

Door & Access Systems

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Your New Uniform?

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Lead-Safe Requirements

**Hit the
Garage Door
Industry**

**Helpful
Information
From
Authoritative
Sources**

By Tom Wadsworth, Editor



“The ten most dangerous words in the English language are, ‘Hi, I’m from the government, and I’m here to help.’”

—Ronald Reagan, July 28, 1988

Editor’s Preface

Since March 1, we have received comments and input from hundreds of garage door dealers throughout the United States about the Environmental Protection Agency’s (EPA) new lead-safe work practices. Yes, hundreds.

Opinions are clashing. Tempers are flaring. Misinterpretations are rampant. Confusion and frustration abound.

In an attempt to increase clarity and provide reliable information, this article will present much information taken directly from authoritative sources, primarily from the EPA itself. Knowing that legalese and regulation-speak are not always easy to understand, we will occasionally translate when we are confident in our translation.

Wherever possible, this article will provide exact quotations from these sources, avoiding unwarranted interpretations. To aid the reader, red text in this article indicates the exact wording of the EPA language as found in the lead-safe practices rule as published in the Federal Register on April 22, 2008, on the EPA Web site, in current EPA documents, or from EPA authorities in Washington.

This article does not cover all the issues involved. But we hope we are touching some of the issues of urgent interest to U.S. garage door dealers. The reader should also note that changes have been proposed for certain portions of the regulations. Dealers are urged to stay tuned in to reliable sources for updates.

DASMA has developed a line of communication to the head of the EPA’s lead paint program. An industry lead-paint task force, composed of DASMA and IDA members, is now studying industry questions and working with the EPA to get reliable answers. The group may have results to report this summer. To receive e-mail updates on this issue, please send your e-mail address to dasma@dasma.com.

April 22, 2010: Earth Day

On April 22, 2010, the entire U.S. renovation world, including the garage door industry, received a major wake-up call from the EPA. Effective that date, “no firm may perform, offer, or claim to perform renovations without certification from EPA” in any housing or child-occupied facilities constructed prior to 1978.

On March 19, in an exclusive interview with Door & Access Systems, Maria J. Doa, Ph.D., who serves as the director of the EPA’s lead-based paint program, stated that garage door dealers “need to have a trained and certified renovator on staff, and their firm needs to be a certified firm.” Failure to comply can incur a fine of up to \$37,500 per violation, per day.

The EPA’s Renovation, Repair, and Painting (RRP) Rule applies when you work on “pre-1978 housing and child-occupied facilities, such as schools and daycares.” When the rule applies, renovators must ensure that all lead dust is properly contained and disposed of. Some exceptions apply (see p. 42).

However, according to the EPA’s Lead-Safe Renovations booklet published in March 2009, “If a home was built before 1978, you must either assume that lead-based paint is present or have the work area tested for lead-based paint before starting the job.”

Key Task: Get Certified

DASMA and IDA are urging all garage door installation/repair companies to get their firms certified and to have at least one employee from each firm complete the requirements to become a certified renovator.

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Why All the Fuss?

The problems of lead poisoning have been publicized for decades. According to the EPA ...

- “Lead paint poisoning affects over one million children today.”
- “Learning disabilities, hearing loss, and violent behavior are some of the effects lead paint can have on young children.”
- “Lead may cause a range of health effects, from behavioral problems and learning disabilities, to seizures and death.”
- “Lead is more dangerous to children ... [but] lead is also harmful to adults. Adults can suffer from: reproductive problems (in both men and women), high blood pressure and hypertension, nerve disorders, memory and concentration problems, muscle and joint pain.”

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The EPA says, “To become a certified renovator, individuals are required to take eight hours of training, of which two hours must be hands-on training.” Firms become certified by submitting “a two-page application to EPA and pay a fee of \$300. Certification is good for five years.” Certified firms then earn the “rights to use EPA’s ‘Lead-Safe Certified Firm’ logo.”

“Once a dealer is trained and certified, they will be better equipped to answer most of the questions that arise,” says Naomi Angel, DASMA legal counsel. “Instead of continually relying on input from others, the training will help each dealer become his or her own best resource.”

protection specialist who works with Dr. Doa in the EPA’s National Program Chemicals Division. He copied Dr. Doa on his response.

In his e-mail, Edmunds noted that the key issue is “whether the work performed is considered ‘minor repair and maintenance’ as defined in the RRP regulations.”

He quoted the EPA definition. “‘Minor repair and maintenance’ is defined as activities ... that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities ... When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed.”

section is simply carried away.”

“EPA Response: If you are only removing fasteners and not disturbing paint on the doors then the square footage of the doors do not have to be counted toward the six square feet and 20 square feet in the definition of minor repair and maintenance.”

Since this response did not specifically address the issue of carrying the sections, we sent a follow-up question. We said:

“Yes, we are only removing fasteners, and yes, we believe that we are not ‘disturbing paint on the doors.’ However, we ARE carrying the doors away from the garage and loading them in the technician’s service truck. Does that ‘carrying process’ count as ‘disturbing paint on the doors’? Common sense tells us that this is not disturbing the paint, but we want to be sure. This action is repeated thousands of times a day in our industry.”

“It Depends ...”

His response was, “There may be some instances where removing a door could disturb the paint. For example, if the paint is in bad condition and paint chips fall off the door when it is taken off the hinges or carried, then that would be considered disturbing paint. It depends on the situation.”

We felt this response was encouraging, but the phrases “there may be some instances” and “it depends” leave room for doubt. In a typical 35-year-old painted garage door, the surfaces of the section joints can be rather brittle and dusty from constant rubbing against the adjacent section.

In a later DASMA communication with Marc Edmunds, he acknowledged that garage door removal may not be considered a typical home renovation. But he added, “Removing a door may or may not disturb paint. It depends on the job and thus will be a judgment call by the people working on that job.”

EPA Posts an Answer Online

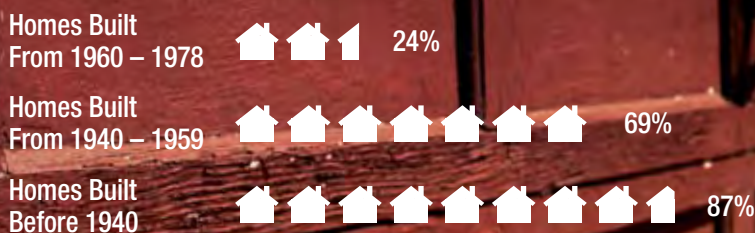
On May 21, the EPA posted an answer on its Web site to a specific question about replacing garage doors. The posted question is, “My firm replaces garage doors. We unbolt the door from its hardware and remove it without penetrating, scraping, or removing paint. Is this work subject to the RRP Rule?”

The EPA’s answer, available for viewing online, is, “If unbolting and removing the door does not disturb a painted surface in the hinges, door, or frame, the RRP Rule does not apply.”

The statement can be found at <http://toxics.custhelp.com> and searching for “garage.” The Answer ID number is 6982.

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Percentage of Homes Likely to Contain Lead



Source: National Survey of Lead and Allergens in Housing, as cited in 40 CFR Part 745, published April 22, 2008.

Disturbing Lead-Based Paint?

Since April 22, Door & Access Systems has conducted two nationwide surveys that generated much input from garage door dealers on the issue of lead-safe work practices. Since the RRP Rule focuses on “renovation, repair, and painting activities that disturb lead-based paint,” many dealers questioned why typical garage door repair and replacement work should apply.

For example, we received about 25 comments like these:

- “Removing garage doors does not disturb paint. Do the EPA inspectors understand our industry?”
- “The homeowner ‘disturbs lead paint’ with every opening of the door. This is much more ‘disturbing lead paint’ than when we remove the door. How does removing a door trigger the RRP Rule?”

DASMA’s Three Questions

Recognizing the potential confusion, DASMA e-mailed three questions to Dr. Doa of the EPA. The questions attempted to focus on three key activities of garage door technicians.

The EPA responded on April 8 in an e-mail from Marc Edmunds, an environmental

#1: Repair Work

Our first question asked, “Does a garage door technician trigger the rule if the task involves removing or installing fasteners in a lead-painted surface? (The surface could be a door section, door trim, jamb, header, or ceiling).” We figured that this question covered most residential garage door repair work as well as garage door opener repairs and replacements.

When Edmunds responded, he did not characterize his comments as his personal interpretation but called them “EPA Response.” Here’s the first.

“EPA Response: The RRP rule does not apply for work that meets the definition of minor repair and maintenance. Removing or installing fasteners may disturb paint but the RRP rule would only apply if the combined area of paint disturbed for the entire renovation does exceeds [sic] the square footage in the definition of minor repair and maintenance.”

#2: Removing Garage Door Sections

Our second question asked if the rule was triggered when “removing a lead-painted garage door section.” We explained that “Garage doors typically come in four stacked sections. After removing fasteners, each

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#3: Removing Garage Door Trim

Our third question asked if we would trigger the rule by removing lead-painted trim from the garage door exterior. We explained, “The exterior trim is usually pried off. Its total square footage is typically less than eight square feet.”

“EPA Response: The removal of painted trim would be considered disturbing paint and would have to be counted toward the square footage of the minor repair and maintenance definition.”

Judging by these EPA statements, it appears that most garage door repair work will not trigger the rule unless the total square footage exceeds “the six square feet [interior] and 20 square feet [exterior] in the definition of minor repair and maintenance.”

Garage door work that doesn’t trigger the rule, then, likely includes minor tasks such as changing springs, rollers, and hinges, as well as any opener repair or opener replacements. Replacing a single exterior painted section would not trigger the rule if its total exterior square footage is less than the 20-sq.-ft. definition.

“Better Safe Than Sorry”

So, the big question involves replacing an entire garage door that has lead-based paint. Since the EPA’s statements leave open the possibility for liability, door dealers may do well to take the conservative approach. That means focusing on safety for the customer, for your workers, and for your business.

A key statement in the definition of minor repair and maintenance is, “When removing painted components, or portions of painted

components, the entire surface area removed is the amount of painted surface disturbed.”

This statement may be enough to motivate door dealers to regard all replacements of lead-based-painted garage doors as requiring the EPA’s lead-safe work practices.

EPA Enforcement and Penalties

Several door dealers have asked how the EPA intends to enforce the RRP Rule. In its “Small Entity Compliance Guide to Renovate Right,” the EPA states that it “uses a variety of methods to determine whether businesses are complying, including inspecting work sites, reviewing records and reports, and responding to citizen tips and complaints.”

The “citizen tips and complaints,” likely coming from competitors, may ultimately be the primary way that the EPA discovers violations.

What can the EPA do to violators? In addition to penalties of up to \$37,500 per violation, per day, the EPA can also seek “jail time for a firm that knowingly and willfully violates the [RRP Rule] requirements.”

Beyond the fines and imprisonment, “EPA may suspend, revoke, or modify an individual’s certification if the individual fails to comply with federal lead-based paint statutes or regulations.”

EPA Year One: Compliance Assistance

We were informed of a rumor that the EPA has 16,000 enforcement officers ready to slap fines on non-compliant renovators. However, Dr. Doa told us that this was false.

“In the first year, we’re focusing on compliance assistance,” said Doa. “We want to get people trained and certified.”

Passing Responsibility?

Some dealers have stated that they plan to sidestep the requirements by hiring another company to remove any lead-painted garage doors. The door dealer would then come in and install a new door in an empty opening, without disturbing any paint.

This approach, however, will not relieve you of liability. “If you hire someone to do work for you, you are responsible for their work,” says Naomi Angel.

Four Exceptions Become Three: Opt-Out Is Out

The original RRP Rule offered four ways that renovators could be exempt from the rule’s requirements. When first introduced in April 2008, the RRP Rule contained an opt-out provision. If a homeowner certified that no child under age six or pregnant women resided in the home, then the renovator would be exempt from the training and work practice requirements of the rule.

However, on Oct. 28, 2009, the EPA proposed eliminating the opt-out provision. This proposed rule became final on April 23, 2010. If new legislation doesn’t change that date, only three exceptions will then apply.

The Three Exceptions: #1 Lead-Free Projects as Determined by Testing

The RRP Rule “exempts renovations that affect only components that a certified renovator, using a test kit recognized by EPA, determines are free of lead-based paint.” This option can be useful since only 24 percent of homes built

A Brief History of Lead-Based Paint and the U.S. Government

1977 Sept. 1: Congress enacts a Consumer Product Safety Act that bans “lead-containing paint,” effective Feb. 27, 1978.

1992 Oct. 28: Congress enacts the Residential Lead-Based Paint Hazard Reduction Act of 1992, establishing a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible.

1996 Aug. 29: The EPA promulgates its final Lead-Based Paint Activities Regulations under the Toxic Substances Control Act (TSCA) Section 402 (a) for pre-1978 housing and child-occupied facilities.

1998 June 1: EPA regulations require persons who perform renovations for compensation in target housing to provide a lead hazard information pamphlet to owners and occupants of the home being renovated.

2006 Jan. 10: The EPA issues a Notice of Proposed Rulemaking covering renovation performed for compensation in target housing. The proposal contains requirements designed to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint.

2007 June 5: The EPA issues a Supplemental Proposal to add child-occupied facilities to the buildings covered by the 2006 Proposal.

2008 April 22: The EPA publishes the final rule concerning the Renovation, Repair, and Painting (RRP) Program to address the lead hazards in homes and child-occupied facilities. The rule takes effect on June 23, 2008, with certain segments to be implemented at later dates.

2009 Oct. 22: The EPA begins certifying renovation firms.
Oct. 28: The EPA publishes a proposed rule to eliminate the “opt-out provision” that allows a homeowner to exempt a renovation firm from the RRP rule by certifying that no child under age six or pregnant women reside in the home.

2010 April 22: The RRP Rule of 2008 is fully implemented, prohibiting firms from performing renovations on target buildings without certification from EPA.

May 6: The EPA publishes a final rule to eliminate the “opt-out provision” that was created in 2008. The opt-out provision is set for elimination on July 6, 2010.

from 1960 to 1978 are likely to contain lead-based paint.

All components affected must be tested. If, for example, you are planning to replace a garage door and trim, “the certified renovator must test each of the components that will be affected by the renovation.” Thus, the garage door and the trim must be tested.

According to the RRP Rule, the only exception to testing all components is when “the components make up an integrated whole, such as the individual stair treads and risers in a staircase. In this situation, the renovator need test only one such individual component, e.g., a single stair tread, unless it is obvious to the renovator that the individual components have been repainted or refinished separately.”

Only One EPA-Recognized Kit

The tests are simple and inexpensive. As of June 10, 2010, the only two EPA-recognized test kits are “the LeadCheck kit and the State of Massachusetts kit.” Of these, LeadCheck appears to be the only commercially available product.

On April 9, Mike Peroni, the chief operating officer of Hybrivet Systems, the maker of LeadCheck, told us that his firm had just sent its first shipment to Sherwin Williams stores. But by May 18, Peroni reported that the kits were available at other stores such as Sherwin Williams, Do It Best, Modern Builders Supply, ABC Supply, Home Depot, and Lowes.

Don't Get the Wrong Kit

Some stores may have a consumer version of LeadCheck, such as one marketed by Homax, that does not include the test confirmation cards. These cards are essential for certified renovators to provide a record the test results.

Peroni says LeadCheck has severed its relationship with Homax. If you find any kits sold under the Homax label, they are the final remnants of Homax's inventory. Many other brands of test kits are available on Amazon and elsewhere, but LeadCheck—with the test confirmation card—is the only EPA-recognized kit available.

Having a corner in a hot market is a good place to be, but it has its struggles. “A lot of non-contractors have bought our swabs and are selling them on eBay for ridiculous prices,” Peroni warns.

How to Order

Kits can be ordered directly from LeadCheck for \$2.15 per test swab by calling 508-651-7881 or 800-262-5323. Currently, the kits are available online only from check4lead.com and homedepot.com, but online prices are higher.

In response to high demand, Peroni says the company has ramped up production and extended its call center hours to 7:00 a.m. to 8:00 p.m. (ET). Still, lead times in late May were two and a half to three weeks.

He recognizes that many renovators have projects right now, but can't get the test kits. “The best solution is to assume there is lead and proceed accordingly,” he adds.

The Three Exceptions #2 Minor Repair and Maintenance

As stated earlier, “the RRP rule does not apply for work that meets the definition of minor repair and maintenance.” This means activities “that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities.”

But as noted previously, “When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed.”

The Three Exceptions #3 Emergency Projects

Emergency projects are also an exception, but not entirely. “Emergency projects are exempt from the lead hazard information distribution requirements, but the clean-up after the project must meet the requirements of this regulation, and compliance with the training, certification, warning sign, and containment requirements of this regulation is required to the extent practicable.”

The 2008 published rule doesn't provide much clarity to the definition of “emergency projects.” It does say, however, “Emergency renovations include interim controls performed in response to a resident child with an elevated blood-lead level.”

The EPA's “Small Entity Compliance Guide to Renovate Right” (December 2008 edition), offers a helpful definition of “emergency renovation.” It identifies it as “Unplanned renovation activities done in response to a sudden, unexpected event which, if not immediately attended to, presents a safety or public health hazard or threatens property with significant damage.”

The Disposal Issue

Several garage door dealers, even some who have taken the training, have asked questions about the proper disposal of a garage door with lead-based paint. The EPA documents are fairly clear about disposal issues.

The EPA's “Steps to Lead Safe Renovation, Repair and Painting” brochure of March 2009 says, “Use heavy plastic sheeting or bags to

collect waste. Large components should be wrapped in protective sheeting and sealed (securely) with tape.”

The “Small Entity Compliance Guide” adds that the sealing must be secure enough to “prevent releases of dust and debris before the waste is removed from the work area.” Further, the RRP Rule adds that while “transporting lead-based paint waste from a work site,” you “must contain the waste to prevent identifiable releases.”

A few door dealers have expressed difficulty in finding a landfill that will accept the waste. The “Steps to Lead Safe” brochure says, “Most waste generated during these [residential renovation] activities is classified as solid, non-hazardous waste, and should be taken to a licensed solid waste landfill.”

The EPA notes, however, that “Work done in commercial, public, or other nonresidential child-occupied facilities ... may be considered hazardous and require special disposal methods.” Since some landfills may be more stringent than federal regulations, the EPA recommends that you check your state and local requirements.

Recordkeeping, etc.

As stated earlier, this article does not cover every issue involved in the RRP Rule. Proper recordkeeping, posting of signs, establishing barriers, distributing information to occupants, personal protective equipment, and cleaning procedures, for example, should be covered adequately in your training. This is another reason to take the training and take it seriously.

The Proposal to Delay

Prior to the April 22, 2010, implementation date, several construction industry associations appealed for a delay. They claimed that the industry had not been adequately notified of the Rule and that states had not been able to train enough renovators to be in compliance.

On April 29, a week after the RRP Rule was fully implemented, legislation was introduced in the U.S. House (H.R. 5177), and in the Senate on May 4, (S. 3296), to delay the implementation of the RRP Rule.

On May 27, the Senate passed legislation that would bar the EPA from levying fines against contractors through Sept. 30, 2010, and give contractors more time to comply with the RRP Rule. The amendment, part of an appropriations bill, must still be approved by the House and signed by the president. At the time of this writing, its outcome was not yet final.

If the amendment is approved, door dealers would be saved from any fines if they sign

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up for the RRP training class by the end of September.

Public and Commercial Buildings, Too?

On April 23, 2010, the EPA announced its intention to expand the RPP Rule beyond pre-1978 housing and child-occupied facilities. Specifically, the EPA said it intends “to propose lead-safe work practices and other requirements for renovations on the exteriors of public and commercial buildings.” The EPA also plans “to determine whether lead-based paint hazards are created by interior renovation, repair, and painting projects in public and commercial buildings.”

Ultimately, the EPA plans to issue a proposal “to regulate renovations on the exteriors of public and commercial buildings ... by Dec. 15, 2011, and to take final action ... by July 15, 2013.”

What does this mean? If your garage door firm is planning to ignore certification and refuse to do jobs that require RPP lead-safe work practices, you might want to reconsider. In the next few years, you may find yourself shut out of many more jobs than just pre-1978 housing.

Some States May Vary

A state may promulgate its own rules that may be different from or go beyond the federal requirements. As of June 10, 2010, eight states had been authorized to administer their own RRP programs in lieu of the federal program. If you live in one of the following states, contact your state program about its training and certification requirements.

- Iowa (Dept. of Public Health)
- Kansas (Dept. of Health and Environment)
- Mississippi (Dept. of Environmental Quality)
- North Carolina (Dept. of Health and Human Services)
- Oregon (Dept. of Human Services, Public Health Division)
- Rhode Island (Dept. of Health)
- Utah (Dept. of Environmental Quality)
- Wisconsin (Dept. of Health Services)

You Can't Fight City Hall

Judging from the responses of hundreds of door dealers nationwide, it's clear that many are frustrated and angry with the new lead-safe work practices. Our surveys offered dealers the option to submit comments, and hundreds jumped at the opportunity. Nearly all comments were negative.

For example, dealers criticized the RRP Rule as “ridiculous,” “too late and too costly,” “corrupt,” “an attack on small business,” “nonsense,” “just another money grab by the government,” “totally crazy,” “the most unnecessary regulation ever,” “absurd,” “benefiting only the tailgater,” and “just another

government rip-off.”

We admit that we had similar thoughts. But after the initial shock wears away, the regulations still stand.

Naomi Angel, DASMA's legal counsel, has been working closely with government regulations for decades. She understands our frustration, but recognizes that it's a common and recurring reaction in the eternal cycle of government regulation.

“It's unproductive and futile to think that the rules are inconsistent or nonsensical,” she advises. “Just follow the rules as best you can and protect yourself from liability.” ■

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