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*The Voice For Real Estate®*

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1200 Pennsylvania Ave, NW  
Washington, DC 20460-0001

**RE: Comments on the Proposed Renovation, Repair and Painting Program (40 CFR, Part 745).**

**Attention: Docket I.D. # EPA-HQ-OPPT-2005-0049**

To Whom It May Concern:

On behalf of the 1.3 million members of the National Association of REALTORS® and the nearly 17,500 members of the Institute of Real Estate Management (IREM), I appreciate the opportunity to provide comments on this proposed lead renovation, repair and painting rule. NAR is a critical stakeholder in this proposed rule because we represent members who manage rental property as their primary business. NAR also includes members who manage single and multi-family properties who would also be affected by this rule.

While the National Association of Realtors® (NAR) and IREM have a number of serious concerns about the specific proposal, we first wanted to address some of the basic assumptions that support the rule. In the introduction of the proposed rule, there is extensive discussion on the impacts of lead ingested by children, and the actions taken by the federal government to reduce the incidence of childhood lead poisoning and elevated blood lead levels. According to EPA, "This action supports the attainment of the federal government's goal of eliminating childhood lead poisoning by 2010." While we do not dispute the negative effects of lead on children, we believe that, given current trends, childhood lead poisoning will cease to be a serious public health issue within a similar timeframe proposed by the EPA, whether or not this rule is implemented. The first assumption that we take issue with is the need to implement this regulation at all.

## **Childhood Lead Poisoning Decreasing**

Nationwide, the incidence and severity of childhood lead paint poisoning has markedly decreased in the past decade. According to the Centers for Disease Control, since the late 1970's the average blood lead level (BLL) in children has decreased by approximately 80 percent. According to the National Health and Nutrition Examination Surveys II, mean BLLs have dropped from 14.9 mg/dL in 1976-1980 among children ages 1-5 to 2.2 mg/dL in 1999-2000 among the same age group. Also, in 1999-2000 2.2 percent of children aged 1-5 had a BLL greater than 10 mg/dL compared to 88.2 percent in 1976-1980. More importantly, this decrease has occurred within a more strict regulatory environment, such as enhanced screening mechanisms, and better reporting of lead poisonings and elevated blood lead levels.

This success has a number of different sources: the elimination of lead in gasoline and other sources of lead, government lead reduction programs, and better education all played a part. But just as important have been broad demographic changes and economic trends that have impacted urban areas, where the lead poisoning problem has traditionally been most severe. Quite simply, the number of housing units with lead-based paint hazards has decreased through attrition. In 1990, there were an estimated 64 million people living in homes with lead-based paint nationwide. In 2000, this decreased to 38 million people. Older, decaying urban housing with lead paint is being demolished and replaced with newer housing without lead paint. As a result, lead poisonings, incidences of elevated BLLs, and overall BLLs have decreased.

This national trend is also mirrored at the local level. For example, according to the New York City Department of Health and Mental Hygiene, there were 3,193 new childhood lead poisoning cases in New York City in 2004, a 6 percent decrease from 3,413 cases in 2003, and an 83 percent decline in cases over the past decade. In 2004, the rate of children who had elevated blood levels was 10.2 per every 1,000 children tested, down from 11.3 per every 1,000 in 2003 and 53.4 per 1,000 in 1995. Clearly, the combination of education, existing government regulations and broad economic and demographic changes has had an impact on this serious public health issue.

## **Benefits of This Rule Are Not Adequately Quantified**

The second basic assumption EPA is using as a rationale to move forward with this rulemaking is that remodeling and repair activities contribute to elevated blood lead levels and, as a primary benefit, this rule will lower children's BLLs during reconstruction activities. NAR requested the consulting firm Exponent, Inc. to conduct a review of EPA's compliance cost assessment (Section 4 of the EPA cost/benefit analysis) and a more limited review of the benefit assessment (Section 5, specifically 5.1, 5.2. and 5.3.1) These reports are attached to this comment letter. This assessment of this rule identified enough methodological and design flaws in the cost/benefit analysis to shed doubt on this benefit assumption.

In the overview of the EPA benefit assessment, which involves estimating the blood-lead levels resulting from exposure to lead dust produced by home renovations, EPA cited evidence of association between home renovation and lead exposure in children from Reissman et al (2002) and CDC (1997). Since EPA relied heavily upon these two references as the main

support for its rationale to model changes in lead dust to blood lead level, these two papers were reviewed to determine if EPA had adequately captured the study findings. Reissman et al. (2002) conducted a case-control study among New York City children, aged 6 to 60 months, who had their blood tested at the New York City Department of Health (NYCDOH) Public Health Laboratory between June 1 and September 30, 1998, and who had no prior history of elevated blood lead based on measurements in the NYCDOH registry. The authors of this report concluded that their study “indicates that renovation activities associated with elevated BLLs *most likely* account for a *fairly small*, although nontrivial, proportion (approximately 10%) of children with elevated BLLs in the target neighborhoods of New York City” (p. 508). (italics added)

Citing the Reissman et al. (2002) paper, EPA states that children with elevated BLLs (case children) were 3.5 times more likely than control children to live in a house that “had interior surfaces prepared for painting” (Chapter 5, p. 6). This statement misrepresents the Reissman et al. (2002) findings and is an overestimate of the effects of having had interior surfaces prepared for painting. The finding of “3.5 times more likely” (or, in other words, an odds ratio of 3.5) was for the homes in which preparation for painting was done by “*hand sanding*.” Nine percent of the case households and 3% of the control households reported preparation for painting by hand sanding; thus this was not a common practice. Furthermore, this association was reduced by 20% to 2.8 when the analyses were adjusted for pica behavior. Children with elevated BLLs were *not* significantly more likely than control children to have lived in homes where *other methods* of preparation for painting were reported. These issues are not addressed by EPA.

The CDC study cited by EPA (CDC, 1997) has no comparison group and, thus, is not informative about whether children with elevated BLLs are more likely than children with lower BLLs to have had exposure related to paint removal activities. Limitations and other interpretation issues regarding the Reissman et al. (2002) study and the CDC (1997) study are not discussed by EPA.

EPA used a number of assumptions in its Monte Carlo model to estimate lead surface contamination from home renovations before and after the rules are implemented. Based on our review, these assumptions are highly uncertain and assumptions alternative to EPA’s would result in significant reductions of EPA’s estimates of lead surface contamination (46%-80% reduction). Since blood lead levels and monetized benefits are dependent on the estimated lead surface levels, it that one cannot predict whether or not this rule, if implemented, will have the intended benefit. Given the significant negative implications for the regulated community if this rule is implemented, NAR would recommend that EPA provide a more thorough benefit/cost analysis, and undergo a peer review evaluation, as described by the OMB.

### **Some Costs Are Underestimated and Other Costs Are Unidentified**

Regardless of the credibility of the basic assumptions EPA is using to conduct this rulemaking, NAR has other concerns with the rulemaking. The biggest concern has to do with the issue of cost – NAR believes that EPA has both significantly (1) underestimated the costs associated with this rule, and (2) neglected to include other costs this proposed rule will impose

on the regulated community and homeowners. The total cost assigned by EPA to implement the Rule was approximately \$531 million per year. *NAR's evaluation found that the estimated costs of the Rule should be approximately 3 times greater than EPA's estimate.*

## **Review of EPA's Cost Analysis**

The *Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule* by the U.S. Environmental Protection Agency (EPA) presents a cost-benefit analysis of the Renovation, Repair and Painting (RRP) Rule. Although four options were considered, EPA chose Option B as the preferred option. EPA's cost analysis grouped the cost by work practice, certification and training, and recordkeeping. Work practice cost items made up the greatest proportion of the total costs. Specific renovation and repair events with Rule-required work practices included non-room-specific wall/ceiling repair/replacement (55 percent); non-room-specific window/door repair/replacement (15 percent); interior painting (11 percent); and exterior painting (9 percent). Although the Rule requires that all renovation workers have certification and training from an accredited institution, there were no significant recordkeeping cost items identified in EPA's economic analysis. Exponent did not find sufficient evidence and/or documentation to justify a substantial adjustment (25 percent or more) to the EPA estimate of work practice costs that were greater than 10 percent of the total cost. Consequently, Exponent also used the EPA cost estimate for the identified work practice tasks in cost estimate calculations.

## **Costs Underestimated by EPA**

There were additional costs that were by EPA and items that were not included in EPA's cost assessment.

Costs associated with testing and reporting of lead-based paint were underestimated because EPA failed to address the false negatives that could be reported by the test kits. Test kits can only analyze surface paints, and would likely not detect lead below the surface. False negatives from the test kits can result in lead exposure and possible litigation impacts. Additional sampling to reduce the impacts from false negative readings would add an estimated \$175 million for Option B for all repair and renovation events in the first year.

EPA underestimated the cost of the additional paperwork burden associated with each firm requiring certification. EPA assumed that only 5 minutes per renovation event per firm would be required. Exponent estimates a more realistic paperwork burden of 1 hour, increasing the estimated cost to \$327 million in the first year of the Rule.

## **Costs Not Identified by EPA**

A number of items were identified that were not addressed by EPA's cost estimate. These include such items as temporary relocation costs of moving occupants out of their homes during repairs and impacts on realtors such as training requirements and extra communication. Although the costs of some items were less than 10 percent of the budget, they were retained in

our assessment to the final estimated cost of implementing the Rule. Some of the more significant cost impact items are listed in the following paragraphs.

There are significant cost components for property owners/managers and real estate agents. Exponent estimated that the proposed Rule would add a month to the real estate transaction process and require additional support to the buyers and sellers by the agents. For rental property owners/managers, we estimated that the proposed Rule would result in an additional month of unit vacancy between renters as the Rule is followed and documented. We estimated the impacts to these rental owners/managers and agents to be approximately \$100 million per year in 2005 dollars

The potential impact of limiting one certified RRP manager to only one project at a time could require three to five times the number of certified managers in the first year. However, another, less costly approach would be having every RRP worker to be a certified manager. Cross training all workers as managers would add additional training costs of at least \$135 million per year.

Improper renovation costs arising from repairs that are not properly managed or will be performed by inadequately trained renovators will cost an additional \$22 million to \$158 million per year. EPA's cost analysis assumes efficient and proper work practices will be followed. However, Exponent did not consider this assumption to be accurate for the RRP industry, which has traditionally been plagued with contractors performing unnecessary work such as replacing walls that may have only required painting. Using the assumption that 25 percent of the renovation charges are unnecessary, additional costs are estimated at \$28 million to \$197 million per year due to the implementation of the Rule.

In the event that the Rule requires notification of RRP activities to EPA, the renovation firms, the rental property owners/managers, and real estate agents will incur additional costs. Renovators will incur an estimated additional cost of \$12 million per year, as preparation of the notification will require an additional hour per event. Real estate agent costs will increase by an estimated \$175 million per year assuming that REALTOR<sup>®</sup> costs are incurred at a rate of \$50 for each sale involving a house built before 1978 and that 50 percent of the sales involve housing built before 1978.

The cost of recordkeeping by rental property owners/managers will be significant. Assuming that each rental owner/manager spends 2 hours reviewing and preserving the RRP contractor reports for past RRP activities, there will be an estimated additional \$23 million per year in costs.

Training costs for realtors and rental property owners/managers will need to be added to EPA's cost estimate. Assuming that property management and real estate agents will require the equivalent training as a certified renovator, and 20 percent of the national real estate professionals (total of approximately 510,000) become trained, an additional \$52 million per year would be incurred assuming 4 hours of training at \$25 per hour.

Exponent also looked at references and related materials in other sections of this economic analysis document prepared by EPA. During this review, Exponent discovered that one assumption was applied differently to calculations found in Section 4 and Section 5. Specifically, Table 4-21 includes the assumption that 75 percent of the investigation task and 47 percent of all RRP work activities are currently being conducted properly. However, when evaluating the work practice items in Chapter 5, including the Monte Carlo simulation, Exponent found that the Monte Carlo simulation was calculated assuming that none of the current RRP remediation projects are being done in accordance with the proposed RRP Rule.

In summary, EPA estimated the total cost impacts from the proposed rule to be approximately \$531 million per year. Exponent's estimate, as summarized above, included significant secondary impacts to the real estate, property management, and public housing authorities, and is at least \$1.5 billion, approximately three times EPA's estimate, and most of these added costs would be borne by the real estate and property management industries and rental owners/ managers.

### **Other NAR Concerns**

In addition to the areas left unestimated and significant costs underestimated, NAR also has concerns regarding specific provisions of the proposed rule, including:

- Our first concern has to do with enforcement of the rule. Even if this rule becomes delegable to state governments, it is completely unknown how this would be enforced. Given the fact that many renovators-contractors, painters, and carpenters are not licensed or regulated by the states, it is unclear how these renovators will even be aware that they are required to be certified in these work practice standards. Even if the States do create a new regulatory structure to ensure that renovators are certified, the cost of that regulation will be passed along to the renovators who, in turn, will pass the cost through to property owners. That cost would be in addition to the costs related to actual compliance with specific components of this rule, which will be addressed shortly.
- Also related to this point on renovators, the proposal requires “certified renovators” to complete an EPA-approved training course. It has been our experience that under similar requirements, states have refused to accept other state's training for work conducted in their state. We strongly urge EPA to require states to accept reciprocity for all EPA-approved training courses. Without reciprocity, renovators in neighboring states would be required to take the same course multiple times. Renovators would pass on these additional education and certification costs to their customers.
- The proposed rule requires that a “certified renovator” supervise each and every renovation—defined as any activity that disturbs more than 2 square feet of paint. NAR believes that such a requirement will result in a disincentive for property owners to conduct regular maintenance on their properties. This could result in deferred maintenance of the target housing, possibly creating greater lead hazards. Due to the increased expense, administrative burden and time involved in complying with the rule, some owners may be forced to defer small maintenance activities until they are forced to deal with a bigger problem.

- EPA has requested comment on whether or not the rule should apply when the housing is unoccupied, for example, during turnover of a unit. We would argue that requiring such work practices in a vacant unit would be unnecessary unless immediate occupancy after the renovation work is complete is expected, as the threat of exposure is negligible when no one is residing in the unit.
- The proposed rule requires that the “certified renovator” be present at the worksite on a regular basis to oversee work practices, but EPA requests comment on whether this individual should be physically present at the worksite at all times. Comments were also requested about whether this individual should be prohibited from being assigned to more than one job at a time. We believe that such a requirement would be unnecessary. Providing oversight by the certified renovator on a regular basis would be sufficient for quality control over the project. Furthermore, the rule states that ALL persons performing renovation activities must have on-the-job training by a certified renovator. This is sufficient for ensuring that the practices are used.
- The rule proposes a requirement that signed and dated records be kept describing the work practices, sign posting procedures, and containment and cleaning methods utilized for every job. EPA expects this record-keeping burden to take no more than 5 hours per year. NAR would strongly argue that this record keeping requirement will be far more time-consuming than EPA believes. This proposed provision will require the development and maintenance of a paper filing system, which will require floor space and time to establish. For security purposes, this will most likely mean contracting with an off-site record storage company to keep and maintain these files. Obtaining signatures on documents is a time-consuming process as well. For even small to medium-sized property managers and Realtors with a small property management portfolio, this provision will quickly take up an immense amount of time and other resources.
- We are also opposed to the possible requirement that EPA be notified prior to the start of all renovation jobs. As a practical matter, this would not be feasible and may result in property owners deferring all maintenance until such time that they could take care of all their jobs at the same time in order to consolidate notification. We urge EPA to stick with their proposal NOT to require such notification.
- The proposed rule only covers renovators and remodelers who have been certified, and does not cover do-it yourselfers. As a result, this rule will have the perverse affect of increasing exposures to lead hazards. As repair and remodeling firms incorporate these new and expensive lead-safe work practices, they will pass on the increase costs of doing this work to the consumer. This will price out some homeowners who are unable to afford these new, higher prices for repair and remodeling activities. This will lead to two possible scenarios:
  - (1) homeowners will avoid making needed repairs to their home, possibly resulting in increased exposure to lead hazards; or

(2) homeowners will conduct the work themselves, probably not taking the appropriate precautions and utilizing the suggested work safe activities, thereby exposing themselves to increased lead hazards.

- The proposed rule does not require dust clearance sampling after each renovation project. We fully support the reasoning that EPA has used in not requiring this testing. Dust sampling is expensive and time consuming. While waiting for the test results, the renovation area would have to remain unoccupied; this would create a tremendous burden on property owners and residents. Such a requirement would result in deferred maintenance and deteriorating properties. In order to gain the most possible compliance, EPA should stay away from requirements that make the use of lead-safe practices *more* difficult. We strongly urge EPA to stand by their decision NOT to require dust clearance sampling for renovation jobs.
- The proposed rule requires the “certified renovator” to take a cleaning verification swipe with a Swiffer-type cloth. These cloths generally run \$1-\$2 each. We would urge EPA to also allow the use of ASTM-approved dust testing cloths. These cloths are the type used in dust sampling. They are readily available, and cost between 2-5 cents each.
- In addition, the rule requires that the results of the cleaning verification be kept for three years. We are concerned about this provision with respect to 1018 disclosure requirements. Would the results of all renovation cleaning have to be disclosed to buyers and leasees at time of sale or lease? EPA is unclear regarding this important relationship between this proposed rule and the Section 1018 disclosure rule, and NAR requests clarification in this area.
- The proposed rule makes several mentions of fees: fees for applications, fees for training. NAR urges EPA to make the training for certified renovators free for some period of time in order to help facilitate the creation of this kind of workforce. EPA and HUD have provided this kind of free training for other rules and that has been helpful in gaining compliance. We also request that this free training be heavily publicized in advance of training sessions. We urge EPA to do the same with this rule.

Thank you again for this opportunity to comment on the proposed rule on behalf of the combined membership of the National Association of REALTORS<sup>®</sup> and the Institute of Real Estate Management.

Sincerely,

David A. Lereah  
Senior Vice-President, Chief Economist