



National Association of Residential Property Managers

e-Chapter Meeting: April 21, 2010 New Lead-Based Paint Rules

Guest Speaker: Demian Ellis, Regional Lead Coordinator for the EPA

The following information is a summary of the Q&A Session following the presentation delivered by Demian Ellis along with additional questions posed to the Mr. Ellis following the eChapter Meeting. This document was reviewed by the EPA to ensure it was accurate; however, new changes or announcements may have been published since this document was created. For updates and additional information please visit the EPA's website at <http://www.epa.gov/lead> on lead hazards.

If a property does not have lead-based paint, do the contractors still need to follow the new rules?

No. If the property was lead based paint free then it would be exempted from the new renovation requirements. However, determining the property is free of lead-based paint must be done by a certified inspector, certified risk assessor, or certified renovator.

How much of an area needs to be tested to determine that a home is free of lead-based paint?

There is extensive training that inspectors and risk assessors go through and specific protocol for the testing. A certified inspector or risk assessor will be able to determine what amount of area needs to be tested. If this lead-based paint determination is being made by a certified renovator, the certified renovator must test each component affected by the renovation. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately. Multiple window sills are not integrated parts of a whole. They are separate components and must be tested separately.

If a property is tested and found to be free of lead-based paint, does any testing need to be done again if you do work on the property several years later?

Not if the testing was done by a certified individual (inspector, risk assessor, or renovator). Once a component has been determined to be lead-based paint free it would continue to

be exempt from the renovation requirements. For RRP exemption purposes, there is no expiration for a lead based paint determination as long as the records are maintained for the area tested. If there is another area of property that needs repair, it will need to be evaluated separately. Note that a certified renovator's determination that a property is lead-based paint free cannot be used as the basis for a tenant disclosure exemption under 1018—only a certified inspector or risk assessor can issue such a determination for 1018.

Does an owner need to fulfill all three of the requirements you have listed in your presentation to be able to opt out or do they just need to satisfy one?

They must meet all three requirements. However, on April 22, 2010, the EPA Administrator signed a rule requiring lead-safe work practices to be followed in all pre-1978 homes, effectively eliminating the opt-out exemption. This rule (eliminating the opt-out provision) will become effective 60 days after publication in the Federal Register.

If the opt out requirements change can you notify NARPM so that we can post it on our website?

Yes. I can also send you the final rule that comes out.

Are property managers required to distribute the booklets and documentation, or is it the responsibility of the contractors they use?

If a firm is using contractors to do the work then the contractors must be certified and use certified renovators. Certified firms must comply with the information distribution requirements, record keeping requirements, etc. If the property management firm is acting as a certified firm because it's hiring its own employees to do the work, then the responsibility falls on the property management firm to comply with the RRP requirements including information distribution, recordkeeping, work practice standards, etc. In addition, if the property management firm is acting as a leasing agent or landlord, then they along with the property owner are responsible for maintaining and disclosing knowledge and information to tenants on the presence of lead-based paint/lead-based paint hazards, which would include lead testing reports.

Can the disclosure forms be delivered electronically?

Yes, the distribution of the lead information pamphlet (40 CFR § 745.83) via e-mail is an acceptable means of distributing the pamphlet as long as the requirements of the Electronic Signatures in Global and National Commerce Act ("Act") (15 U.S.C. § 7001 et seq.) are met. The Act requires that the recipient of the pamphlet, among other things, consents electronically to email delivery and in a manner that demonstrates that the recipient can access the information in the form it will be provided. In addition, the recipient must be allowed to withdraw this consent and be informed of the procedures for withdrawing consent. Further, the recipient must be provided with a statement of the hardware and software requirements for accessing and retaining the pamphlet.

If a property manager uses a certified contractor and a violation is found such as failure to distribute the necessary materials or keep proper records, does the liability fall solely on the contractor or will the property manager be held liable for not doing the due diligence of checking up on the contractor?

The liability falls on the contractor, in that situation. The responsibility is on the certified firm to comply with the requirements of the rule.

When renovating a common area in an apartment, do all tenants need to be provided pamphlets and sign the acknowledgement form?

You can provide it individually to each tenant or post an informational sign that is clearly visible to everyone with access to that common area. Either provide the pamphlet itself, or information on how to obtain a free copy of that pamphlet.

Also, as part of the Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program, signed on April 22, 2010, renovation firms will be required to provide information demonstrating compliance with the training and work practice requirements of the RRP rule to the owner of the building being renovated and, if different, to the occupants of the renovated housing or the operator of the child-occupied facility. For renovations in common areas of target housing, the renovation firm must provide the occupants of the affected housing units instructions on how to review or obtain this information from the renovation firm at no charge to the occupant. In addition, under the final rule, the renovation firm is required to provide interested parents or guardians of children using the child-occupied facility instructions on how to review or obtain a copy of these records at no cost to the parents or guardians.

Is there specific language that must be used on the signage?

Not at this time but that suggestion can certainly be proposed to our headquarters. We could develop suggested language, but I don't think we will be amending the rule to require specific language.

What type of documents or credentials should a property manager look for to determine if a contractor is certified?

If the state handles the licensing, contact the proper state agency to obtain a list of certified inspectors and risk assessors so that you can be sure your contractor is on that list. If the EPA is in charge of your jurisdiction, the regional office should be able to supply you with a similar list of certified contractors. Certified contractors can also be located on the EPA website at <http://www.epa.gov/lead>.

Should test kits only be used by certified renovators?

Yes. Under the rule only a certified renovator may use a test kit to determine if a property is free of lead-based paint. Alternatively, a certified inspector or risk assessor may make a lead-based paint free determination using approved testing protocols.

Is stucco subject to lead-based renovation requirements?

Yes, if the stucco was applied prior to 1978 because stucco is often painted over. Keep in mind that lead-based paint applies to any varnish or coating, not simply paint.

Is there a difference in the certification process for a property management firm versus an individual person?

The individuals actually doing the work must take the training. There is no training that the firm takes. To become certified as a firm you must submit a completed application to the EPA along with a check to pay for the certification fee. The EPA will review your application and issue a certification if you are approved.

Is testing required if you are removing wallpaper or carpeting?

Yes, it is possible that an area larger than 6 sq ft. of painted surface might be disturbed in removing wallpaper or carpeting. In these situations, this work must be performed by a certified firm using certified individuals.

On the current mandated disclosure form that is used when a pre-1978 residence is leased to a new tenant; what document should be presented to that tenant if a repair had been done in that property? Is there a uniform document that all contractors must provide or is a copy of the final report by the certified contractor sufficient?

Documentation of repairs is not required to be provided to prospective or new tenants. Knowledge and reports of lead-based paint or lead-based paint hazards must be disclosed to the prospective tenant. However, as part of the Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program, signed on April 22, 2010, renovation firms will be required to provide information demonstrating compliance with the training and work practice requirements of the RRP rule to the owner of the building being renovated and, if different, to the occupants of the renovated housing or the operator of the child-occupied facility. For renovations in common areas of target housing, the renovation firm must provide the occupants of the affected housing units instructions on how to review or obtain this information from the renovation firm at no charge to the occupant.

If the contractor is only required to keep their records for 3 years, how long will the property owner need to keep answering that they are aware of tests having been done in the property?

If lead testing was done in the property, this information must be maintained indefinitely and disclosed to future tenants or owners of the property.

If the contractor is only required to keep their records for 3 years, how long will the property owner need to keep providing a copy of test reports from repairs?

Lead testing data must be maintained and disclosed to all future tenants/owners. However, reports of repairs are not required to be disclosed upon lease to new tenant or sale to new owner.

What responsibility/liability does a property manager have if they start managing a new property that was built before 1978 and the homeowner brags that they recently had the windows replaced? Does the property manager need to request proper paperwork from the homeowner?

There is no requirement to disclose information on renovations/repairs performed on the property to new tenants or property owners.