



January 22, 2010

The Honorable Lisa Jackson
Office of the Administrator
Environmental Protection Agency
Ariel Rios Federal Building
1200 Pennsylvania Avenue, NW
Washington DC 20460

Re: 40 CFR Subpart E – Residential Property Renovation Part 745.82 – Applicability (a)(1)

Dear Administrator Jackson:

As organizations that represent owners and managers of multifamily residential properties that are subject to the Residential Lead-Based Paint Hazard Reduction Act, we are writing to seek clarification on a matter arising under the Renovation, Repair and Painting Rule. It is our understanding that a lead-based paint inspection of a pre-1978 residential property performed by state-certified individuals in accordance with 40 CFR Part 745.227(b) using the documented methodology described in 40 CFR Part 745.227(a)(3) is the appropriate protocol to determine compliance responsibilities under the Act, including the Renovation, Repair and Painting rule (RRP).

Recently, EPA regional officials have stated to property owners that a lead-based paint inspection, performed by a state-certified inspector or risk assessor that includes a written determination that various building components are free of paint or other surface coatings containing lead equal to or in excess of 1.0 milligrams per square centimeter (mg/cm²) or 0.5% by weight is not sufficient to determine compliance requirements with the RRP. Many property owners have voluntarily undertaken the expense of testing their properties for LBP. Current testing procedures, in a typical pre-1978 multifamily property costs approximately \$14,000; if LBP is found to be present in the building then significant additional costs associated are incurred in compliance with various requirements including notification, record keeping, worker training and specialized cleaning equipment.

In the course of the RRP rulemaking, EPA did not propose a change to the lead-based paint free designation either at the property or component level; EPA has not advanced a case for making such a change nor has the regulated community had the opportunity to comment. These comprehensive property assessment protocols were developed by a Task Force convened by the Secretary of Housing and Urban Development (HUD) under the authority of the Residential Lead-Based Paint Hazard Reduction Act and have been widely used since their publication in 1995; these have been the basis for determining a target property's compliance responsibilities under the Act including the exemption from the rule's requirements.

As property owners seek to be in compliance with all applicable laws, we respectfully seek an immediate clarification regarding the assertion that housing and/or testing combinations that have been found to be lead-based paint free pursuant to 40 CFR 745.227(b) continue to meet the requirements of Subpart E – *Residential Property Renovation*.

Sincerely,

Handwritten signature of Eileen Lee in cursive script.

Eileen Lee, Ph.D.
Vice President of Environmental and Energy Policy
National Multi Housing Council/National Apartment
Association Joint Legislative Staff

Handwritten signature of Denise B. Muha in cursive script.

Denise B. Muha
Executive Director
National Leased Housing
Association