

New Mandatory EPA Rules for Renovations of Homes Built Prior to 1978

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Starting April 22, 2010, any contractor or maintenance person performing activities that disturb painted surfaces in residences or "child occupied facilities" built prior to 1978, is subject to fines of up to \$32,500.00 per day and imprisonment for failure to comply with the EPA's "Lead: Renovation and Repair Program," commonly known as the RRP program. (Title 40 Code of Federal Regulations Part 745.80 et. seq). These Rules prohibit anyone from receiving payment for work that disturbs painted surfaces in any residence or "child occupied facility" built before 1978, unless he or she is a "Certified Renovator" as defined in the Rules and the firm performing the work is a "Lead Free Certified Firm."

To become a "Lead Free Certified Firm," a company must submit an application to the EPA stating that it will comply with RRP Rules and its work will be performed under the supervision of an EPA "Certified Renovator." To become a "Certified Renovator" an individual must attend an eight-hour EPA approved certification course and pass a 50 question exam. The "Certified Renovator" is responsible for:

- Educating the owner/occupant of the property of the Rules by providing an EPA approved pamphlet; and
- Conducting testing to determine if lead is present in the paint; and
- Ensuring a containment area is properly set up; and
- Ensuring that the area has been properly cleaned and waste has been packaged and disposed of appropriately after the work is completed.

The RRP Rules are self-enforcing for the most part as there are extensive record keeping requirements, and the EPA is authorized to demand production of the records. Attorneys need to be familiar with the RRP Rules in order to be ready to assist clients who may encounter difficulties applying the Rules or become the subject of an EPA investigation.

Although the RRP Rules apply to renovations, the Rules provide that the term "renovation" does not include "minor repair" and emergency repairs. Minor repairs involve work which:

1. Will disturb less than six square feet of interior painted surfaces per room; or
2. Will disturb less than twenty square feet of exterior painted surface; or
3. Does not involve demolition of a painted surface; or
4. Does not involve the replacement of a window.

Emergency Renovations are "renovation activities that are not planned but result from a sudden unexpected event

that if not immediately attended to, presents a safety or public health hazard or threatens equipment and/or property with significant damage." In an interesting example in the FAQ section of the EPA web site, the EPA states that making a hole less than six square feet in a wall with a hammer is "demolition" which requires application of the Rules but using a saw to cut the same size hole is a "minor repair" exempt from the rule.

The Rules require a contractor to provide a homeowner an EPA issued pamphlet "no more than 60 days before beginning a renovation" and obtain a "written acknowledgement that the owner has received the pamphlet" or "obtain a certificate of mailing at least seven days prior to the renovation." While the Rules and the EPA approved pamphlet contain a provision allowing a homeowner to "opt out" of certain portions of the Rules, the EPA has published a notice that this provision will be rescinded.

If the renovation will take place in a common area of multi-family housing, the contractor must:

1. Provide the owner with the EPA approved pamphlet and obtain a written acknowledgement of receipt or obtain a certificate of mailing for the pamphlet at least 7 days prior to the renovation.
2. Notify the owner/occupant of "each affected unit" in writing describing the "general nature and location of the planned renovation, providing the expected starting and ending dates and including a statement of how the occupant can obtain the pamphlet; at no charge, from the firm performing the renovation. As an alternative, the contractor can post signs containing the above referenced information which include a copy of the pamphlet or explain how an interested occupant can obtain a copy of the pamphlet.
3. Prepare, sign and date a statement describing the steps taken to notify each occupant of the intended renovation activities and to provide the pamphlet.
4. Notify each occupant if there are any changes to the starting and ending date of the renovation.

If the renovation involves a "child occupied facility, the contractor must also provide a notice to the "parents and guardians of each child using the facility" by hand delivery or mail describing the general nature of the work to be performed, the locations at which the work will be performed and the anticipated completion date. The contractor must also "prepare, sign and date a statement describing the steps taken to notify all parents/guardians of the work to be performed."

A "child occupied facility" is any portion of a building built

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before 1978 that is visited by a child under six years old whereby:

1. Visits are regularly on two different week days; and
2. Each visit lasts at least three hours; and
3. The combined weekly visits are at least 6 hours; and
4. The combined annual visits are at least 60 hours.

These Rules apply regardless of the type of building in which the "child occupied facility" is located. As such, these Rules will apply to day care centers, recreation centers, public schools and charter schools. If the "child occupied facility" is a building with common areas, the Rules only apply to those portions of the common areas that are "routinely used by children under 6 years of age such as restaurants and cafeterias." The RRP Rules also apply to any exterior areas that are "immediately adjacent" to the building and common areas routinely used by children under the age of 6.

One of the most difficult aspects of the RRP Rules is the record keeping requirements. Firms performing renovations in any building subject to the Rules must keep records "necessary to demonstrate compliance" with the Rules for three years from the date the renovation is completed. The records must include, but are not limited to, the following items:


1. Whether an inspection has determined that there is no lead paint in the building; and
2. Signed and dated acknowledgements of the owner that the owner has received the required notice or that the contractor complied with one of the methods of service authorized by the Rules; and
3. Documentation that a "Certified Renovator" was assigned to the project; and
4. Documentation that the "Certified Renovator" performed or directed the performance of the tasks required by the Rules; and

5. Documentation that the "Certified Renovator" performed the required post-renovation cleaning procedures; and
6. Documentation that training was provided in lead safe practices to the workers performing the project including the specific topics of training for each worker; and
7. Documentation that warning signs were posted at the entrances to the work area; and
8. If test kits were used, documentation of the brand that was used and the location at which the testing was performed; and
9. Documentation that the containment requirements of the rule were complied with.

These are just some of the record keeping requirements with which each firm must comply. Most trainers are recommending contractors prepare checklists to make sure they have all of the records required for each project and take photographs of the various phases of the work.

The RRP Rules provide sanctions for "failure or refusal to establish and maintain records" and give the EPA authority to conduct investigations and issue subpoenas. Refusal to comply with an EPA investigation can result in fines of up to \$32,500.00 dollars per day and imprisonment for up to five years.

This article has been limited to a discussion of some of the key points of the RRP Rules. If you have clients who are involved in the renovation of residences built before 1978 or clients who own apartments, read the Rules to ensure you are ready to answer the many questions your clients are certain to have. The EPA has a portion of its web site dedicated to the RRP Rules: epa.gov/lead. It has links to all of the Rules and the various publications the EPA has produced to help contractors, homeowners and others understand the Rules.

The web site also has a "frequently asked questions" section that allows users to post their own questions and receive answers from the EPA. If you are unfamiliar with the EPA RRP Lead Safe Certified Renovator program, reading the questions and answers on the web site will give you a good understanding of the many difficult issues involved in the interpretation of the RRP Rules. 

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