

## **Following Litigation, EPA Plans Changes to Lead Paint Rule**

A U.S. Environmental Protection Agency court settlement regarding requirements for remodelers doing work in homes built before 1978 is likely to result in future rule changes — but does not change the April 2010 deadline for lead-safe work practice training and certification required for all remodelers working in pre-1978 homes.

The EPA entered into a settlement agreement to resolve litigation brought by public advocacy groups, including the Sierra Club and the New York City Coalition to End Lead Poisoning, against the Lead: Renovation, Repair and Painting rule governing remodeling activities in homes and child-occupied facilities built before 1978.

Despite the changes envisioned by the settlement, remodelers working in homes built before 1978 and child-occupied facilities must be trained and certified by April 2010, just as the existing rule requires.

Remodelers working in these homes or facilities must be certified, follow specific work practices and keep detailed records. Additionally, at least one employee in the remodeling company must be trained as a certified renovator by April 22, 2010.

### **Settlement Overview:**

#### **Eliminating the 'Opt-Out' Provision, Adding 'Clearance Testing'**

As a result of its settlement agreement, the EPA will propose two rules that will alter how remodelers can work in pre-1978 housing. The first rulemaking will be proposed by Oct. 20, with a final rule issued no later than April 22, 2010. The second rulemaking will be proposed by April 22, 2010 and become final in July 2011.

In the first rulemaking, EPA will propose removing the "opt-out" provision, which now allows home owners to sign a waiver stating they have no children under age six or pregnant women in the home. Under the opt-out provision, if the homeowner signs the waiver, a remodeler does not have to use lead-safe work practices during the remodeling job.

Removing the opt-out provision would mean that all contractors working in pre-1978 homes would be required to follow the lead-safe work practices contained in the regulation, even if the home owner does not want lead-safe practices to be used. NAHB expects that this change will greatly increase the number of homes subject to the rule as well as the overall cost of the rule.

The EPA will also propose requiring quantitative dust sampling for certain remodeling activities, expecting remodelers to satisfy a numeric limit on the amount of lead in dust, known also as "clearance testing." At this time, NAHB estimates that the cost of performing clearance testing can be anywhere between \$500 and \$700 per project, although this number may vary widely throughout the country.

NAHB is concerned that these changes to the EPA's lead paint rule will greatly increase the cost of remodeling and will force many home owners to undertake work themselves or hire unscrupulous — and as of April 22, 2010, illegal — contractors.

While the EPA has agreed to propose these changes and to finalize new rules by certain dates, the substance of the final rules cannot be changed by a legal

settlement. Instead, the final rules must be based on the administrative record that is created during the proposal stage — in other words, on the comments that people submit to the agency.

Thus, say NAHB Remodelers leaders, it is critical for NAHB to make itself heard during this comment process. When the EPA submits its formal proposal, NAHB will seek its members' assistance to provide comments to the EPA and communicate concerns to Congress.

## **Training Requirements: An Update**

By early September, the EPA had approved 43 organizations as trainers for the certified renovator class. The eight hours of required training must include two hours of hands-on demonstration activities, but the EPA is also planning to certify online courses to satisfy the classroom instruction requirement.

Thus far, none of the trainers are based in Illinois, Iowa, Kentucky, Pennsylvania, Tennessee or North Carolina — but a number of training companies are willing to travel to those states.

Training costs range from about \$150 to \$250 per person.

In addition, remodeling firms must also apply for EPA certification, which costs \$300 per certified firm and will be a requirement to work in pre-1978 housing beginning in April 2010. EPA will begin accepting certification applications in October. Information about how to become a certified firm or certified renovator and how to obtain training is available for NAHB members at [www.nahb.org/leadpaint](http://www.nahb.org/leadpaint) .

### **For more information:**

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