



July 6, 2015

Toiya Goodlow
National Program Chemicals Division
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC 20460

Dear Ms. Goodlow:

RE: Lead; Renovation, Repair and Painting Program: Lead Test Kit Stakeholder Meeting (40 CFR Part 745); HQ-OPPT-2005-0049

Members of the National Multifamily Housing Council (NMHC) and the National Apartment Association (NAA) are committed to providing lead-safe housing. The organizations have a long history of cooperation with the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD) in educating our members about best practices and compliance with federal regulations.

NMHC/NAA appreciate the opportunity to participate in the stakeholder meeting held on June 4 to discuss lead test kits and to submit comments. EPA convened this meeting pursuant to Congressional direction after questions arose about the continuing lack of a commercially available field test kit that meets the Agency's performance criteria. In issuing the Renovation, Repair and Painting rule (RRP) in 2008 and in the 2010 amendments, EPA's Economic Analysis relied upon there being available in the marketplace, an accurate, affordable and rapid field test. NMHC/NAA are concerned that an accurate field test that can be easily performed by the renovator is still not available. EPA stopped funding activities around field test development in 2013; HUD has recently funded a 3-year grant for the development of a field test, it is not clear if this effort will be successful and if and when the product would be commercially available.

The Economic Analysis in support of the rule was clearly predicated on renovators being able to test work surfaces and determine whether the RRP rule would be triggered. EPA relied upon the availability of an accurate, rapid field test that could be performed by renovators in projecting the number of times the RRP rule would be triggered; we are concerned that the default reliance on paint chip testing (requiring laboratory analysis) and XRF analysis (requiring the services of a certified lead inspector) or simply assuming that lead-based paint is present significantly increases the actual costs of compliance with the rule.

Recent discussions by stakeholders about strategies to put more XRF machines into the field raise serious questions. This highly sophisticated instrument requires a skilled technician to operate and HUD rules for federally-assisted housing require the individual to be certified. The idea that rental XRF units in the hands of renovators are the answer to this problem is misguided. It is unlikely that certified renovators will also become certified lead inspectors/ risk assessors given the training requirements and associated costs and so will be in the same situation of needing to wait for the results of costly testing protocols before undertaking activities unless they presume that LBP is present on the job. The cost of an XRF test is \$300 per building component in the context of a testing for an RRP event (comment of Lee Wasserman, 6/29/15) as compared to the cost of a LeadCheck test kit at \$9.99 for 2 tests (Walgreens). The LeadCheck test kit does not meet the Agency's performance criteria as it detects lead in lower concentrations (600 ppm) than the standard the statutory standard (5000 ppm) and errs on the side of false positive readings.

NMHC/NAA Joint Legislative Program

Professionally owned and maintained multifamily housing built before 1978 are likely to have undergone a property-wide inspection in order to determine whether lead-based paint is present. For all target housing and child occupied facilities that have not undergone a lead-based inspection by a certified lead inspector, an accurate field test is an essential tool for safely and cost-effectively performing repairs. The cost of renovations performed by certified lead renovators generally exceeds the cost of the same practices performed in the absence of lead. This price differential is a meaningful consideration for some property owners and the lack of an affordable, accurate field test could be consequential.

Lastly, NMHC/NAA observe that the notion of an accurate, rapid field test has been mentioned in discussions concerning the pending regulatory proposal on lead in public and commercial buildings. This rule would apply to certain commercial properties regardless of the date of construction. Buildings constructed after 1978 would not be presumed to be lead-free and there would be a strong incentive to test surfaces before any repair would be performed. The lack of an accurate, low cost test kit should be accurately reflected in any economic analysis and the Agency should confine its cost estimates to the technologies that are currently available and meet the established criteria.

NMHC/NAA urge EPA to revise the economic analysis for the RRP rule given the absence of an accurate, affordable and rapid field test. The economic analysis undercounted the number of renovations that would be subject to the rule based on the availability of cost-effective, rapid field testing. In addition, we urge EPA to consider only those testing technologies which are currently available and approved as a variable in considering the economic impact of any rule to guide potential lead work in public and commercial buildings.

Sincerely,



Cindy V. Chetti
Senior Vice President of Government Affairs
National Multifamily Housing Council



Gregory Brown
Vice President of Government Affairs
National Apartment Association