



EPA Enforcement Inspections for the Lead: Renovation, Repair, and Painting Rule What to Expect

The U.S. Environmental Protection Agency (EPA) recently released an [inspection manual](#) for its lead-based paint regulation for remodelers, known as the Lead: Renovation, Repair, and Painting or RRP Rule. The manual is written for the inspector, but provides helpful insights to remodelers and other contractors on what to expect during an EPA inspection. NAHB has summarized the key points of the manual in this FAQ. Anyone facing an EPA inspection is encouraged to review the full manual for more information and/or consult with an attorney.

Who is the inspector?

Inspectors are EPA employees or contractors hired to conduct RRP inspections, also referred to as “audits.” While EPA headquarters develops regulations and guidance, the 10 EPA regions have a significant amount of autonomy when it comes to implementation and enforcement of the rules. EPA regional offices perform RRP inspections, and often a region will employ consultants, rather than employees, to do so.

What is the role of the inspector?

The inspector “gather[s] information and document[s] observations.” *Inspection Manual Ch.1 p.2*. The inspector then reports findings to a “Case Development Officer,” who makes the determination whether a violation has occurred. Unlike other state or local inspectors that remodelers may encounter, EPA inspectors will not identify rule violations or provide specific compliance assistance onsite. EPA limits the inspector to “appropriate compliance assistance,” which is described as providing links to EPA websites and copies of printed materials. *Ch. 1 p.4*.

What is the source of the inspector’s authority?

The Toxic Substances Control Act (TSCA), provides the basis for EPA and its authorized agents’ authority to conduct inspections. EPA regulations state that “[l]ead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA Section 11 to ensure compliance with this subpart.” *40 CFR 745.87(e)*.

Where does the inspection take place?

EPA may inspect either the remodeler’s records or an active job site. Record review inspections are far more common.

What happens at a records review inspection?

The inspector will review the remodeler's records, typically at the remodeler's office or wherever the records are kept. The inspector will look for documents demonstrating that the remodeler's company is an RRP certified firm, certified renovators are assigned to pre-1978 projects, uncertified workers receive appropriate on-the-job training, work practices are followed, and required records (the pre-renovation disclosure form, recordkeeping checklist, etc.) are maintained.

What happens at a job site inspection?

In order to enter the property to perform the inspection, the inspector must first receive consent from the owner or someone who is in "control" of the property – typically the home owner, tenant or adult occupying the property. The remodeler is *not* authorized to allow an EPA inspector entering the property because the remodeler does not own it.

If the person authorized to consent refuses to do so, EPA may obtain a warrant to enter the premises. However, EPA's inspection manual states that "EPA generally takes no action to demand access to particular private properties for RRP inspections." *Ch.3 p. 11*. Thus, it is only in rare instances where the region has determined that an onsite inspection is necessary, that the agency will seek a warrant.

Does EPA have to give advance notice that an inspection will take place?

EPA is not obligated to provide advance notice, and the inspection manual states that "[g]enerally, EPA conducts unannounced inspections." *Ch.3 p. 17*. NAHB has heard anecdotally that EPA often sends a letter providing advance notice of record review inspections.

Does the inspector research the remodeler before the inspection occurs?

EPA encourages inspectors to research the property and the remodeler before conducting the inspection. The property research should focus on the age of the property, its use, whether it receives any federal assistance, and whether occupants of the property have demonstrated elevated blood lead levels. Research on the remodeler includes whether the remodeler has been the subject of past enforcement actions and may include any information about the remodeler's firm that can be discovered through public resources.

How does the inspector identify whom to inspect?

The inspection manual does not address this. NAHB understands that complaints and tips to the agency form a significant portion of enforcement actions.

What documents must the inspector present at the inspection?

The inspector must present a Notice of Inspection (NOI) to the remodeler as the regulated entity, as well as the property owner if the inspection is at a job site. The property owner must sign the NOI to show that the inspector received consent to enter the property. The inspector must also present identifying credentials, and supply the remodeler with the TSCA Inspection Confidentiality Notice form, a Declaration of Confidential Business Information form, and a Receipt for Documents form. The first two documents provide information about how “Confidential Business Information” will be handled by the agency, and the second form serves as a receipt for any samples or documents that the inspector takes during the inspection. The inspector also provides informational resources to the property owner and remodeler, such as the [Small Business Information Sheet](#) and [Small Entity Compliance Guide to Renovate Right](#).

What is the inspector looking for?

The inspector is looking for evidence of noncompliance with the RRP Rule by “gather[ing] information and document[ing] observations in support of statutory and regulatory compliance monitoring and enforcement efforts.” *Ch. 3 p. 13*. Inspectors are instructed to break each provision of the rule down into “elements” and, when noncompliance is suspected, to find evidence that supports each element of the violation.

EPA provides an example of how the inspector should do this:

For example, if, during a worksite inspection, an inspector observed that ducts were not properly covered, in violation of 40 CFR 745.85(a)(2)(i)(B), the elements of that violation would be each of the following:

- *Ducts*
- *Opening in the work area*
- *Must be closed*
- *Must be covered*
- *With taped-down*
- *Plastic Sheeting or other impermeable material*

Ch. 3 p. 14.

How many records does the inspector review?

EPA has developed a formula. For the pre-renovation disclosure rule, EPA recommends that 10% of pre-renovation disclosure rule records should be inspected to determine compliance. For the RRP Rule, EPA recommends that an inspector employ what EPA refers to as a “flexible 10% sampling protocol,” which requires a review of at least five RRP records for every case, and to review 10% of the available RRP records in most cases, unless using 10% would generate too many records, which EPA defines as hundreds of records. EPA notes that if there are fewer than

five records available, the flexible 10% sampling protocol guidance cannot be applied. *Exhibit 4* of the RRP Inspection Manual provides more information on EPA's guidance for record review inspections.

What kind of records does the inspector want to see?

The inspector will want to see the firm's compliance recordkeeping checklists for each pre-1978 job, and likely will also want to see contracts and invoices. The inspector will want to see signed statements related to the pre-renovation disclosure rule as well. If there are a significant number of records, the inspector may look at records for evidence of a pattern of noncompliance related to the types of jobs, communities where work is performed, or type of structure where work is performed (e.g., single-family, multifamily, etc.).

How long do records need to be retained?

EPA regulations require remodelers to keep all the records related to a renovation performed on a pre-1978 property for three years following the completion of the renovation. These records may be stored electronically rather than as paper copies.

How long does it take to hear from EPA after an inspection is conducted?

Because violations are not determined at the time of inspection, a significant amount of time can pass before a remodeler hears the results and whether EPA intends to pursue an enforcement action. NAHB has heard of wait times anywhere from four to eight months or longer.

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