EPA’s Lead: Renovation, Repair, and Painting (LRRP) Rule

OBJECTIVE: WDMA supports legislation reforming the Environmental Protection Agency’s (EPA) Lead: Renovation, Repair and Painting (LRRP) rule to make compliance requirements more reasonable for remodelers, contractors and homeowners while protecting pregnant women and children six years of age or under from lead exposure.

BACKGROUND: The final LRRP Rule took effect on April 22, 2010 and requires remodeling and renovation firms that perform work on pre-1978 housing and child-occupied facilities to be EPA certified and follow rigorous, costly work practices supervised by an EPA-certified renovator when painted surfaces will be disturbed. This includes any work that disturbs more than six square feet of any painted surface on the interior of the home or building, 20 or more square feet on the exterior, and window repair or replacement.

Poor development and implementation of the rule has resulted in contractors and homeowners facing considerable compliance costs and the lack of an EPA compliant test kit means in some cases consumers are paying additional costs for unnecessary work because of false positive test results. EPA is now looking to expand the rule to commercial and public buildings despite a report from EPA’s Office of Inspector General that the agency understated the costs and overstated the benefits of the rule.

EPA estimates that meeting the LRRP compliance requirements adds an additional $35 to $376 per project; however, according to manufacturers and remodelers, a standard window replacement project complying with LRRP adds more than $1,000 to the cost of each project.

REMOVAL OF OPT-OUT PROVISION: In April 2008, the final LRRP rule contained an “Opt-Out” provision allowing homeowners to waive testing and the use of special work practices if there were no pregnant women or children under age six living in the home. However, in July 2010, EPA removed the Opt-Out provision more than doubling the number of pre-1978 homes subject to the rule. EPA took this action without adequate justification for the rule’s expansion, and by EPA’s own estimates, removing the Opt-Out provision increases annual compliance costs by $336 million to the regulated community.

LACK OF ACCURATE LEAD TEST KITS: EPA has also failed to meet the requirements of its own rule by failing to identify a lead test kit that produces no more than 10 percent false positives. As a result, in some cases consumers are paying for work practices that are unnecessary and provide no benefit, but must be employed because of false positive test results. EPA’s initial estimates stated that an improved test kit would reduce the rule’s cost by $400 million a year. In addition, EPA stated in its rulemaking that “if the improved test kits are not commercially available by September 2010, EPA will initiate a rulemaking to extend the effective date of this final rule for 1 year with respect to owner-occupied target housing built after 1960.”

PROPOSED EXPANSION TO COMMERCIAL AND PUBLIC BUILDINGS: EPA has begun the process of expanding LRRP to commercial and public buildings as part of a revised settlement agreement, even though Congress only granted EPA authority to issue guidelines for work practices applicable to LRRP activities. Under the Toxic Substances Control Act, Congress requires EPA to first conduct a separate and independent study of lead paint hazards in public and commercial buildings before it
can issue regulations for renovating and remodeling those structures. EPA had a deadline for proposing this rule of July 1, 2015 in accordance with 2008 legal settlement with Lead Rule activists. However, EPA notified litigants last September that it would not meet the deadline and has not provided a revised deadline.

INSPECTOR GENERAL ASKS EPA TO REEXAMINE THE RULE: In July 2012, the EPA Office of Inspector General (IG) found the agency used limited data in its analysis of LRRP, thereby limiting the reliability of the rule’s costs and benefits. The IG Report recommended that EPA reexamine the costs and benefits of both “the 2008 Lead Rule and the 2010 amendment to determine whether the rule should be modified, streamlined, expanded, or repealed.” Despite the IG’s recommendation the agency has yet to reexamine the rule’s costs and benefits.

STATUS: Rep. Kevin Cramer (R-ND) has introduced H.R. 2328, the Lead Exposure Reduction Amendments Act of 2015 with nine original cosponsors, and Senator Jim Inhofe (R-OK) has introduced a companion bill (S. 1987) in the Senate. The Lead Exposure Reduction Amendments Act of 2015 would:

- Restore the “Opt-Out” provision by allowing homeowners without small children or pregnant women present to decide whether to require LRRP compliance;
- Suspend the rule for post-1960 homes without a pregnant woman or small child living there if EPA cannot approve a test kit that meets the regulation’s requirements;
- Prohibit EPA from expanding the rule to commercial and public buildings until it conducts a study demonstrating the need for such an action; and,
- Provide a de minimis exemption for first-time paperwork non-compliance by certified contractors.

WDMA POSITION: WDMA supports the intent of the rule and shares EPA’s objectives to protect children and pregnant women from lead hazards. However, EPA’s removal of the Opt-Out provision and extending application of the rule beyond housing to commercial and public buildings clearly exceeds the scope and intent of the rule.

EPA enforcement should focus on non-certified firms and individuals performing renovation, repair and painting projects covered by the rule, and provide de minimis exemptions for first-time non-compliant work performed by certified firms. EPA should also suspend enforcement until EPA develops a compliant test kit meeting both response criteria and is commercially available to the public.

REQUEST: WDMA asks members of the House cosponsor H.R. 2328 & S. 1987 and support the needed reforms to EPA’s Lead: Renovation, Repair and Painting rule that balance the additional compliance costs for remodelers and contractors with the need to protect pregnant women and small children.

For more information, contact Kevin McKenney, Director of Government Affairs, at kmckenney@wdma.com or 202.367.2480