may be required to comply with the Renovation, Repair, and Painting (RRP) Rule under the Toxic Substances Control Act. This rule applies to work completed in apartments, homes and child-occupied facilities such as a school or daycare facility, so long as the building was constructed before 1978. Firms that have violated the RRP have faced civil enforcement actions ranging from less than \$10,000 to more than \$150,000.

Furthermore, the New York City Housing Authority may be required to spend more than \$1 billion in capital funds to correct lead paint violations. In addition to the RRP Rule, the Trump Administration recently unveiled a federal plan aimed at reducing lead contamination and exposure.

If any of those qualifications apply, RRP Rule requires contractors to obtain certification. This certification requirement applies to all firms and sole proprietorships. For example, general contractors, painters, plumbers, carpenters and electricians are all covered under the RRP Rule. If they do not obtain the proper certification, the RRP Rule prohibits them from advertising or performing such renovation activities in places covered by the rule.

### **WHAT TYPE OF ACTIVITIES ARE COVERED BY THE RULE?**

Generally, any activity that disturbs paint in pre-1978 housing and child-occupied facilities are covered. Some examples of activities that are included under the RRP Rule include remodeling, repair and maintenance, electrical work, plumbing, painting preparation, carpentry and window replacement.

Not all housing is covered by the RRP Rule. Some examples of dwellings that are not covered include homes built in or after 1978, homes built specifically for elderly or disabled people—unless children under the age of six either reside or are expected to reside there—and “zero-bedroom” homes such as studio apartments or dormitories.

Additionally, if the housing or potentially affected area is declared lead-free by a certified inspector or risk assessor, by an EPA recognized test kit or by sending collected paint samples for analysis to an EPA recognized laboratory, then the home is not affected by the RRP Rule. Also, any minor repair or maintenance activity that disturbs six square feet or less inside or 20 square feet or less outside is not covered by the rule (except for window replacement, full or partial demolition activities and any “prohibited” activity).



### **ACTIONS TO TAKE IF THOSE CHARACTERISTICS DESCRIBES YOUR WORK**

The rule proscribes specific informational, certification and recordkeeping requirements. The Pre-Renovation Education (PRE) rule requires renovation firms to provide a lead hazard information pamphlet, “Renovate Right,” to the owners and occupants of target housing before beginning renovations. Specifics of the requirement can be found at 40 C.F.R. § 745.84.

In conducting such renovations, a firm must ensure that:

1. it is certified;
2. the renovations are performed by certified renovators or people who have been trained by a certified renovator;
3. that a certified renovator is assigned to each renovation;
4. the abovementioned pre-renovation education requirements have been met; and
5. necessary recordkeeping requirements have also been met.

The certification requirement instructs that such renovations be completed by certified firms, certified renovators or trained individuals. Certification entails the submission of an application, along with a fee, and re-certification every five years. More information on training and certification requirements for renovators and dust sampling technicians can be found at 40 C.F.R. §§ 745.225, 745.90(a) and 745.89. Additional firm responsibilities are described at 40 C.F.R. §§ 745.85, 86 and 89(d).

The recordkeeping provisions require that renovation firms maintain certain records for three years following the completion of a renovation. These records include:

- Copies of pamphlet acknowledgement forms;
- Owner-occupant opt-out forms; and
- Documentation and certification that work practice requirements were followed.

More details can be found at 40 C.F.R. § 745.86.