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likely to be seen by the occupants of all of the affected units.

[73 FR 21761, Apr. 22, 2008, as amended at 75 FR 24819, May 6, 2010]

§ 745.87 Enforcement and inspections.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689).

(b) Failure or refusal to establish and maintain records or to make available or permit access to or copying of records, as required by this subpart, is 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

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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 form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(i) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) *Re-certification.* To maintain its certification, a firm must be re-certified by EPA every 5 years.

(1) *Timely and complete application.* To be re-certified, a firm must submit a complete application for re-certifi-

cation. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include 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.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain re-certification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) *EPA action on an application.* After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and 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. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling

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covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) *Amendment of certification.* A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) *Firm responsibilities.* Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

(4) The pre-renovation education requirements of § 745.84 have been performed.

(5) The recordkeeping requirements of § 745.86 are met.

[73 FR 21764, Apr. 22, 2008]

§ 745.90 Renovator certification and dust sampling technician certification.

(a) *Renovator certification and dust sampling technician certification.* (1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust clearance sampling under § 745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an EPA, HUD, or EPA/HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician.