

EPA'S Lead Paint Disturbance Reg: What Contractors Need to Know

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On April 22, 2008, the Environmental Protection Agency (EPA) issued a final rule under the authority of § 402(c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair and painting activities. The rule requires contractors to adopt certain safety measures while performing general renovation work that disturbs lead-based paint in target housing and child-occupied facilities constructed before 1978. The rule will fully take effect on April 22, 2010, and renovators will be required to apply for certification from the EPA and to adopt specific work practices designed to prevent lead contamination. EPA Lead Renovation, Repair, and Painting Program, 40 C.F.R. § 745.¹

The rule imposes stringent requirements on contractors and other firms performing renovations that disturb painted surfaces. The EPA is authorized to impose harsh fines and penalties for non-compliance with the rule, and knowing or willful violations of its provisions by contractors or firms may even result in imprisonment. It is important to emphasize that the rule applies to any work that involves the disturbance of lead-based paint, regardless of whether the contractors or firms actually perform painting work or are labeled as painters. It is crucial, therefore, for all contractors and firms performing renovation work to be familiar with the provisions of the regulation, and to ensure that they fully comply with the EPA's requirements. This article provides a general outline of the provisions of the lead renovation regulation, including timelines for its implementation, and the legal liabilities imposed on contractors and firms for non-compliance.

Regulation and Provisions Contractor Compliance

• Scope of the Rule

The rule defines a renovation as any modification of an existing structure that results in the disturbance of painted surfaces unless the work is part of an abatement. The rule applies to work done on target housing constructed before 1978 and “child-occupied facilities,” except: (1) housing for the elderly or people with disabilities; or (2) any dwelling without a bedroom (unless a child is expected to reside there).

A child-occupied facility is defined as any building or portion of a building that was constructed prior to 1978, and is visited regularly by the same child who is under six years of age on at least two different days within any week (provided that each day’s visit lasts at least three hours, 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, and include kindergartens and daycare centers. The rule encompasses common areas that are routinely used by children under age six, such as restrooms and cafeterias, but does not apply to areas of buildings that children simply pass through. Contractors performing renovation work on the exterior side of a building immediately adjacent to a child-occupied facility must also comply with the regulation.

The rule exempts activities conducted as part of lead-hazard abatements. Minor repairs or maintenance activities that disturb less than six square feet of painted surface per room for interior renovation work and activities that disturb less than 20 square feet of exterior surfaces are also exempted from the rule. The exemption for minor repairs, however, does not apply to window replacement work, the demolition of painted surfaces, or renovations involving open-flame burning or torching, machines that remove paint through high-speed operations without exhaust control, or the use of a heat gun at temperatures at or above 1100 degrees fahrenheit.

The rule exempts renovations in which the contractor or firm can establish that no lead-based paint will be disturbed during the work through a written determination by a certified lead inspector or risk assessor, or through the proper use of an EPA-recognized lead-hazard test kit by a certified renovator. The rule also contains an exception for renovations performed in owner-occupied target housing where no child under age six or pregnant woman resides, so long as the housing does not meet the definition of “child-occupied facility,” and provided that the contractor or renovation firm obtains a written statement from the owner confirming that no children under age six or pregnant women reside in the building before beginning the renovation.

• Pre-Renovation Education Requirement

The EPA modified the existing pre-renovation education rule and developed a new renovation-specific lead hazard information pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools* as part of the lead paint renovation regulation. The modified rule took effect on June 23, 2008. The final pre-renovation education rule requires that before beginning renovations, contractors and firms performing renovations in target housing and child-occupied facilities distribute the new pamphlet to the owners and occupants of target housing, the owners of public or commercial buildings that contain a child-occupied facility, and the proprietors of child-occupied facilities.

Contractors and firms are also required to provide general information about the renovation and make the pamphlet available to parents or guardians of children under age six using the child-occupied facilities. Compliance with this provision can be accomplished by mailing or hand-delivering the general information on the renovation and the pamphlet to the parents and guardians, or by posting informational signs containing general information on the renovation in areas where the signs can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can obtain a copy of the pamphlet from the renovation firm at no cost to the parents or guardians. For renovations in the common areas of multi-unit target housing, similar notification options are available to firms. They must provide tenants with general information regarding the nature of the renovation by mail, hand-delivery or by posting signs, and must also make this new pamphlet available upon request. Firms are required to maintain documentation of compliance with these requirements.

• Training, Certification and Accreditation Requirements

The rule includes training, certification and accreditation requirements for firms and contractors performing renovation work. Each renovation project covered by the final rule must be performed and/or directed by a certified renovator who has undergone training in an EPA-accredited training program or course that lasts a minimum of eight hours. The certified renovator is responsible for ensuring compliance with the work practice standards contained in the regulation, and must perform or direct the performance of certain critical tasks during the renovation such as posting warning signs, containing the work area and cleaning the work area after the renovation is completed. These activities may also be performed by workers who have received on-the-job training by a certified renovator. The certified renovator, however, must be present at the site while the tasks are performed to ensure that they are done correctly under the regulation’s work practice standards, and must perform a post-renovation cleaning verification.