

Testimony of
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Committee on Small Business

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Regulatory Flexibility Act Compliance:
Is EPA Failing Small Business?



Introduction:

Mr. Chairman and Members of the Committee, I am pleased to present this testimony on behalf of the National Association of the Remodeling Industry (NARI). Today I will try and describe how the U.S. Environmental Protection Agency (EPA)'s Lead Renovation, Repair, and Painting (LRRP) rule is affecting remodelers and how the EPA can do a better job working with organizations like NARI to protect our customers and our customers' families.

NARI is a non-profit trade association based in Des Plaines, Illinois. We have 58 Chapters in major metro areas nationwide and our membership of 7,000 companies is comprised of remodeling contractors, local suppliers, and national suppliers. 83 percent of NARI members have fewer than 20 employees and many are 1 or 2 man operations. NARI's core purpose is to advance and promote the remodeling industry's professionalism, product and vital public purpose. NARI members voluntarily subscribe to a strict Code of Ethics which NARI rigorously enforces.

I run a design build company in Kensington, Maryland. Merrick Design and Build Inc. is a full service residential and commercial remodeling, design, & build company. We have been serving customers in lower Montgomery County and Northwest DC since 1989 when I founded the company. We focus primarily on residential renovation and repair and our work includes some commercial projects, including churches, schools, day care centers, professional offices and restaurants.

In addition to running my business, I serve as Chairman of NARI's Government Affairs Committee. I stay very involved with NARI's Metro DC Chapter and I am a member of the National Federation of Independent Business (NFIB).

Background on EPA's Lead Renovation, Repair, and Painting Rule:

NARI has always been proud of its training and certification programs and we have a long history of educating remodelers on lead paint hazards. In fact, NARI worked with the U.S. Department of Housing and Urban Affairs (HUD) to run a lead paint training program in 1998. Curriculum NARI developed for that program continues to be used today and NARI remains dedicated to training remodelers in how to ensure their customers are not harmed from lead paint.

As a practical matter, please keep in mind that if EPA simply recognized the work practices inherent in how we remodel homes, we may have saved a lot of trouble that has overshadowed the issuance, re-issuance, amendments, and court settlements related to EPA's LRRP rulemakings.

NARI did not think that EPA's rulemaking in 2008 was perfect. It still lacked some of the flexibility inherent in the different situations that arise unique to different projects. However, the "opt out" provision in the 2008 final rule was one flexibility provision that arose from the small business panel process that is part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) process this Committee is discussing today.

When EPA finalized LRRP in August of 2008, NARI made it a top priority to inform our members of their responsibilities and to direct members to trainers so they could become certified. NARI members received information on LRRP via numerous articles in our main membership publication, *The Remodelers Journal*; NARI's e-newsletter, *The Spec Sheet*; and in our e-notice, *Tuffin' It out*. NARI publishes and distributes Issue Briefing Papers, and we continue to devote space to the LRRP on NARI's Web site, www.nari.org/leadsafety.

In 2010, when EPA decided to change the LRRP rules, NARI was disappointed. We worked with several contracting, homebuilding, and remodeling businesses to express our concerns in a comment to EPA we submitted in July of 2010. In addition to the problems we had with EPA changing the rules when we were pushing NARI members to get certified and learn what EPA had finalized just 2-years earlier, we had substantive concerns with many of the provisions in EPA's 2010 proposal.

Fundamental to our concerns were the removal of the "opt-out" provision and EPA's refusal to re-convene a group of small businesses, the U.S. Small Business Administration's Office of Advocacy, and the Office of Management and Budget to ensure flexibility in the rulemaking for small businesses.

In a different part of EPA's 2010 proposal, EPA did listen to small businesses. Part of what EPA proposed to do in its 2010 LRRP proposal was to add end-of-job requirements for remodelers and contractors. We had significant problems with the "clearance testing" proposal, mostly because it would have added a layer of costs and complexity to jobs for contractors who were still struggling to comply with the 2008 rule. Plus, our customers still did not understand that their projects were more expensive because of EPA requirements. NARI felt strongly that adding "clearance testing" would have pushed more and more contractors away from the EPA-certification process, adding costs to projects without a direct correlation to making our customers' homes safer.

EPA agreed with us that "clearance testing" requirements would impose more costs without additional benefits and last July they decided not to impose new regulatory mandates on remodelers, home builders, and contractors.

Legislation to restore the “opt-out” provision:

Recently, Members of the House of Representatives introduced a bi-partisan bill that would help make EPA’s LRRP rules work better to protect young children and pregnant women and to add the flexibility needed for remodelers to best serve our customers. H.R. 5911 restores the “opt out” provision in a way that relies on EPA to determine what projects would reduce cost without sacrificing safety. NARI supports that legislation and hopes this Committee will take a close look at it and offer its support.

EPA’s proposal to extend LRRP requirements to cover work on the exterior of public and commercial buildings:

It seems like EPA’s desire to pile onto its 2008 final rule continues. EPA is considering extending LRRP requirements to cover work on the exterior of public and commercial buildings. To EPA’s credit, they reached out to small businesses last year to try and flush out how their thinking would impact us. NARI was glad that Kevin Nau, who runs a design build company in Maryland, was able to consult with EPA when the agency was considering convening a Small Business Advocacy Review Panel under SBREFA.

NARI’s concerns with EPA moving forward with a public and commercial building rule are three-fold. First, we are concerned that EPA may proceed without convening a SBREFA Small Business Advocacy Review Panel. We do not want the same thing to happen when EPA proposed its 2010 additions to LRRP, that a rule move forward without a SBREFA panel. It seems as though EPA’s attention to court-ordered deadlines can take a higher priority than considering small business input in rules. I would ask this Committee to try and change that. Research from the U.S. Small Business Administration’s Office of Advocacy shows that we are disproportionately harmed by federal regulations. When it comes to EPA rules, the Office of Advocacy research shows firms like mine shoulder more than 3 times the cost of large businesses, when it comes to federal regulatory compliance. The SBREFA panel process is intended to level the playing field. NARI supported legislation this Committee approved last year (H.R. 527). I hope that that legislation, and oversight by this and other committees in Congress, impress upon EPA that small business input may be more important than meeting a court deadline.

Second, NARI is concerned that EPA may move forward with a public and commercial LRRP rule without clear evidence and data showing lead poisoning risks to children under 6 and pregnant women from construction activities at public and commercial buildings. If EPA cannot present a clear connection between the activity and the risk to children and pregnant women, then our customers certainly will not understand why their projects will become more expensive.

Third, when EPA moves forward with the rule, NARI would advise that the agency make the rules flexible enough to cover different scenarios. This is what NARI member, Kevin Nau, advised the EPA during meetings last year.

NARI's working relationship with EPA:

NARI prides itself in relationship with EPA. We honestly believe that our goals, to protect our customers' families, are the same as EPA's. With that in mind, we meet regularly with EPA officials to make sure they know how their policies impact remodelers.

During our meetings with EPA, we express our frustration over the low number of contracting firms that are EPA-certified (an LRRP requirement for working on homes built before 1978). Last month, EPA announced that 122,476 firms in the construction and remodeling sector are EPA Lead-Safe Certified Firms. According to the Joint Center for Housing Studies at Harvard University, there are 652,206 remodeling businesses in the United States. Not all of the EPA-certified firms are remodelers (they may be painters, window installers, plumbers, flooring installers, etc.). Even if all the EPA-certified firms are remodelers, that would mean EPA has certified less than 20% of the remodeling firms nation-wide.

NARI believes there are several reasons why so many firms are not certified. Many non-certified firms are able to under-bid those professionals who have spent the time and money to become EPA-certified. Since cost is driving our customers' decisions to go ahead with projects, those non-certified contractors are getting more jobs. That is a troubling scenario because of the risk that presents to homes occupied by young children or pregnant women. We believe that better targeted enforcement activities will help to reverse this trend. We have advised EPA to focus its LRRP enforcement on situations where non EPA-certified contractors are doing work in violation of LRRP rules. In the 2-years since EPA has been enforcing LRRP, there are fewer than 10 cases filed by federal enforcement authorities against non-certified contractors for work practice violations.

Additionally, home owner awareness of LRRP has to increase. Last year, NARI worked with Meredith Corporation's Better Homes and Gardens' homeowner research panel to gauge awareness of EPA's LRRP rules. Unfortunately, 53% of the respondents were unaware of the rules.

Conclusion:

NARI is pleased with the opportunity to advise this Committee about how EPA interacts with small businesses when the agency develops regulations. The SBREFA process was designed to codify what simply makes sense; for small businesses to work with EPA to come up with constructive solutions for complex problems. It seems as though the process works when EPA listens to the input from the Office of Advocacy and from small businesses. It does not seem to work when EPA rushes the process or avoids it altogether.

We will continue to work with EPA. We will try and increase our customers' knowledge of LRRP rules and we will continue to work with remodelers to increase EPA-certification. Our dialogue with EPA is important because NARI should be EPA's partners in our efforts to protect children and pregnant women from lead-based dangers caused by remodeling activities.

Thank you for your attention to these important issues.