



October 25, 2007

By Electronic Mail

Robert J. Meyers
Principle Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
Mail Code: 6101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attn: Docket No. EPA-HQ-OAR-2005-0526

RE: Comments on the National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, Proposed Rule, 72 Fed. Reg. 52,958 (Sept. 17, 2007)

Dear Mr. Meyers:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits the following comments to the U.S. Environmental Protection Agency (EPA), regarding EPA's Proposed Rule, *National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources*, 72 Fed. Reg. 52,958 (September 17, 2007). The proposed rule would require, among other things, paint stripping and miscellaneous surface coating operations at area sources to use prescribed equipment, undertake required training, and/or utilize management practices designed to minimize emissions of hazardous air pollutants. EPA certified under the Regulatory Flexibility Act (RFA) that the rule will not have a significant economic impact on a substantial number of small entities. That certification

was premised on EPA's determination that the rule would only require minimal notification, training, equipment, and best management practice requirements for a total of about 9,000 facilities, totaling less than \$1000 per facility. Recently, however, Advocacy has learned that the rule, as proposed, could impose higher equipment costs on as many as 200,000 existing area sources, most of which are small businesses. We are concerned, therefore, that EPA's RFA certification lacks a factual basis. If EPA is unable to certify with an adequate factual basis, EPA would be required to convene a small business review Panel under section 609(b) of the RFA.

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 the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 specifically required by the RFA to conduct small business review panels to assess small entity impacts and consider alternatives that could minimize those impacts. Moreover, President Bush signed Executive Order 13,272 on August 13, 2002; the Executive Order requires Federal agencies to give every appropriate consideration to any comments submitted by Advocacy on a proposed or final rule. 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.

EPA has certified, under section 605(b) of the Regulatory Flexibility Act (RFA), as amended, that the proposed rule will not have a significant economic impact on a substantial number of small entities. *See* 72 Fed. Reg. 52,974 (September 17, 2007). Small entities include small businesses, small governmental jurisdictions (a government of a city or town with a population of less than 50,000 persons), and small nonprofit organizations. EPA's certification was based on the conclusion that the surface coating operations at area sources are already required to utilize enclosed spray booths by virtue of an existing workplace safety regulation administered by the Occupational Safety and Health Administration (OSHA). *See* 29 C.F.R. § 1910.94(c). The additional cost to these facilities of purchasing new spray guns, requiring worker training, and employing management practices would be minimal. To the extent that covered facilities currently have enclosed spray booths, Advocacy is satisfied that EPA's economic analysis is reasonable.

As currently proposed, however, thousands of additional facilities with some type of surface coating operation may fall within the scope of this rule, and be required to install spray booths or undertake other costly compliance measures. For those facilities, EPA's certification lacks the factual basis that is required by section 605(b) of the RFA. Accordingly, EPA must either clarify that the rule does not apply to a broader universe of facilities or be prepared to convene a small business review Panel under section 609(b) of the RFA.

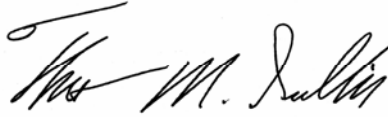
Advocacy recommends that EPA consider several clarifications and revisions to this rule prior to its finalization:

- EPA should clarify that the rule does not apply to homeowners, schools, and non-hobbyists stripping small items such as furniture;

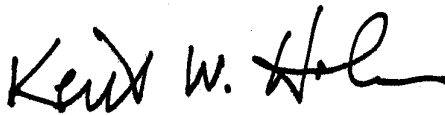
- Where 29 C.F.R. § 1910.94(c) exempts specified activities (e.g., portable operations), EPA should clarify that this rule does not apply;
- EPA should clarify that surface coatings applied with a brush or a roller are not subject to this rule;
- “Spot” projects unrelated to production operations should be exempted (e.g., painting safety lines or making signs within a plant);
- Paints and other materials that are certified to contain no HAPs should be exempted from this rule;
- Spray adhesives should be exempted from this rule; and
- EPA should consider establishing a monthly material use allowance below which sources are not required to purchase new equipment or undertake worker training. Sources would have to maintain records of their material usage. Such an allowance would enable infrequent or very small-volume surface coating operations to avoid the cost of training, installing spray booths, and purchasing other equipment.

If you have any questions about these comments, please contact Keith Holman of my staff at (202) 205-6936 or e-mail at keith.holman@sba.gov.

Sincerely,



Thomas M. Sullivan
Chief Counsel for Advocacy



Keith W. Holman
Assistant Chief Counsel

cc: The Honorable Susan Dudley, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget