



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Ms. Tayyaba Waqar
Program Manager, Environmental Policy
National Association of Home Builders
1201 15th Street NW
Washington, DC 20005

Dear Ms. Waqar:

It was a pleasure to meet with you on June 6, 2013 to discuss the U.S. Environmental Protection Agency's Lead Renovation, Repair and Painting Program and, specifically, the status of the ongoing recognition of lead test kits. I wanted to follow up to clarify the agency's current position on this matter.

The RRP Rule regulatory text at 40 CFR § 745.88(a) states that test kits recognized as of June 23, 2008 are appropriate for use "until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of [40 CFR § 745.88]." Similar language in 40 CFR § 745.88(b)(3) states "[t]he recognition of kits that meet only this [false negative] criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of [40 CFR § 745.88]." This position is provided publicly on the EPA's "Recognition of Lead Test Kits" web page, available at <http://www2.epa.gov/lead/epa-recognition-lead-test-kits>.

As stated in the preamble to the 2008 RRP rule, EPA determined that the EPA's Environmental Technology Verification Program (ETV) is a suitable vehicle for obtaining independent laboratory validation of test kit performance and that EPA intends to use ETV or an equivalent testing program to evaluate test kits. After a test kit has gone through the ETV or other EPA approved testing process, EPA will review the test report to determine whether the kit has been demonstrated to achieve the criteria set forth in the rule. EPA further stated that any recognition granted to test kits based only on the false negative criterion will expire when EPA publicizes its recognition of the first improved test kit that meets both the false negative and false positive criteria of 40 CFR 745.88(c).

The EPA put forth significant effort and resources to foster the development of a test kit that would meet both the false negative and false positive criteria outlined in the RRP rule. On September 1, 2008, EPA's ETV program began accepting applications for testing from test kit manufacturers. For more than two years the EPA supported test kit research and development efforts by several private companies by funding not only the manufacture of reference materials, but also the technical evaluation of test kits through the ETV program. In addition to the two test kits that were recognized by the EPA in 2008, the EPA recognized an additional test kit in 2010 as a result of these efforts. In addition, an existing test kit received EPA recognition for use on additional substrates in 2012.

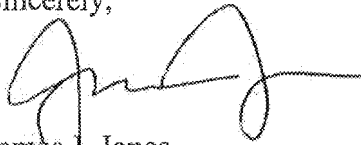
Despite the EPA's commitment of resources to this effort, to date no company's test kit has met both of the performance criteria outlined in the RRP rule. The EPA is unaware of any test kit currently available or under development that would meet the positive criterion. However, there are two EPA-recognized

test kits commercially available nationwide that meet the false negative criterion and continue to be recognized by EPA. The performance verification data indicate that the false positive rate for these kits varies from 22.5% to 84% depending on the test kit used, the substrate tested (e.g., wood, metal, plaster or drywall), color of paint tested and operator experience. Performance verification reports for EPA-recognized test kits are posted on EPA's website at <http://www2.epa.gov/lead/epa-recognition-lead-test-kits#verify>.

At this time, the EPA has no plans or resources to sponsor additional testing of kits as was done previously through the agency's ETV Program. However, any commercial entity that wishes to receive EPA recognition may have ETV Program, or equivalent, evaluation performed and bring their kit and evaluation results to the EPA for potential recognition. To date, one company has done this, which resulted in EPA recognition in 2012; hence, in the interest of fairness, the EPA would proceed this way in the future.

Again, thank you for your interest in this matter. If you have additional questions or concerns, please contact Dr. Tala R. Henry, Director of the National Program Chemicals Division within my office, at (202) 564-2959.

Sincerely,

A handwritten signature in black ink, appearing to read 'James J. Jones', written over a horizontal line.

James J. Jones
Acting Assistant Administrator

Environmental Protection Agency

§ 745.89

a violation of TSCA sections 15 and 409 (15 U.S.C. 2614 and 2689).

(c) Failure or refusal to permit entry or inspection as required by 40 CFR 745.87 and TSCA section 11 (15 U.S.C. 2610) is a violation of sections 15 and 409 (15 U.S.C. 2614 and 2689).

(d) Violators may be subject to civil and criminal sanctions pursuant to TSCA section 16 (15 U.S.C. 2615) for each violation.

(e) Lead-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 (15 U.S.C. 2610) to ensure compliance with this subpart.

[63 FR 29919, June 1, 1998, as amended at 73 FR 21763, Apr. 22, 2008]

§ 745.88 Recognized test kits.

(a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.

(b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.

(1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: <http://www.epa.gov/etv/howtoapply.html>.

(2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA

publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.

(4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.

(5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.

(6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) *Response criteria*—(1) *Negative response criteria*. For paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

(2) *Positive response criteria*. For paint containing lead below the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time.

[73 FR 21763, Apr. 22, 2008]

§ 745.89 Firm certification.

(a) *Initial certification*. (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the