

December 1, 2008

Keith Holman
Office of Advocacy
US Small Business Administration



Delivered via E-mail

RE: Nominations of Existing Agency Rules for Reform

Dear Mr. Holman

The National Steering Committee for the Small Business Ombudsman/Small Business Environmental Assistance Programs (SBO/SBEAP) is nominating the following rules or regulatory programs for reform:

1. **“Once In Always In” policy** – US EPA Office of Enforcement and Compliance Assurance (OECA) have been enforcing a policy that once a facility was covered by a MACT standard under 112(d) of the Clean Air Act, that they would continue to be affected by the rule even if emissions were reduced such that they were below major source levels of hazardous air pollutants (HAP) or they eliminated the materials regulated. Many small businesses were erroneously permitted as affected sources under this rule. Also, many businesses have been able to completely eliminate materials containing regulated HAP. All of these businesses must continue to demonstrate compliance with the regulations, which usually entails very complex recordkeeping and annual certification at a minimum. During 2007, the Technical Subcommittee became aware of a rule that was being drafted by EPA to address situations where it would be appropriate to allow certain facilities to get out of being an affected source under MACT. Because of the level of burden involved in continuing to demonstrate compliance with a MACT standard that no longer applies to your operations, finalizing this rule to eliminate the “Once In Always In” policy would greatly benefit many small businesses. ***Our recommendation is to review the current “Once In Always In” policy for its regulatory burden on small businesses and the needed reform is completion of the rule that EPA started drafting in 2007 but put on hold.***
2. **Paint Stripping/Miscellaneous Surface Coating – 40 CFR Part 63 subpart HHHHHH:** The SBEAP/SBO National Steering Committee submitted comments to EPA on the proposed subpart HHHHHH and are concerned about one major issue that was not addressed in the final rule signed on December 14, 2007. The issue is that small autobody shops have to **petition** the EPA Administrator to get approval to be considered exempt from the rule if they do not use any coatings that contain the target HAPs. This places an excessive burden on the smallest of the sources affected by this rule. For other surface coating operations, they just need to maintain supplier records to demonstrate they don't use the target HAPs. We understand that an element of EPA's reasoning was that autobody coating formulations involve a larger number of materials being combined to create one final paint mixture. It shouldn't matter how many coatings are involved, if you have the documentation to prove there are no target HAPs you should just be able to maintain those records and certify compliance. If the petition process is complicated, costly and/or burdensome, there is no **incentive** to reformulate your coatings. Over the past year we have learned from many suppliers that they can

provide a short list of the few coatings containing the target HAPs. The list allows shops to avoid purchasing coating containing the target HAPs. However, EPA is still wrangling with states about whether shops need to submit many copies (hundreds) of MSDS to prove they do not use the target HAPs. As the process to submit the petition unfolds, the burden only seems to grow for shops. ***Our recommendation is that EPA should amend the rule or establish a standard petition that reduces the amount of paperwork required to establish that a shop is exempt from the rule.***

3. **NSPS for Small Industrial-Commercial-Institutional Steam Generating Units - 40 CFR Part 60 Subpart Dc:** The section of this rule that applies to small boilers of the size 10 to 30 million BTU/hr can affect very small facilities that otherwise have no other air pollution emissions sources. The regulatory burden on such small businesses stems from the fact that most states cannot exempt these affected sources from their Title V permitting requirements, simply by virtue of the fact that they are an "affected" source under section 111 of the Clean Air Act. ***We recommend that this rule, and other NSPS with similar small business impacts, be revised to apply a similar exemption from Title V permitting requirements that EPA has used in most of the recent area source NESHAPs affecting small businesses. The monthly recordkeeping requirements that apply for these smaller units can be adequately addressed through compliance assistance measures that are referenced in the Title V exemptions for area source NESHAPs.***
4. **Weight exemption for trucks to allow for the additional weight of anti-idling units installed on the truck - 23 CFR Part 658.17(n):** This DOT-Federal Highway Administration rule allows all states to use this 400 pound exemption, but doesn't mandate it. Because of this, it is inconsistently applied across states. The inconsistency makes it very difficult for owners or operators to know whether or not they will be over the weight limits as they drive cross-country. There are tens of thousands of small owner/operators who need to consider anti-idling technology as more states and communities ban idling. ***We recommend that the exemptions be mandated, as it would not only benefit the small fleet owners to have consistent application of these exemptions to eliminate confusion, but also because installation of anti-idling technology benefits air quality in every state in which the truck makes an overnight stop.***
5. **Metal Fabrication area source rule – 40 CFR part 63 subpart XXXXXX:** The SBEAP/SBO National Steering Committee submitted comments to EPA on the proposed subpart XXXXXX and are concerned about an issue that was not addressed in the final rule. A very burdensome requirement that made it into the final rule is the use of visible emissions observations, USEPA Method 22, which can graduate up to use of visible emissions testing, USEPA Method 9, for compliance demonstration on welding operations. Method 22 does not require that observers are trained in Method 9 for visible emissions testing, yet the graduated nature of the compliance demonstration requirements could potentially bring Method 9 into play for many sources. In order to be prepared for the potential for conducting Method 9 opacity observations, a facility will need to have one person certified at all times. That means sending either the owner/operator or other staff to classroom training at least once and field testing once every six months. Without a lower applicability threshold in this rule, that means in the smallest shops it's just the owner and his wife and she just does the books for him. The costs for the Method 9 training and field testing averages around \$400, and includes one or two days away from the plant, each time. If you do not maintain Method 9 certification

every six months, your readings are invalid. Few SBO/SBEAPs surveyed were aware of even Title V permits in their states that would require larger sources to conduct their own periodic visible emissions observations. The most likely sources to have these requirements are high volume dust sources like coal piles or sand and gravel operations, and even there work practices are more the norm. Welding operations are not traditionally high volume dust sources. The SBO/SBEAP comment letter to EPA on the proposed rule was not the only comment letter to express concerns about the visible emissions requirements and the burden on affected sources. **We recommend that EPA remove all of the visible emissions observations requirements, Method 22 and Method 9, and rely on a periodic log or recordkeeping requirement to demonstrate that the work practices to minimize emissions from welding operations are being followed. If that is not possible, then we recommend that at a minimum EPA remove the Method 9 visible emissions portion of the graduated compliance demonstration methods since this is a burden that is rarely applied to even Title V sources.**

Thank you for this opportunity to provide input on federal regulations that deserve review and reform. If you have any questions on this letter you can contact Renee Lesjak Bashel, the NSC Vice-Chair and Technical Subcommittee Chair, at 608.264.6153 or Renee.Bashel@wisconsin.gov.

Sincerely,


Annette Fulgenzi
Chair, National Steering Committee

cc: Renee Bashel, WI SBEAP
National Steering Committee of State Small Business Programs
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