**EPA Announces Lead Paint Rules Now in Full Effect; New Actions Set Stage for Tighter, Broader Work Practice Requirements**

The U.S. Environmental Protection Agency’s (EPA) Lead Renovation, Repair, and Painting Program (RRP) rule was fully implemented on April 22, 2010. Under the current rules, contractors who perform renovations, repairs and/or painting projects in most pre-1978 housing, child-care facilities and schools (i.e., that have, or are assumed to have, lead-based paint) must comply with federal accreditation, training, certification and recordkeeping requirements, or risk fines of up to $37,500 per day per violation. Adding to the already complex regulatory regime, EPA has just taken three new actions that widen the rule’s potential impact on the construction industry. Most notably, EPA is also exploring whether or not to impose the RRP requirements to the exteriors — and possibly even the interiors — of all public and commercial buildings.

AGC has distributed news [**articles**](http://newsletters.agc.org/environment/2010/04/01/lead-paint-rules-on-renovation-and-repair-to-housing-child-care-facilities-and-schools-effective-april-2010/) that explain the legal requirements and a contractor’s responsibilities under EPA’s RRP rule, which was finalized in 2008 with a compliance deadline of April 22, 2010. When the rule came out, it contained a provision that exempted a renovation firm from the training and work practice requirements, if the homeowner provided a certificate declaring that no child under age six or pregnant women lived in the house. On April 22, however, EPA finalized a rule effectively closing that exemption. EPA also made a separate rulemaking proposal that would require contractors to perform dust-wipe testing after most renovations covered by the RRP rule and provide the results to the owners and occupants of the building. In addition, also on April 22, EPA gave notice of its intention to investigate lead-based paint hazards that could occur when public and commercial buildings are renovated. If hazards exist, then EPA will propose regulations, according to the agency’s advance notice of proposed rulemaking. These actions come as part of a [**lawsuit settlement**](http://newsletters.agc.org/environment/files/2010/02/pdf1-rrp_settlement_agreement_signed_8-24-09.pdf), wherein EPA agreed to propose several revisions to the RRP rule. Following is more information.

**More on the Lead Renovation, Repair and Painting Rule**

The RRP ruledoesn’t apply to every contractor or to every job**.** It applies to paid contractors working in pre-1978 housing, child-care facilities and schools with lead-based paint. The covered facilities include residential, public or commercial buildings where children under the age of six are present on a regular basis as well as all rental housing. The rule applies to renovation, repair or painting activities. It does not apply to minor maintenance or repair activities affecting less than six square feet of lead-based paint in a room or less than 20 square feet of lead-based paint on the exterior. Window replacement does not qualify as a minor maintenance or repair.

The rule, issued under the authority of section 402(c)(3) of the Toxic Substances Control Act (TSCA), requires that renovators are trained in the use of lead safe work practices, that renovators and construction firms be certified, that providers of renovation training be accredited and that renovators follow specific work practice standards. In an [**April 20 interagency memo**](http://www.epa.gov/lead/pubs/owens20100420.pdf), EPA stated it “does not intend to take enforcement action against firms who applied for firm certification before April 22 and are just waiting for their paperwork.” [**Click here**](http://www.epa.gov/lead/pubs/renovation.htm#contractors) to access an application for firm certification, as well as a list of eligible courses and accredited training providers.

It is also important to note that [**EPA can authorize states**](http://www.epa.gov/lead/pubs/renovation.htm#authorized) to administer and enforce their own RRP programs. Several states have already done so (e.g., Kansas, Rhode Island, Utah, Mississippi, Wisconsin, Iowa and North Carolina), and several more have introduced legislation to take over the RRP rule. For the purpose of state programs, the EPA RRP rule is considered a minimum requirement, and in some cases state compliance requirements may be more stringent. While EPA certification will likely be transferrable to state programs, the best course of action is to check with your state's environmental agency.

Everyone agrees that the RRP rule will increase the cost of remodeling, but EPA and industry experts continue to disagree on how big that increase will be. The cost of not complying with the rule is, without a doubt, extremely steep.EPA can fine contractors up to $37,500 per violation, per day, according to the schedule of [**Civil Monetary Penalty Inflation Adjustments**](http://www.epa.gov/compliance/resources/policies/civil/penalty/technicalcorrection-frpenalty-010709.pdf) (74 *Fed. Reg.* 626, Jan. 7, 2009; U.S.C. 2615(a)(1) - Toxic Substances Control Act).

The “Lead: Renovation, Repair and Painting Program” and additional information are online at [**www.epa.gov/lead**](http://www.epa.gov/lead).

**Elimination of Opt-Out Provision**

The RRP rule *originally* provided an exemption from the training and work requirements if the property owner certifies that no child under age six and no pregnant woman resides in the subject premises. However, EPA is eliminating the “opt-out” provision. EPA is also requiring renovation firms to provide a copy of the records demonstrating compliance with the training and work practice requirements of the RRP rule to the owner (and to the occupant of the building being renovated or the operator of the child-occupied facility, if different). In addition, the rule makes minor changes to the certification, accreditation and state authorization requirements. This final rule will take effect 60 days after publication in the *Federal Register*. [**Click here**](http://www.epa.gov/lead/pubs/LRRP%20Opt-out_FRM_PrepublicationCopy_2010-04-22.pdf) for a pre-publication version.

**Proposed Expansion of RRP Rule Work Practice Requirements**

In an advance notice of proposed rulemaking (ANPR), EPA announced its intention to apply lead-safe work practices and other requirements to renovations on the exteriors public and commercial buildings. The advance notice also announces EPA’s investigation into whether lead-based paint hazards are created by interior renovation, repair and painting projects in public and commercial buildings. If EPA determines that lead-based paint hazards are created by interior renovations, EPA will propose regulations at a later date to address the hazards. EPA will accept public comment on its ANPR for 60 days after publication in the *Federal Register*. [**Click here**](http://www.epa.gov/lead/pubs/LRRP-PnCB-ANPRM_PrepublicationCopy_2010-04-22.pdf) for a pre-publication version.

EPA also signed a separate notice of proposed rulemaking that would require contractors to perform “dust-wipe testing” after most renovation, repair and painting activities covered by the RRP rule to show that dust-lead levels comply with EPA's regulatory standards. Regulated contractors would also need to provide the results of the testing to the owners and occupants of the building. For some of these renovations, the proposal would require that lead dust levels after the renovation be below the regulatory dust-lead hazard standards. EPA will take comment on the proposal for 60 days after publication in the *Federal Register*. [**Click here**](http://www.epa.gov/lead/pubs/LRRP-Clearance-NPRM_PrepublicationCopy_2010-04-22.pdf) for a pre-publication version. The agency expects to finalize the rule by July 2011.

**Proposed Expansion to Definition of Lead-Based Paint and Tightening of Allowable Lead Dust Concentrations**

In related news, [**in response to an August 2009 petition**](http://www.epa.gov/oppt/chemtest/pubs/petitions.html) submitted to EPA by the National Center for Healthy Housing, the Alliance for Healthy Homes and the Sierra Club, EPA has agreed to issue a proposal to (1) modify the regulatory definition of “lead-based paint” and (2) lower the regulatory dust-lead hazard standards. The Agency has not, however, committed to either a specific rulemaking outcome or a certain date for promulgation of a final rule.

Currently, lead-based paint is defined as paint or other surface coatings that contain lead in excess of 0.5 percent by weight (5,000 parts per million (ppm) or 1.0 milligram per square centimeter (mg/cm2). The petitioners are requesting that EPA redefine lead-based paint as any paint or other surface coating containing at least 0.06 percent by weight (600 ppm) with a corresponding reduction in the 1.0 mg/cm2 standard. If adopted, this change could mean that previously exempt properties would have to comply with the RRP and other lead paint rules.

Under present standards, residual lead-containing dust is considered a hazard if the concentration of lead in such dust found on flooring is greater than 40 micrograms of lead per square foot of surface area (ug/ft2) or greater than 250 ug/ft2 on window sills. Specifically, the petitioners are requesting that EPA reduce the maximum allowable floor-lead dust concentrations from 40 ug/ft2 to 10 ug/ft2 and the maximum allowable sill-dust concentrations from 250 ug/ft2 to 100 ug/ft2.

**Conclusion**

Construction professionals need to be aware of these changing standards and take appropriate action to assure compliance with all lead-based paint rules. In the near term, EPA may expand the federal lead-safe work practices and other requirements to renovation and repair of all buildings that have, or are assumed to have, lead-based paint. AGC will continue to monitor and report on any new developments in *AGC’s Environmental Observer* online at [**http://newsletters.agc.org/environment**](http://newsletters.agc.org/environment).

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