February 19th, 2016

Document Control Office (7407M)
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460-0001

Re: EPA-HQ-OPPT-2015-0780

Dear Administrator McCarthy:

On behalf of the Window and Door Manufacturers Association (WDMA), we respectfully submit the following comments regarding the Lead: Renovation, Repair and Painting (RRP) Rule in reference to the federal register notice on December 21, 2015.

WDMA is a national trade association representing the leading producers of commercial and residential doors, windows, and skylights for domestic and export markets. Our members sell to distributors, dealers, builders, remodelers, homeowners, architects, contractors, and other specifiers in the residential, commercial, and institutional construction markets. WDMA members manufacture high quality products designed and constructed to performance-based standards that provide for improved safety, comfort, and energy efficiency, especially in the renovation of older homes and residential buildings.

In the Federal Register issue of April 22, 2008, under the authority of sections 402(c)(3), 404, 406, and 407 of the Toxic Substances Control Act (TSCA), EPA issued its final renovation, repair, and painting (RRP) program rule. The final RRP rule, codified in 40 CFR part 745, subparts E, L, and Q, addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb painted surfaces in target housing and child-occupied facilities. WDMA has consistently supported EPA’s efforts to protect pregnant women and children from the dangers of lead exposure and fully supports the RRP Rule as originally codified. We support practical, well-substantiated requirements to ensure that proper protective measures are taken when the homes they occupy are renovated or repaired. WDMA, however, has a number of serious concerns regarding the continued lack of lead testing kits as required by the rule, and EPA’s response to those concerns.

EPA is specifically soliciting comment on the following potential lead test kit and field testing options:

- Proposing to eliminate the positive response criterion;
- Proposing to modify the positive response criterion;
- Maintaining the current negative response and positive response criteria;
• Proposing to provide reduced RRP certification training requirements for XRF technicians; and
• Exploring any other lead-based paint field testing technology that would provide reduced costs for consumers, remodelers and families to comply with the RRP rule.

Positive Response Criterion

According to 40 CFR 745.88(c), the positive-response criterion states that for paint containing lead below the regulated level, 1.0 mg/cm\(^2\) or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time must be met.

Since the inception of the RRP Rule, no test kit has met the positive response criteria set by EPA. WDMA has been following the efforts by the scientific community to develop a test kit meeting both criteria and is optimistic about the progress that has been made to date. Several companies have presented data regarding their research and while progress has been made, it does not appear that a kit meeting both the positive and negative criteria will be developed in the near future. WDMA believes that EPA’s cessation of test kit development under the Environmental Technology Verification Program (ETV) has contributed to this failure.

In considering solutions to the failure to develop a compliant test kit, it is important to note that EPA lacks authority to modify regulated levels of lead under the RRP Program. According to Title IV of the Residential Lead-based Paint Hazard Reduction Act of 1992, the Secretary of Housing and Urban Development (HUD) holds the statutory authority to amend regulated lead levels,\(^1\) not EPA.

EPA can, however, amend the positive response criteria, currently set at 10%.\(^2\) While EPA has the authority to modify the criteria, WDMA is strongly opposed to raising the number above the 10% it is currently at. Raising the allowable false positive rate would subject an unreasonable number of renovations that do not contain lead-based paint, including window replacements, to lead safe work practices. In EPA’s original 2006 proposal for the RRP Rule, the Agency stated:

> EPA’s goal is to foster the development of a kit that can reliably be used by a person with minimal training, is inexpensive, provides results within an hour, and is demonstrated to have a false positive rate of no more than 10%...

According to EPA, studies conducted by the National Institute of Standards and Technology (NIST), false positive rates currently range from 42% to 78%. EPA cannot raise the false positive criteria without an immediate economic analysis. The 2008 and 2010 analyses were conducted assuming test kits meeting the 10% positive response criteria would be available and increasing that percentage would render those analyses detrimentally faulty. Until a new

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1. P.L. 102-550
2. 40 CFR 745.88(c)
economic analysis is conducted, EPA should keep the current 10% that the rule was originally predicated upon.

**X-Ray Fluorescence Technology**

EPA has asked for comments on reducing the training requirements for X-Ray Fluorescence (XRF) technology. WDMA is supportive of easing the training requirements for XRF; however, WDMA does not support XRF as a substitute for a commercially available compliant test kit, as originally required by the rule. While the XRF analysis is done in the field, there are additional costs and regulations governing who is qualified to conduct the test, which results in the need to bring in additional qualified professionals to perform the testing, again costing the renovator and the homeowner additional time and money. XRF inspectors must have radiation safety training, along with EPA risk assessor certification. After this training, they must get a permit to use an XRF machine, and permits, training, and replacement parts can cost up to $4,000 per year. In EPA’s economic analysis of the RRP Rule, the agency cited cost of XRF testing as the reason for favoring test kits, not because of the training requirements:

> XRF testing has the advantage of having lower false positive rates, but the testing cost per event is much higher than a test kit.

Even if the training requirements are relaxed, the XRF will continue to require significant costs to operate and maintain, which far exceeds the originally intended affordability of test-kits.

In the context of the finalized RRP rule, WDMA does not believe that this is an equitable substitute for the test kit that the rule was predicated on. In fact, EPA evaluated and subsequently dismissed XRF as too expensive during original discussions of the RRP rule.

**Compliant Test-Kit Development**

During the RRP Rule’s original economic analysis in 2008, EPA recognized the lack of a compliant test kit meeting both response criteria and EPA stated they intend to develop a compliant kit:

> ... Test kits currently on the market have false positive rates that range from 47 to 78 percent. Because pre-1960 units are more likely to contain lead-based paint than units constructed between 1960 and 1978, the LBP test kits will return more false positives for these newer units. EPA plans to develop a more accurate LBP test kit, which is expected to have a false positive rate of only 10 percent or less and to be available by the second year that the regulation is in effect.

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5 Id. (Chapter 3; page 102)
This statement by EPA is demonstrative of the Agency’s acceptance of their responsibility to develop a compliant test kit and of their original plan to do so.

It is alarmingly clear, however, that there will be no compliant kits in the near future based on the preliminary results of EPA’s testing of available kits under its Environmental Technology Verification Program (ETV) as announced by EPA on July 27, 2013\(^6\). In a letter signed by James Jones, Acting Assistant Administrator, the agency stated “EPA has no plans or resources to sponsor additional testing of kits…” WDMA is concerned that EPA has abandoned development of a compliant test kit and believes EPA has a responsibility to ensure a commercially available test kit that meets both the positive and negative response criterion is developed. While we appreciate EPA’s efforts to gain additional information on the status of affordable, commercially available test kits as required by the rule, we do not believe EPA should abandon the development of a compliant test kit while still requiring contractors to demonstrate by other means that target housing is lead free. The lack of a compliant test kit forces the full application of the RRP Rule on too many homes that otherwise would have tested negative. WDMA believes forcing renovators and homeowners into compliance without knowing if lead is present is unnecessary, unreasonable and unfair.

Given EPA’s assertion of its expectation that compliant kits would be available by September 2010 when it implemented the initial rule\(^7\), and given the fact that this expectation is a significant part of the basis for the conclusions drawn by EPA’s economic analysis of the rule, we believe that the absence of compliant kits must weigh heavily in EPA’s consideration of additional regulations, and is also sound reasoning for the Agency to reassess its economic analysis and current implementation of the rule which we strongly urge the Agency to do.

### Economic Analysis

As we have previously stated in written comments, we continue to strongly urge the agency to revise the original economic analysis to reflect the empirical experience of implementation. EPA's original analysis estimated that once reliable test kits were available by year two, the number of jobs covered would be cut in half. Table 1 below summarizes the economic analysis:

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6 Jones, James. Letter, July 31, 2013. Acting Assistant Administrator, Environmental Protection Agency
7 40 CFR Part 745
In the analysis of the rule, EPA acknowledged that the survey data were not based on a statistically valid survey and that there is uncertainty associated with the work practices identified. Despite this fact, EPA used the survey results to establish the baseline for estimating the cost to comply with the work practices required by RRP.\(^8\) Based on those results, EPA concluded that there would be relatively low incremental costs associated with the rule because contractors would need to make few changes from their current work practices to comply.

In addition, the economic analyses conducted in both 2008 and 2010 when the opt-out provision was removed specifically state that they were conducted with the assumption that a compliant kit would be developed by September of 2010. Since EPA has not met this or the statutory deadline and a compliant kit remains elusive, the economic analysis is deeply flawed and the agency should revise the originally analysis accordingly.

**Regulatory Review**

EPA is required to review rules under Section 610 of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The Regulatory Flexibility Act states that each agency shall publish:

> A plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities.... The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes....\(^9\)

Given the effect that the continued lack of a commercially-available test kit has had on the application of the rule, WDMA urges the EPA to begin a review as expeditiously as possible, and an economic analysis of the resident RRP regulation should be conducted.

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\(^8\) U.S. Environmental Protection Agency; Office of Inspector General. Report No. 12-P-0600

\(^9\) 5 U.S. Code § 610
Additional Concerns

The absence of a reliable, affordable field test kit has forced renovators to act under the presumptive presence of lead, despite the possibility that no lead-based paint is even present. In an effort ensure compliance certified renovators are over applying the rule, creating an unnecessary financial burden on their businesses and their clients. According to EPA’s own numbers, 24 percent of the homes built between 1960 and 1977 contain lead-based paint\(^\text{10}\). To put this in perspective, out of the total work contractors do in pre-1978 homes, 76 percent of the time work safe practices are being applied in a homes they were never intended for under the rule.

As we have indicated in the past, the added cost of complying with the rule on a window replacement job is approximately a minimum of $60 per window opening but can also be greater depending on the specific of each job. At $60 per window, that means for an average eight-window replacement job, the additional cost to comply with the rule is in the neighborhood of $500, which is far costlier than EPA’s estimate of $35 per job. While those greatly underestimated costs on which the original rule was based remains a concern, it is even more concerning when those are incurred to address a hazard that doesn’t exist.

Once again, WDMA fully supports the RRP Rule and protecting pregnant women and children under six from the dangers of lead exposure. When the rule was being written, WDMA was an enthusiastic participant to craft a workable and common-sense approach to accomplishing the rule’s intent. Over the past five years however, we have watched as the rule forces unnecessary practices and costs to renovators and homeowners, the lack of test kits being a primary reason for that. We are committed to finding a sensible solution to these concerns in order to make the RRP Rule work as it was originally intended.

WDMA greatly appreciates EPA’s outreach to the regulated community and looks forward to EPA improving implementation of this rule in order to better protect pregnant women and children.

Thank you for your consideration of this important matter and the opportunity to provide comments.

Sincerely,

Kevin McKenney
Director of Government Affairs
Window and Door Manufacturers Association

\(^{10}\) [http://www2.epa.gov/sites/production/files/documents/wkrch1_stu_eng.pdf](http://www2.epa.gov/sites/production/files/documents/wkrch1_stu_eng.pdf)