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*By Electronic Mail*

Document Control Office (7407 M)  
Office of Pollution Prevention and Toxics (OPPT)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

**Re: Amendment to the Opt-out and Recordkeeping Provisions of the Lead Renovation, Repair and Painting Program (LRRP); Docket ID Number EPA-HQ-OPPT-2005-0049.**

Dear Administrator Jackson:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) is pleased to submit the following comments on the U.S. Environmental Protection Agency's (EPA) proposed amendment to eliminate the "opt-out" option in the Lead Renovation, Repair, and Painting Program (LRRP) Rule promulgated in April 2008. The current LRRP rule is designed to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. This proposal would result in an EPA estimated increase of costs on regulated firms from \$800 million (current LRRP) to \$1.3 billion (LRRP with new proposal) in the first year of compliance.

The current LRRP rule establishes requirements for renovation work practices; training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; and accrediting providers of renovation and dust sampling technician training. The proposed rule would eliminate the current opt-out for renovation jobs where no children under six years old or pregnant women reside.<sup>1</sup>

Advocacy supports EPA's effort to impose reasonable minimum work practice standards, including clean-up standards that will ensure protection of the health of young children and pregnant women. However, Advocacy opposes the expansion of this expensive rule to extend to dwellings of persons above the age of six (including nonpregnant women).

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<sup>1</sup> Under the current "opt-out" provision, the homeowner may choose whether or not to comply with the full set of LRRP requirements.

This proposed change would almost double the cost of the current rule, without any serious examination of whether there will be additional benefits due to the expansion of this regulation. Furthermore, EPA failed to include the cumulative impact of eliminating the “opt-out” option from the current rule, and two additional costly future rulemakings. Nor did EPA consider alternatives that would address these multi-billion dollar cumulative impacts. By segmenting these rulemakings, EPA reduces the apparent costs of each individual rulemaking and overlooks the serious consequences to small businesses, job creation and housing affordability in America.

Given the much lower level of exposure of older children and adults, EPA could retain the existing rule, or limit the new rule to providing notification to the owners and providing a checklist for lead-safe practices for the renovator to complete. Alternatively, EPA could simply prohibit the several lead dust generating practices that were prohibited or restricted in the current LRRP rulemaking, thereby capturing most, if not virtually all, of the benefits anticipated by this rule, without the additional regulatory baggage of the remainder of the rule.<sup>2</sup> In addition, EPA should seriously consider extension of the compliance date for any opt-out changes to assure adequate training capability and lower costs to small businesses. In short, EPA can substantially alter this proposed rule and preserve substantially all of the benefits in a variety of ways.

### **Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules which will have a significant economic impact on a substantial number of small entities, EPA is required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, Executive Order 13272,<sup>4</sup> requires Federal agencies to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. The agency must include, in any explanation or discussion accompanying publication in the Federal Register of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

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<sup>2</sup> The LRRP already prohibits or restricts a series of work practices that generate excessive amounts of lead dust.

<sup>3</sup> 5 U.S.C. §§ 601 et seq.

<sup>4</sup> 67 Fed. Reg. 53461 (August 16, 2002).

## Background

### *SBREFA Panel*

In developing the predecessor proposed LRRP rule, EPA convened a Small Business Advocacy Review Panel in accordance with the requirements of SBREFA to obtain advice and recommendations about how the proposed rule might affect small entities. The panel included representatives from EPA, Advocacy, and the Office of Information and Regulatory Affairs within the Office of Management and Budget and was assisted in its work by several small entity representatives (SERs) of the various entities that potentially would be subject to the rule. The panel met in 1999 and reviewed various regulatory options developed by EPA, but did not address the series of regulatory changes now being considered by the agency.<sup>5</sup>

EPA issued a final LRRP rule in April 2008. The LRRP rule applies to "target housing," defined in section 401 of the Toxic Substances Control Act (TSCA) as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside) or any 0-bedroom dwelling. The final rule also applies to housing where a pregnant woman resides.

### *Consent Decree*

In a consent decree reached with public interest groups, EPA committed to a series of rulemakings where it will consider establishing additional requirements potentially involving billions of dollars in increased costs over several years. In our view, none of these planned changes are likely to produce any significant benefits to society. EPA has agreed to issue the following proposals over a period of time: (1) eliminating the opt-out, (2) applying the Housing and Urban Development (HUD) clearance test<sup>6</sup> to these renovation activities, and (3) expanding the LRRP requirements to commercial and other non-residential buildings.

When EPA completed the current LRRP, these same requirements were considered and squarely rejected by the agency as offering no significant benefits and inconsistent with the Toxic Substances Control Act (TSCA). Yet, EPA committed to these new rulemakings, and did so without consulting with small businesses, our office, and without benefit of convening a SBREFA panel to address the potential impact of these new requirements. By EPA's own estimate, these rules would add hundreds of millions of dollars in annual costs to small firms.<sup>7</sup>

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<sup>5</sup> The Panel solicited comments from the SERs and prepared a report of its deliberations that included a number of recommendations on how to reduce the potential impact of the rule on small entities. The report is available in the docket and on EPA's website. Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule: Lead-Based Paint; Certification and Training; Renovation and Remodeling Requirements, March 3, 2000. <http://www.epa.gov/lead/pubs/rrp-sbrefa.pdf>

<sup>6</sup> 45 C.F.R. § 35.1320.

<sup>7</sup> The current proposal alone imposes \$500 million in first year costs according to EPA's estimate. See *infra*, fn. 22.

### ***Regulatory Flexibility Act***

Under the Regulatory Flexibility Act, and Executive Order 12866, EPA is required to examine the costs and benefits of regulatory alternatives. In this case, EPA failed to perform needed outreach and failed to examine seriously several regulatory alternatives that would minimize the small business burdens while achieving the same regulatory goals. Further, there is no new science that EPA relies upon to make changes to the opt-out rule, and its re-evaluation of the science and the projected benefits is unconvincingly thin in its endeavor to demonstrate that real benefits to society will accrue.

EPA's proposal attempts to add environmental protection by extending application of these comprehensive regulatory requirements to more renovation activities. Advocacy is concerned that removal of the opt-out option will result in more, not less, lead contamination because it will lead to unregulated renovation by homeowners and disreputable firms, rather than better performance by regulated firms.<sup>8</sup>

### ***Proposal Inconsistent with TSCA***

In the original April 2008 final rule, EPA stated, “[i]n addition, EPA made a concerted effort to keep the costs and burdens associated with this rule as low as possible, while still providing adequate protection against lead-based paint hazards created by renovation activities. Indeed, as part of this rulemaking EPA has, as directed by TSCA section 2(c) considered the environmental economic and social impacts of this rule.”<sup>9</sup> The agency also previously recognized that “[i]n the Senate report on Title X, Congress noted the need ‘for a flexible, targeted approach for protecting children from exposure to lead hazards while maintaining housing affordability.’”<sup>10</sup> This statutory framework provided the legal rationale for the 2008 opt-out provision.

In the current proposal, the agency again declares in the preamble that “... EPA has also taken into consideration the environmental, economic and social impact of today's proposed rule as provided in TSCA § 2(c).”<sup>11</sup> Yet, unlike the approach in the 2008 rule, EPA makes no further mention of this requirement in the remainder of the 2009 preamble or anywhere in the extensive Economic Analysis, and provides no factual basis for its declaration. The agency's legal obligation is not discharged merely by mentioning the applicable legal standard. This strongly contrasts with the 2008 final rule preamble, where the TSCA provision is significantly addressed and applied.<sup>12</sup>

Advocacy believes that the proposed rule imposes substantial burdens on small businesses, home owners and building owners, without any significant expectation of addressing real lead hazards, in contravention of TSCA, the underlying statute.

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<sup>8</sup> See National Association of Home Builders Comments in Docket EPA-HQ-OPPT-2005-0049, filed November 20, 2009, at p. 1.

<sup>9</sup> 73 Fed. Reg. 21692, 21701 (April 22, 2008).

<sup>10</sup> 73 Fed. Reg. 21692, 21710 (April 22, 2008).

<sup>11</sup> 74 Fed. Reg. 55506, 55518 (October 28, 2009).

<sup>12</sup> See above discussion of the 2008 rule.

## Discussion

### **I. The Evidence of Risk to Young Children from Renovation Activity is Weak; Evidence of Benefits to Older Children and Adults is Merely Speculative.**

As we pointed out in our earlier comments on the proposed LRRP,<sup>13</sup> Advocacy believes that while some renovation activities can generate significant amounts of lead dust that could pose a human health hazard, there is not sufficient evidence that renovation activities by private contractors or building owner personnel, as opposed to homeowners, contribute to an increased risk of elevated blood levels (EBL) in children. EPA's final rule relies on both the Phase III study<sup>14</sup> and two New York State Department of Health studies<sup>15</sup> to show a relationship between renovation activities and children's health. The Phase III study was addressed in the SBREFA panel report. While these studies provide some evidence that renovation by homeowners (or sloppy work by contractors) can result in EBL, they do not provide evidence that the proposed procedures will enhance public health. Advocacy believes that the evidence in fact shows that private contractors (i.e., professional renovators) subject to reasonable cleanup standards, including the "no visible dust or debris" standard, do not create additional health hazards. Since the evidence was so weak for young children, it is much weaker for older children and adults who do not ingest lead dust from the floor, windowsills or soil.

Further, while EPA states that the phase III study shows that children subject to remodeling were 30 percent more likely to have EBLs than other children, there is not a significant correlation when the sample was limited to the persons regulated by this rule - namely apartment building owners, apartment building staff, and professional contractors. On the other hand, renovations involving relatives and friends not residing in the household (i.e., those not subject to this rule) showed the highest correlation with EBL. Based on the foregoing, Advocacy is still concerned that the final LRRP rule could unnecessarily raise costs and drive homeowners from using professional contractors (renovators), who work more carefully, to inexperienced and untrained individuals. The current LRRP rule would also encourage do-it-yourself work by untrained individuals, which could actually endanger children's health, not improve them. Now, EPA proposes to vastly increase the cost of this rule, with only the hope that some benefits might accrue.

Finally, EPA cited two additional references in the LRRP final rule to demonstrate that EBL is associated with renovation. However, the first study by the New York State Department of Health, found that 6.9 percent of the children had EBL, and this was

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<sup>13</sup> [http://www.sba.gov/advo/laws/comments/epa06\\_0525.pdf](http://www.sba.gov/advo/laws/comments/epa06_0525.pdf).

<sup>14</sup> USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase III, Wisconsin Childhood Blood-Lead Study (EPA 747-R-99-002, March 1999).

<sup>15</sup> HHS, PHS, CDC. Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remolding Activities—New York, 1993-1994. Morbidity and Mortality Weekly Report (45(51); 1120-1123, January 3, 1997).

associated with renovation. Unfortunately, this study is not reliable since it did not compare the 6.9 percent EBL with a control group of New York households that had not undergone renovation within the two year period.<sup>16</sup> Given the large magnitude of residences studied that undergo renovation each year, Advocacy does not believe that this figure reveals a relationship with renovation activities. The follow-up study by New York State remedied the first error, and did include a control group.<sup>17</sup> While this study did find EBL associated with renovation, the increase disappeared when the study excluded the test samples that did not follow the study protocol: clean the floor until there is no visible dust. EPA's attempt to dismiss the study in the final rule by stating that the "study did not measure dust lead levels" does not address the fact that there was no effect shown when there was no visible dust.<sup>18</sup> This is consistent with our contention that a "no visible dust" standard is all that is needed here. Under the current LRRP and any modification to the opt-out provision, there is no need for an additional cleaning verification step, if there is no visible dust, and the firm follows lead-safe practices (whether under EPA rules or lead-safe guidance). The lack of visible dust can be easily handled using an EPA-specified checklist, without the need for comprehensive panoply of EPA paperwork, cleaning verification and training requirements.

For example, Advocacy found data from the City of Milwaukee, a city with a very active lead paint program, to be very instructive, and consistent with the analysis that lead renovation contributes very little to health hazards. This data was submitted to EPA in the initial rulemaking, and shows that of the 577 cases of lead poisoning reported to the Health Department in 2004-2005, only four of the cases, or 0.7 percent, were linked to renovation or remodeling activities. In each of those four cases, do-it-yourself (DIY) occupants performed the projects. These cases are not addressed by the current LRRP rule nor the proposed elimination of the "opt-out."<sup>19</sup> This result is consistent with contractors using reasonable care to clean up and eliminate all visible dust, care that is not being used by DIYers.

Despite the Executive Order 12866's requirement to include a benefits analysis, EPA's original OMB submission contained no benefits estimates.<sup>20</sup> The agency frankly acknowledges that its attempt at estimating benefits was "crude".<sup>21</sup> The estimates are, therefore, extremely speculative, at best.

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<sup>16</sup> HHS, PHS, CDC. Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remolding Activities—New York, 1993-1994. Morbidity and Mortality Weekly Report (45(51); 1120-1123, January 3, 1997).

<sup>17</sup> Reissman, Dori B., Thomas D. Matte, Karen L. Gurnite, Rachel B. Kaufmann, and Jessica Leighton. "Is Home Renovation or Repair a Risk Factor for Exposure to Lead Among Children Residing in New York City?" *Journal of Urban Health: Bulletin of the New York Academy of Medicine*. Vol. 79, No. 4, 502-511, (December 2005).

<sup>18</sup> 73 Fed. Reg. 221692, 221740 (April 22, 2008).

<sup>19</sup> U.S. E.P.A., City of Milwaukee Health Department, Wisconsin, Comment: *Lead; Renovation, Repair, and Painting Program; Proposed Rule*, EPA-HQ-OPPT-2005-0049-0602 (2006).

<sup>20</sup> See redlined version of EPA Economic Analysis in EPA-HQ-OPPT-2005-0049.

<sup>21</sup> Section 5.2 of the Economic Analysis states that "EPA has calculated crude benefit numbers, for several groups of individuals protected by removing the opt-out provision...the average benefits per individual from the previous analyses have not been modified to reflect any differences in exposure between populations protected by the 2008 rule and those protected by the removal of the opt-out provision....The

## **II. EPA Should Delay Implementation of Any Opt-out Revisions Until the New Test Kits Are Ready and Renovators Are Trained.**

EPA can significantly reduce the cost of this rulemaking by delaying the compliance date for any rule revisions. EPA estimates that the first year \$500 million LRRP opt-out annual costs would be reduced to \$300 million in the second year when the new test kits are expected to be available.<sup>22</sup> The test kits would allow renovators to avoid the costs of this rule if the low cost test kits verify that the affected unit was free of lead paint. Thus, given the fact that the opt-out universe costs are otherwise extremely high, and the lead exposure extremely limited, a delay of the opt-out portion of the rule, at least to the second year, to assure that the lower cost test kits would become available, would save \$200 million annually, while still accomplishing statutory goals.

In addition, as the National Association of Home Builders points out in detail, it is highly unlikely that the 300,000 contractors affected by EPA's removal of the "opt-out" provision will be sufficiently trained by the April 2010 compliance date.<sup>23</sup> Rather than create this large shortfall in trained workers and risk additional noncompliance, EPA should delay any expansion of the LRRP rule.

## **III. EPA Should Retain the Current Opt-out Provision.**

Under the Regulatory Flexibility Act (RFA), EPA is to consider all significant regulatory alternatives that achieve the statutory purpose.<sup>24</sup> Clearly, EPA determined that the current rule complied with the requirements of the Toxic Substances Control Act (TSCA), and certainly should remain among the regulatory options available for decision makers. EPA's failure to seriously consider the obvious alternative of retaining the current opt-out provision is a clear violation of the RFA's requirement to examine significant alternatives that would minimize the burden on small entities.

In addition, EPA's reasoning for rejecting the current opt-out provision is extremely weak. EPA indicates that it is concerned that "future tenants could unknowingly move into a rental unit where dust-level hazards created by the renovation are present... [or that] hazards created during renovations in an owner-occupied residence conducted prior to a sale will be present for the next occupants...."<sup>25</sup> In addition, "Visiting children who do not spend enough time in the housing to render it a child-occupied facility may nevertheless be exposed to lead from playing in dust-level hazards..., such as [spending time] in the home of grandparents."<sup>26</sup> Surprisingly, these very concerns were addressed in the final LRRP preamble, yet EPA does not explain this complete reversal in position from April 2008 and October 2009.

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amount of error in these values is unknown." In sum, the estimates are of unknown accuracy, and the estimates were not adjusted downward to reflect the much larger exposures of the 2008 rule.

<sup>22</sup> 74 Fed. Reg. 55506, 55516 (October 28, 2009).

<sup>23</sup> See fn. 8.

<sup>24</sup> 5 U.S.C. §603.

<sup>25</sup> 74 Fed. Reg. 55506, 55509 (October 28, 2009).

<sup>26</sup> 74 Fed. Reg. 55506, 55509 (October 28, 2009).

In 2008, EPA was concerned about the Congressional intent behind the lead legislation, and was mindful of the Congressional instruction to focus on the target housing (children under 6 years old), and to account for costs and affordable housing. EPA explained that “it does not believe it is an effective use of society’s resources to impose this final rule requirements [sic] on all renovations in order to account for the portion of homes without young children that will be sold to families with young children following renovations.”<sup>27</sup> EPA further informs the reader that the lead disclosure rule, under 40 CFR §745, is designed to address this situation to apprise prospective buyers about lead-based paint hazards.<sup>28</sup> It is difficult to reconcile those 2008 statements with EPA’s 2009 approach without further explanation, or any new science, in the proposal.

To illustrate the point, it seems overly burdensome for a window installer who is replacing a single window (or a wallpaperer disturbing more than six square feet) for a home with two resident 50 year-old adults to comply with the entire LRRP rule requirements, but that is exactly what EPA would be requiring here. The lead-safe pamphlet and knowledge about lead-safe practices should suffice for the population that is not the focus of this rule. This differential approach makes sense to us and made sense to Congress because adults and older children do not ingest lead dust from the floor or soil, as younger children do.

#### **IV. EPA Should Consider a Disclosure Option rather than the Opt-out Provision.**

One of the classic forms of less intrusive regulatory alternatives that minimize costs and provides benefits is an information disclosure rule, instead of the traditional command and control regulation now being considered by the agency. In this case, EPA and HUD could revise the current lead disclosure form for the opt-out situation by adding the phrase “other than remodeling” after the word “hazards” and before the first parenthesis in line (a) and after the word “seller” and before the first parenthesis in line (b). A new line (c) would be entered in the section of “Seller Disclosures” as follows:

- (c) Remodeling (check i, ii, or iii, and check iv. if applicable):
  - (i)\_\_\_There has been no remodeling or renovation to this unit while I have owned it since {effective date of rule}.
  - (ii)\_\_\_All remodeling or renovation to the unit while I or my company has owned it since {effective date of rule} has been done by lead-certified contractors; a copy of each contractor’s certificate is attached.
  - (iii)\_\_\_There has been remodeling or renovation to the unit while I or my company owned it since {effective date of rule}, but it was not done by lead-certified contractors or I cannot find the certificate(s).
  - (iv)\_\_\_The unit has been cleared as lead-safe under the applicable HUD clearance procedure.

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<sup>27</sup> 73 Fed. Reg. 21692, 21710 (April 22, 2008).

<sup>28</sup> Id.

This disclosure rule would reduce the incentive to hire uncertified contractors or to do the work oneself without lead-safety training. The rule would be self-enforcing, requiring no expenditure or personnel by EPA or state agencies beyond administration of training programs. The disclosure rule, in lieu of all the complex EPA requirements, is particularly appropriate where the evidence of expected benefits are likely to be minimal or nonexistent, and where lead-safe practices are well known and in common practice.

## **V. EPA Can Simply Prohibit the Lead-Generating Practices Excluded by the Current LRRP for the Opt-out Scenario.**

EPA did solicit comments on one alternative that Advocacy supports. Specifically, we support the alternative of simply prohibiting the individual practices that EPA identified as producing excessive lead dust for the opt-out situation. It would vastly simplify compliance with the rule by limiting it to exclusion of these practices, which is very familiar to persons who already follow lead-safe practices, and does not require paperwork, extra training, certification, etc. This would also substantially lower the costs of compliance, compared to EPA's proposal. Such an alternative would very likely capture almost all the lead reduction benefits without the remaining regulatory requirements.<sup>29</sup>

## **VI. EPA Needs to Address the Cumulative and Overlapping Impacts of the Series of Planned LRRP Amendments, and not just the Opt-out Proposal Alone.**

EPA's has decided to divide the LRRP-related rulemakings into three separate rulemakings, and therefore, has not accounted for the cumulative or overlapping impacts of these connected rules. In the absence of a consent decree, in the normal course, this would be a single rulemaking addressing all forms of lead renovation activities, just as the current LRRP was done. However, by separating these provisions into three separate rulemakings, EPA avoids the accumulation of economic impacts.

In this opt-out rulemaking alone, EPA finds that the 75,000 non-employer impacts (mostly single employee firms) would face economic impacts of 1.3 percent to 4.7 percent of revenues, which is extremely high.<sup>30</sup> If EPA had added the additional expenses of the current LRRP rule, the projected economic impact would likely significantly exceed the range for this single rule. Furthermore, the expense of adding

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<sup>29</sup> In the April 2008 LRRP Economic Analysis, EPA found that the majority of the benefits were accounted for simply by the prohibited practices provisions (see Table 5-13). We also note, however, that this particular analysis showed large unexplained inconsistencies, and is subject to considerable uncertainty.

<sup>30</sup> 74 Fed. Reg. 55506, 55519 (October 28, 2009). Also, EPA points out that this may be an overestimate of impact because some non-employers "have significant issues related to understatement of income". However, EPA fails to add that the data supporting the underestimation of income shows that, but for a very small minority of firms, there is not a very significant understatement in comparison to total income. Therefore, these estimated average costs/revenue economic impacts, across firm types, are unlikely to be significantly affected.

the HUD clearance procedure to all LRRP and opt-out renovations would further exacerbate the problem. Thus, EPA and the public is denied the opportunity to explore the actual cumulative impact of these requirements because EPA decided to consider these revisions separately, rather than at one time, as is more appropriate.

As a result, EPA did not have the opportunity to develop any alternatives that address, for example, the overlap between the opt-out situation and the costly HUD clearance process. The purposes of the RFA include consideration of both cumulative and overlapping Federal regulations in some organized fashion to aid the development of reasoned decision making.

EPA should consider all three rulemakings at one time, and reissue this proposal after consideration of the cumulative and overlapping impacts of the rules yet to come.<sup>31</sup>

## **VII. EPA Needs to Comply with SBREFA Panel Procedures for Future Rule Amendments.**

EPA has the opportunity to profit from using the SBREFA panel process for the remaining regulations, and possibly the opt-out, if it so chooses. Under section 609(b) of the RFA, EPA is required to convene a SBREFA Panel any time “a rule is promulgated which will have a significant economic impact on a substantial number of small entities.” At a minimum, the agency should use this process for the consideration of the remaining LRRP amendments.

Since EPA had already signed a consent decree requiring the proposal to be issued by last month, without consulting with this office, Advocacy did not have a timely opportunity to discuss the SBREFA panel requirement with EPA before this proposal was issued. Given the numerous inadequacies and lost opportunities discussed above under both TSCA and the RFA, and the historical utility of SBREFA panels to EPA decision making, EPA could have benefited substantially from a SBREFA panel proceeding. It is useful to remember that considerations of RFA principles in 1980 through 1982, in consultation with this Office, led directly to EPA’s more aggressive removal of lead from gasoline, possibly EPA’s most important contribution to human health since the founding of EPA. This clearly demonstrated that the RFA and environmental principles can be accommodated.

While it is still timely, however, we wish to address the issue of the applicability of the SBREFA process to the two future rulemakings. Initially, we restate that these two rulemakings and the current rulemaking should all be combined. There should not be any question that the last planned rulemaking, involving commercial and other nonresidential

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<sup>31</sup> EPA explicitly excluded comments on the LRRP work practices, which includes the new and elaborate clearance verification procedure, which has been almost universally criticized by all interest groups. EPA needs to take the opportunity to defer implementation of this procedure until it completes the upcoming rulemaking regarding a new clearance procedure or take other action before the LRRP becomes effective in April 2010.

buildings, which are entirely outside of the scope of “target housing” as defined in TSCA, was not the subject of the panel in 2000. EPA needs a panel to address that unanticipated issue. Having established the need for one panel, it makes the most sense that EPA convene a panel, as expeditiously as possible so that it may consider, pre-proposal, changes to the clearance procedure, and secondly, post-proposal, changes to the opt-out provisions. Even though EPA has already issued the opt-out proposal, the small entity representatives advising the SBREFA panel, may have some very useful targeted advice that could be helpful as EPA develops a final rule.

Furthermore, despite the fact that the “clearance” issue was addressed in the earlier 2000 SBREFA panel, substantial new information has been developed since 2000. A different economic climate currently exists today that warrants consideration of this issue by a new panel. More significantly, if EPA determines that it will be going forward with a panel, it would be more efficient to address all possible issues at one time, and to hold the panel as early as reasonably possible.

### **VIII. Conclusion.**

EPA’s plans to promulgate a series of additional requirements to supplement the already costly LRRP rule will impose substantial burdens on small firms, homeowners and building owners, with questionable benefit. In compliance with the RFA, EPA should move expeditiously to initiate SBREFA panels for these rules, in time to receive advice on the existing proposal.

We urge EPA to delay any rulemaking changes for at least one year until more trained personnel and the new test kits become available.

With respect to the proposal to eliminate the “opt-out” option, EPA fails to explain its 180 degree reversal, without any new science. The agency also fails to take into account, in any discernible manner, the negative effect on small businesses and affordable housing. Lastly, the agency’s evidence supporting the estimated benefits is extremely speculative, at best.

EPA's proposal would instead impede low-income residents from improving their residences by imposing unnecessarily costly requirements. In 2008, EPA declared "that homeowners without young children or where expectant mothers do not reside should be able to choose whether or not work done in their own homes conforms to the requirements of the rule."<sup>32</sup> This proposal removes this choice from the homeowner. We respectfully urge the agency to reconsider its decision on this important rule, and take other appropriate action on the remaining issues.

Sincerely,

/s/

Susan M. Walthall  
Acting Chief Counsel  
Office of Advocacy

/s/

Kevin Bromberg  
Assistant Chief Counsel for Environmental Policy  
Office of Advocacy

cc:

Steven Owens, Assistant Administrator, Office of Pollution Prevention  
And Toxics, EPA

Cass Sunstein, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

Docket ID Number EPA-HQ-OPPT-2005-0049

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<sup>32</sup> April 2008 Final Regulatory Flexibility Act Analysis, EPA Docket #EPA-HQ-2005-0049-0951.5, at p. 8.