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Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
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**RE: Renovation, Repair, and Painting Rule
(Docket EPA-HQ-OPPT-2005-0049)**

The National Multi Housing Council and the National Apartment Association represent the nation's leading firms participating in the multifamily rental housing industry. Our combined memberships are engaged in all aspects of the apartment industry, including ownership, development, management, and finance. The National Multi Housing Council (NMHC) represents the principal officers of the apartment industry's largest and most prominent firms. The National Apartment Association (NAA) is the largest national federation of state and local apartment associations. NAA is comprised of 190 affiliates and represents nearly 50,000 professionals who own and manage more than 6 million apartments. NMHC and NAA jointly operate a federal legislative program and provide a unified voice for the private apartment industry.

NMHC/NAA members provide quality apartment homes across the nation, and they continue to invest in worker training, disclosure and staff and resident education in order to reduce the rate of childhood lead poisoning. Currently 15.9 million households -- nearly 14 percent of all households -- live in apartment buildings that have five or more units. NMHC/NAA members are deeply committed to providing safe, affordable and accessible housing. As such, our NMHC/NAA members provide quality apartment homes across the nation and invest in worker training, lead inspections and disclosure activities and staff and resident education in order to support the national goal of eliminating childhood lead poisoning. In the early 1990's, the apartment industry worked with Congress as it deliberated the issues that were subsequently incorporated into the Residential Lead-based Paint Hazard Reduction Act (Title X). NMHC/NAA have worked with the various Agencies that have had jurisdiction over various pieces of this legislation, including EPA, the Department of Housing and Urban Development (HUD), the Occupational Safety and Health Administration (OSHA), and the Consumer Products Safety Commission (CPSC).

We have consistently advocated a position of reducing sources of lead in the environment. To that end, we have advocated including tighter restrictions on

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new sources of lead emissions, specifically tougher standards for lead emissions from cement kilns and the banning of lead from consumer products such as candles and vinyl mini-blinds. Lead in the environment, regardless of the source, finds its way into household dust and can create lead exposure hazards on our properties even when they are free of lead-based paint (LBP). Our associations have developed lead training courses for leasing agents and maintenance workers on apartment properties, presented information at numerous national meetings, and authored articles in trade magazines to inform apartment industry executives about federal and state lead requirements. In cooperation with HUD, NAA has trained thousands of supervisors and workers to meet the requirements for federally assisted properties. We have participated in meetings sponsored by EPA and HUD to discuss options for meeting the federal challenge of eliminating childhood lead poisoning by 2010. We have also participated in many workshops that EPA has hosted on the Renovation, Repair and Painting Rule.

It is with concern that we note that EPA appears to have ignored or at least accorded disparate treatment to the data analysis that NMHC/NAA submitted to the docket in support of this rule. On May 25, 2006, in compliance with EPA's original deadline for comments, we submitted a retrospective analysis of lead testing in pre-1978 housing. The data were collected by independent, state-certified lead-based paint risk assessors (CONNOR) in accordance with the protocols set forth in Chapter 5 of the 1995 HUD Guidelines and applicable EPA and state regulations. The data were collected over a ten-year period (1996 to 2006) in the course of assessing compliance with the Maryland Reduction of Lead Risk in Housing program, HUD regulations that require properties that received federal assistance to be tested for lead hazards, and/or routine lead testing to determine a property's lead status under Title X. Another independent contractor, Earth Track, in coordination with Industrial Economics, Inc., performed the statistical analysis of the data.

To our knowledge, this analysis represents the largest data set ever assembled of actual target "occupied" or "ready to be occupied" housing in which dust lead levels were measured following the repair and make-ready activities performed by actual property maintenance staff. The analysis consisted of two data sets: (1) the results of lead testing in more than 6,000 residential units in Maryland built between 1900 and 1978 and (2) lead testing in approximately 34,000 apartment units built between 1832 and 1978 on properties located in 41 states. More than 47 percent of the properties in this sample participated in HUD's project-based Section 8 program. The properties in both data sets represent a cross-section of property types.

In nearly a year since we submitted a description of the findings of this analysis, EPA has not asked us for the raw data or sought any other information about the study. Nor did EPA ask the Clean Air Scientific Advisory Committee Lead Review Panel to review this study at its February 5, 2007 meeting as it did with two additional studies (one performed by the EPA and the other conducted by

the National Association of Home Builders) and a third EPA study design comparing lead dust levels with lead work practices. Furthermore, when EPA published the Notice of Data Availability (NODA) in the Federal Register (March 16, 2007), it failed to mention the retrospective data sets that were described in the comments submitted by NMHC/NAA in May 2006.

The post-renovation/remodeling/painting and occupied housing lead dust levels in the data sets submitted by NMHC/NAA reflect actual living conditions in target residential properties, unlike the data sets presented in the NODA. The National Association of Home Builders' study was performed in five homes that had been unoccupied for some period of time and were not scheduled to be re-occupied. It is not clear whether the houses were habitable or able to be made so, which does not reflect the majority of situations that will trigger this rule. In contrast, the residential units in the NMHC/NAA study were occupied, subject to routine repair/maintenance activities including, at the very least, painting and, in the case of the Maryland data set, window replacement, door re-hanging and other surface preparation performed by maintenance staff that were all trained to work and clean up after their work in occupied housing. In some cases (Maryland in particular), workers would have been utilizing the lead-safe work practices (including plastic drop cloths) required by the state. In the national data set, some of the workers would have received specific training in lead-safe work practices before the lead testing took place but since the point of the testing was to determine whether or not a property had lead-based paint, workers would have received the HUD-required lead-based paint or state-required training after the property had been tested. They would have been using good maintenance practices to clean up after their work sites. This goes to the point that however cleaning is performed, it is essential that it is done thoroughly.

NMHC/NAA believe that the analysis of these data sets presents compelling information that is exactly on-point for the questions considered in this rulemaking and strongly urge EPA to consider this information in promulgating a rule that addresses work practices for apartment maintenance personnel. Given the disparity among tasks that are covered by this rule -- ranging from routine property maintenance of occupied housing to major gut rehabs to tasks involving the use of high lead-dust generating activities like open-flame burning or grinding -- it may well be that EPA should develop several sets of requirements for different categories of workers regarding training and cleanup and verification.

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