

1. Clearance and dust wipe testing for renovations (NOT INCLUDED in Final Rule)

[p. 47919] EPA has decided not to promulgate clearance and dust wipe testing requirements as proposed in May 2010

2. Elimination of provision allowing clearance in lieu of cleaning verification (NOT INCLUDED in Final Rule)

[p. 47923] EPA is retaining the provision that allows the cleaning verification step to be skipped if the renovation firm must also achieve clearance. However, EPA believes that renovation firms whose projects are subject to clearance only as a result of contractual requirements are less likely to gain the repetitive experience of cleaning sufficiently so as to meet clearance with few cleaning cycles, so EPA encourages property owners who include clearance in their renovation contracts to also require renovation firms to perform cleaning verification. EPA also notes that States and Tribes are free to include both clearance and cleaning verification in their laws and regulations.

3. Paint chip sample collection (INCLUDED in Final Rule)

[p. 47924] EPA is promulgating the proposed option allowing certified renovators to collect paint chip samples from painted components that will be disturbed by a renovation and submit those samples to an NLLAP-recognized entity for analysis. EPA will modify the model certified renovator training course to add the necessary information on sample collection, chain-of-custody, and laboratory submission procedures. EPA will post the information developed for the renovator training course on its Web site. EPA will also e-mail this information to certified renovation firms that provided an e-mail address on their certification applications. Certified renovators must still test each affected component, they are not permitted to exclude components based on similar painting histories or perform random paint sampling in multi-unit buildings. Just as with the current provisions for test kit use, in those states that do not permit persons other than certified inspectors or risk assessors to sample or test for lead-based paint, certified renovators will not be able to exercise this option.

4. Additional requirements for Training Provider Accreditation (INCLUDED in Final Rule)

[pp. 47924-47929] Amendments affecting training providers include changes to the requirements for documentation of personnel qualifications, submission of training course materials, role of the principal instructor, application amendments, hands-on training requirements, e-learning, combined refresher courses, recordkeeping, and trainee photographs.

5. State and Tribal program authorization (INCLUDED in Final Rule)

[p. 47929] Amendments affecting State and Tribal programs include, among other details, establishment of a minimum penalty of \$5,000 per violation per day

6. Vertical containment (INCLUDED in Final Rule)

[p. 47931] ... EPA is promulgating a requirement that vertical containment or equivalent extra precautions in containing the work area be used on exterior renovations performed within 10 feet of

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the property line. This requirement is intended to provide flexibility for certified renovators to design effective containment systems based on the renovation activity and the work site. To ensure that renovation firms understand that the requirement refers to a wide variety of effective work area containment systems, EPA is including the phrase “or equivalent extra precautions in containing the work area” in this requirement. Effective work area containment can span a range from simple barriers to more extensive scaffolding, depending on the size of the job and other relevant factors. Complex vertical containment systems with extensive scaffolding are often not necessary to effectively contain the dust generated by a renovation. An example of a simple barrier system, on a job requiring hand scraping within a few feet of the ground and within a few feet of the property line, would be laying plastic or other impermeable material on the ground between the paint disturbing activity and the property line, anchoring it to the house, and then extending the material up and over the fence at the property line. A slightly more extensive containment approach could involve the use of a triangular eave/soffit “lean-to” system. In this system, plastic or other impermeable material could be spread out on the ground 5–10 feet out from the exterior side wall, depending upon the available space. The same impermeable material could be attached to the eave or soffit area at the roofline, and held away from the building by an extension ladder temporarily fastened to where the wall meets the eave or soffit. The material would then be fastened and sealed onto the ground cover. A variation of this system would involve draping the plastic or impermeable material over a frame consisting of commercially available tension rods or strong painter’s extension tubes. Effective containment could also consist of plastic or other impermeable material draped from outriggers, or framework secured to the roofline, taped to the sides of the building to surround the work area, and fastened and sealed to the ground cover. Yet another containment system could involve a rigid box-like framework, constructed out of commercially available tension rods or painter’s extension tubes, wrapped in impermeable sheeting and anchored to the ground cover and the sides of the building. EPA believes that these measures, in most cases, should be sufficient to contain dust and debris where extra containment measures are needed, such as work that creates large amounts of dust or work performed within 10 feet of the property line.

[p. 47932] ... EPA has been asked to address the problem of obstacles that prevent renovation firms from using 6 feet of plastic sheeting or other impermeable material on interior floors or 10 feet of material on the ground. EPA believes that the proper use of vertical containment measures may be a more effective method for containing the work area than use of traditional floor or ground containment alone, especially where obstacles prevent or make it impractical to install floor or ground containment to the extent required by the RRP rule. Therefore, EPA is amending the containment provisions for both interior and exterior renovations to permit renovation firms to erect vertical containment closer to the renovation activity than the minimum floor or ground containment distance specified in the RRP rule to give renovation firms more flexibility in designing effective containment strategies for particular work sites. For exterior renovations, this amendment would allow a renovation firm to construct vertical containment less than 10 feet from the renovation activity. If a renovation firm chooses to take advantage of this provision, the ground containment may extend less than 10

feet, stopping just outside the edge of the vertical containment, as long as the distance is sufficient to contain all dust and debris during the renovation and post-renovation cleanup. For example, a renovation firm erects an exterior vertical containment system consisting of a rigid box-like framework wrapped in impermeable plastic sheeting and anchored to the ground and home. If this containment system is erected 5 feet from the side of the home, and placed on top of ground containment, such containment should effectively limit the travel of dust and debris to the interior of the enclosure. Under the amended containment provisions, the renovation firm would not be required to extend plastic sheeting or other impermeable material another 5 feet beyond the vertical containment system in order to meet the 10 foot minimum ground containment requirement promulgated in the 2008 RRP rule.

7. *Prohibited or restricted practices (INCLUDED in Final Rule)*

[p. 47933] ... EPA proposed to make a number of minor revisions to clarify the prohibitions and restrictions on work practices in 40 CFR 745.85(a)(3). The first was a clarification that these prohibitions and restrictions, e.g., the prohibition on open flame burning or torching, apply to all painted surfaces, not just surfaces where the presence of lead-based paint has been confirmed. The term “lead-based paint” was incorrectly and inadvertently used in this subparagraph, making it inconsistent with the rest of the RRP rule, which applies in the presence of known lead-based paint as well as paint that has not been tested for lead content. Accordingly, EPA proposed to replace the term “lead-based paint” with “painted surfaces” in this subparagraph. Of course, if the painted surface has been tested and found to be free of lead based paint, the prohibitions and restrictions on work practices in the final RRP rule do not apply. In using the term “painted surfaces,” EPA has always meant component surfaces that are covered in whole or in part with a coating that could be lead-based paint. The term was designed to encompass situations where the surface is covered with lead-based paint as defined by the regulation as well as situations where the lead content of the surface coating had not been determined. EPA never intended to exclude varnishes or other surface coatings from the coverage of the RRP rule. In fact, the applicability section of the RRP rule, 40 CFR 745.82, limits the exclusions for testing to those situations where the components to be disturbed by a renovation have been demonstrated to be free of paint and other surface coatings that contain lead at levels equal to or exceeding the regulatory threshold. Therefore, EPA is promulgating this revision as proposed and EPA is also adding a clarifying definition of “painted surface” to 40 CFR 745.83. This definition states that painted surface means a component surface covered in whole or in part with paint or other surface coatings.

...EPA proposed to clarify that the restriction in this section on the use of machines that remove paint through high speed operation applies anywhere painted surfaces are being disturbed by such machines; the restriction is not limited to situations where all of the paint is removed by such machines. EPA is promulgating this revision as proposed, with the addition of the phrase “or other surface coatings” after the term “paint,” because EPA never intended to create a loophole that would

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allow someone to remove some or most of the paint or other surface coating from a component without complying with the restriction.

[pp. 47933-47934] ... EPA proposed to clarify what was meant by HEPA exhaust control. In order to better express what is required when machines designed to remove paint through high speed operation are used, EPA consulted the Occupational Safety and Health Administration's Technical Manual (Ref. 12). The use of shrouded tools to remove lead-based paint is discussed in Chapter 3 of Section V, entitled "Controlling Lead Exposures in the Construction Industry: Engineering and Work Practice Controls." Using language from this reference, EPA proposed to amend 40 CFR 745.85(a)(3)(ii) to read, "The use of machines designed to remove paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines are used shrouded and equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation." ... After consulting the abatement chapter of the HUD Guidelines, EPA has determined that the proposed language could potentially be read to exclude one of the two types of sanders described by HUD as appropriate for abatement work because they provide HEPA exhaust control. Accordingly, EPA is promulgating the revision as proposed, except that the regulatory language will read "* * * unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system."

8. HEPA vacuums (INCLUDED in Final Rule)

[p. 47934] In May 2010, EPA proposed to clarify that vacuums qualifying as HEPA vacuums for the purposes of this rule must be operated and maintained in accordance with the manufacturer's instructions in order to continue to qualify as HEPA vacuums. This includes following the manufacturer's filter change interval recommendations. EPA also proposed to clarify that the standard for HEPA filters, that they be capable of capturing particles of 0.3 microns with 99.97% efficiency, means that the filters must have a Minimum Efficiency Reporting Value (MERV) of 17 or greater. At the time, EPA also recommended that renovation firms have information from the manufacturer that the particular model of vacuum that the renovation firm intends to use, or the vacuum's HEPA filter, has been tested in accordance with an applicable test method, such as ASTM F1471-09, "Standard Test Method for Air Cleaning Performance of a High-Efficiency Particulate Air-Filter System," and has been determined to meet this standard (Ref. 13). ... EPA continues to believe that HEPA vacuums are a necessary part of the required RRP work practices. In addition, the OSHA Lead in Construction standard requires the use of HEPA vacuums whenever vacuums are used. However, EPA also understands the concerns of those commenters who had already purchased HEPA vacuums for purposes of the RRP rule as well as those others who thought that the proposed MERV value of 17 would be too stringent. In balancing these concerns, EPA has decided to promulgate the requirement that HEPA vacuums be operated in accordance with manufacturer's instructions, but not the requirement that compliant vacuums be rated at a MERV value of 17 or higher.

9. On-the-job training (INCLUDED in Final Rule)

[p. 47934] EPA's 2010 proposal included a clarification regarding the required elements of on-the-job training provided by renovators. Specifically, EPA proposed to clarify that the RRP rule requires certified renovators to train other renovation workers in only the work practices required by the RRP rule that the workers will be using in performing their assigned tasks. As discussed in the 2010 proposal, EPA did not intend to require training in any other subjects, such as how to paint or how to connect pipes. EPA is promulgating the clarification as proposed....

10. Grandfathering (INCLUDED in Final Rule)

[pp. 47934-47935] Under the final 2008 RRP rule, individuals who successfully completed an accredited abatement worker or supervisor course, and individuals who successfully completed the HUD, EPA, or the joint EPA/HUD model renovation training courses may take an accredited refresher renovation training course in lieu of the initial renovation training to become a certified renovator. In addition, individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course, but are not currently certified in the discipline, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. As discussed in the 2010 proposal, EPA inadvertently failed to include in the 2008 RRP rule a time limit for taking the refresher in lieu of the initial course. EPA is promulgating a provision that allows renovators and dust sampling technicians who take the appropriate prerequisite course before the effective date of this rule to take an accredited refresher training course in lieu of the initial training. EPA also proposed a clarification regarding the grandfathering provision as it applies to the dust sampling technician discipline. Individuals who successfully complete an accredited lead-based paint inspector or risk assessor course, but are not currently certified in the discipline, may take an accredited refresher dust sampling technician course in lieu of the initial training before the effective date of this rule to become a certified dust sampling technician. In order to clarify the intent of the regulation, EPA proposed to amend 40 CFR 745.90(a)(3) to specifically state that a certified inspector or risk assessor may act as a dust sampling technician. EPA is promulgating this provision as proposed.

DATES: This final rule is effective October 4, 2011.

NOTE: Page numbers in parentheses refer to the preamble to the regulatory revisions published in *Federal Register / Vol. 76, No. 151 / Friday, August 5, 2011 / Rules and Regulations*