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August 29, 2014

U.S. Environmental Protection Agency
Document Control Office (7407M)
Office of Pollution Prevention and Toxics
Washington DC 20460-0173

OMB Desk Officer for EPA
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Subject: Docket ID No. EPA-HQ-OPPT-2013-0715; Information Collection Request
(ICR): Survey of Public and Commercial Building Industry

Dear Sir or Madam:

On behalf of 1 million members of the National Association of REALTORS® (NAR), thank you for the opportunity to comment on the above captioned survey by the Environmental Protection Agency (EPA). While sharing the EPA's interest in basing regulatory decisions on high quality data, we question the need and usefulness of this private sector survey when federal agencies are collecting much of the requested information. Until the Agency reports on these data sources and identifies a lead-based paint hazard pursuant to Section 403 of the Toxic Substances Control Act, we respectfully request that EPA withdraw this proposed survey and make publicly available the data sets the Agency has already obtained.

Under the Paperwork Reduction Act (PRA), the Office of Management and Budget (OMB) evaluates whether a proposed collection of information:

- Is necessary for the proper performance of the functions of the agency, including whether the information has practical utility (44 USC 3508);
- Minimizes the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected; and
- Maximizes the practical utility of and public benefit from information collected by or for the Federal Government (44 USC 3504).

The agency must also certify that it “reduces to the extent practicable and appropriate the burden ... including with respect to small entities, ... an exemption from coverage of the collection of information, or any part thereof” (44 USC 3506(C)(3)).

Need for Survey

To us “necessary” means an information collection is absolutely needed for a) an agency to carry out its statutory obligations and b) the information cannot be collected from elsewhere. In separate comments,¹ the Commercial Properties Coalition (of which NAR is a member) already established that under TSCA sec. 403, the EPA has no regulatory authority unless it identifies a lead-based paint hazard in commercial and public buildings. If conversely, EPA moves ahead with this survey, and later finds there is no hazard, it will have collected data it cannot use.

We strongly agree with the Coalition's comments, and would add these two points:

- This is merely a “jobs” survey. For the counterpart residential rule, the EPA made its hazard determination on data sets including environmental-lead levels in dust and



¹ For a copy: <http://www.regulations.gov/#/docketDetail;D=EPA-HQ-OPPT-2013-0715>

soil in U.S. housing and linking those levels to elevated blood lead concentrations in children.² But the survey would not collect environmental- or blood-lead levels. It doesn't document the incidence of lead-based paint in commercial or public buildings or exposures to conditions that would result in hazards. What it does is approximate the number and types of jobs and companies that renovate, repair, and paint these properties so "EPA can use data on the general prevalence of lead-based paint to estimate how many of these jobs disturb lead based paint."³

- Federal data sources exist. There may not be need for a private sector survey since "EPA has already collected information about lead-based paint and RRP practices from various Federal entities" (see its response to comments). However, EPA "does not discuss this data because EPA does not need ICR approval to conduct discussion within the Federal government. Nor is it necessary to document all of the data that has been obtained from Federal entities (or any other sources) in order to justify the information collection requested in the Supporting Statement."⁴ That may be true but in the ICR EPA also identifies "mistrust of regulatory agencies" as the #1 obstacle to obtaining useable data, and openness and transparency could help with this.⁵ There are at least two federal data sources for commercial renovation jobs data, of which we're aware:
 - Federal renovations. The U.S. government owns the most buildings and leases the most commercial space across the country. It is likely that federal agencies like the General Services Administration will be able to provide at least some useable information on renovations in the commercial buildings it leases.
 - Worker exposures. The EPA indicated it's working with the Occupational Safety and Health Administration to obtain lead sampling and exposure data from its enforcement records.⁶ If EPA is not able to find a hazard where worker protection laws have been violated, it raises the question of what the Agency expects to find by surveying the general population.

EPA will counter that it cannot rely on other data sources and requires a survey upon for two reasons:

- "Not representative" – specifically, the EPA states:

"Federal building renovations costing tens or hundreds of millions of dollars with multi-year timeframes may differ from the RRP activities that other entities (including small businesses) more commonly undertake in P&CBs such as preparing surfaces for repainting in a motel, creating an opening in a wall to perform electrical work in a doctor's office, or removing a section of a wall in order to repair a broken water pipe in a shopping mall."⁷

However, not all federal projects are as large as the Capitol Dome. The federal building stock is vast and diverse, and it's not clear why "preparing a surface for painting or creating an opening in a wall" would be different in a post office than a motel or doctor's office. As for "removing a section of wall to repair a water pipe in a mall," not long ago, EPA had offices in Waterside Mall in SW Washington. Also the federal government may turn to the same renovation companies that the private sector does (Turner Smoot, in the case of the Capitol Dome), and EPA doesn't explain why these companies would have a different set of practices for federal and non-federal clients. Spending more and taking longer to complete renovations doesn't itself prove that small businesses would use a different set of practices than those hired by the federal government.

² For more on the many data set used to residential hazard determination, see:

- <http://www2.epa.gov/lead/hazard-standard-risk-analysis-tsca-section-403>
- <http://www2.epa.gov/lead/hazard-standard-risk-analysis-supplement-tsca-section-403>

³ See EPA's response to Commercial Property Coalition comments found at:

http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201407-2070-003

⁴ Id.

⁵ For more on data bias, see sec. 2 of Supporting Statement B at

http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201407-2070-003

⁶ InsideEPA, "EPA Denies Health, Labor Groups' Call to Seek OSHA Data on Lead Paint," posted February 24, 2014.

⁷ EPA response to comments at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201407-2070-003

- “Representative data or not”⁸ – is EPA’s proposition, and it’s a false choice: for instance, the EPA might find that federal agencies can provide some of the requested data and then tailor the ICR to collect the rest. Also, the federal government makes many decisions based on incomplete or imprecise data; information is expensive. The issue isn’t whether EPA will have good data or not to make regulatory decisions, but rather, whether the incremental precision to be gained from putting a survey out in the field would justify the additional paperwork burden on the public. The EPA has not yet answered this question.

Practical Utility

The PRA defines the term as “the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion” (44 USC 3502). However, in this survey, there is reason to believe that EPA could collect the data it cannot use.

- No hazard finding. The Agency will not be able to use this information unless it makes the prerequisite legal finding of a lead-based paint hazard authorizing the regulation of commercial and public buildings. While EPA responded to coalition comments that it would not put the survey in the field if it determines there are no hazards, elsewhere, EPA provides a collection schedule for survey work to begin within one week of OMB approval.⁹ If EPA begins collecting data and later finds no hazard, then that data will have been collected all for naught.
- Survey Bias. The EPA identifies two likely sources of bias in the information to be collected – a) nonresponse bias and 2) measurement error, but does not explain what the agency will do with the information if the Agency finds bias. Non-response bias is when respondents differ in meaningful ways from non-respondents. Measurement error could result because respondents are being asked to answer questions purely from memory. This is significant because EPA intends to base regulatory decisions on this data, and if the data turns out to be biased so too will the decision making. OIRA provides clear direction to regulatory agencies on this very point:

“ICRs for surveys with expected response rates lower than 80 percent need complete descriptions of how the expected response rate was determined, a detailed description of steps that will be taken to maximize the response rate (see question #69), and a description of plans to evaluate nonresponse bias (see question #71). Agencies also need a clear justification as to why the expected response rate is adequate based on the purpose of the study and the type of information that will be collected (whether influential or not). This discussion may include past experience with response rates when studying this population, prior investigations of nonresponse bias, plans to evaluate nonresponse bias, and plans to use survey methods that follow best practices that are demonstrated to achieve good response rates (see question #69). The ICR should also include a discussion of the selection of the mode of data collection and its impact on the expected response rate. ICRs with lower response rates are often justified by agencies in cases when they are seeking to gather information that is planned for internal use only, is exploratory, or is not intended to be generalized to a target population. Examples for these kinds of collections may include some customer satisfaction and web site user surveys and other qualitative or anecdotal collections” (emphasis added).¹⁰

The EPA does not provide an estimated overall response rate to this ICR. It does, however, point to a previous informal study that “although not strictly comparable,” required contacting nearly 1,000 respondents before it found 9 willing to complete the survey.¹¹ The Agency does make some adjustments to try and increase the response rate,¹² but with prior

⁸ “If this survey is not conducted EPA would have to rely on assumptions, anecdotal information, or information collected from convenience samples, rather than calculating national representative parameters from a probability sample” (sec. 1 of the Supporting Statement A at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201407-2070-003)

⁹ Sec. 5 of Supporting Statement A.

¹⁰ From Question #66 of OIRA’s “Questions and Answers When Designing Surveys for Information Collections” at http://www.whitehouse.gov/sites/default/files/omb/inforeg/pmc_survey_guidance_2006.pdf

¹¹ Sec. 5 of Supporting Statement A.

¹² EPA makes some minor survey adjustments and also proposes to train investigators “to avert potential refusals and attempt to convert non-respondents who refused,” follow up with calls, emails and mail at least 8 times, and pay some respondents \$50 to

experience suggesting a rate this far below 80%, EPA should go beyond the minor adjustments and explain if and how it intends to use information if found to be biased. The EPA has emphasized that without this survey, it would have rely on “assumptions, anecdotal information or information collected from convenience samples” but in light of the potential for bias, we question whether the survey will produce data that’s more “representative” than what the Agency already has.

Paperwork Burden

The EPA anticipates screening a total of 8,500 businesses (97% small) in order to randomly select 400 for a survey that ranges from 10 to 30 minutes (depending on business type). The screening portion of the survey is expected to take a few minutes, which doesn’t include time to prepare or consult outside counsel. We would also note the hassle of 8 follow up calls or emails if the respondent does not “volunteer” to spend those few minutes taking a survey. Here are EPA’s counts by business type.

	Contractors	Property Managers	Building Tenants
Total # Screened	1,645	2,040	4,800
% Fully Surveyed	15%	3%	2%

We appreciate that EPA has reduced the number of survey questions for respondents who don’t renovate, repair and paint commercial buildings and also for those who do but aren’t contractors. But the PRA’s purpose is to “minimize” paperwork burden. Just because a survey only takes 3-5 minutes doesn’t justify contacting 8,500 small businesses and asking them 3-5 minutes worth of questions that EPA may not be able to use. This is especially true particularly when there are federal sources that could provide the same information.

We believe the EPA can do more to reduce burden in this survey, and we encourage the Agency to consider these options:

- Adopt a two-stage approach to information collection. First EPA should withdraw the ICR and publish a federal register notice determining whether or not a lead-based hazard exists in commercial and public buildings and also making publically available the requested federal data sets to support the decision. If the Agency makes a positive determination and finds there is need for more precise and complete data, it could tailor and resubmit the ICR at a later time.
- Consider deleting survey questions -- if not the instrument itself especially for the property managers and tenants. Question 7 alone -- which has 22 parts -- asks respondents to approximate how many projects it conducted over the past year, and to do this entirely from recall for 11 different job types. EPA can get much of the information from contractors but would have to screen many more managers or tenants in order to fully survey <100 each. And it’s unclear what’s gained from learning generally how renovation jobs “differ between different types of firms,” which even EPA concedes is a “secondary objective.”¹³
- Exempt smaller businesses from survey coverage. This is an option specifically flagged in 44 USC 3506(c)(1)(B) for EPA to consider. Yet EPA merely states that “small entities make up the majority of the establishments” and “the instrument was developed to minimize burden on all respondents.”¹⁴ Table B2.1 of Supporting Statement B breaks out the population by number of employees. The EPA should at least consider exempting the smallest (fewer than 1-4 employees) or clarify why their work practices would significantly differ from those with 5-9 employees.

complete the survey. The Agency also commits to analyze survey results for bias and could adjust sampling weights, assuming that “respondents and non-respondents within the weighting class are similar.” Still this doesn’t guarantee reliable data is collected.

¹³ Sec. 1 of Supporting Statement B at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201407-2070-003

¹⁴ Sec. 5 of Supporting Statement A.

- Conduct a pilot test. EPA did conduct a pretest with 6 respondents. However, “given time and budget constraints, EPA does not plan to conduct a pilot test.”¹⁵ However, it would seem less expensive for the federal government to conduct a pilot test on a subset of the 8,500 small businesses than to survey all of them only to then find they can’t use the data.

Conclusion

Based on the forgoing, we respectfully request that EPA withdraw the ICR until a) it identifies a lead paint hazard in commercial and public buildings, b) makes publicly available requested federal data on renovations and c) considers options to further streamline the survey for small businesses.

Thank you again, for the opportunity comment on this proposed survey of commercial building industry. We look forward to working with you and the EPA to minimize the paperwork burden while identifying the information the Agency needs to fulfill statutory obligations under TSCA

Sincerely,



Steve Brown
2014 President, National Association of REALTORS®

¹⁵ Sec. 3 of Supporting Statement B.