

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for EPA's planned proposed rulemaking entitled "Risk and Technology Review (RTR) Amendments to the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Mineral Wool Production." This notice of proposed rulemaking is being developed by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act (CAA).

Section 112 requires EPA to set maximum achievable control technology (MACT) standards for source categories listed for regulation of hazardous air pollutants (HAP). The Risk and Technology Review (RTR) is a combined effort to evaluate both risk and technology as required by the Clean Air Act (CAA) after the application of the MACT standards. Section 112(f)(2) directs EPA to conduct risk assessments on each source category subject to MACT standards, and to determine if additional standards are needed to reduce residual risks. Section 112(d)(6) of the CAA requires EPA to review and revise the MACT standards, as necessary, taking into account developments in practices, processes and control technologies. The MACT rule for this source category was promulgated on June 1, 1999. Therefore, the statutory deadlines for promulgating both the residual risk rule and the technology review for the mineral wool source category was June 1, 2007. These deadlines run concurrently for each MACT standard and EPA is conducting the risk and technology reviews (RTR) together in one rulemaking.

The Mineral Wool production source category includes those facilities that manufacture rock and slag wool (mineral wool). Mineral wool is a fibrous, glassy substance made from natural rock, blast furnace slag, or other similar materials and consists of silicate fibers typically 4 to 7 micrometers in diameter. Products made from mineral wool are used for thermal or acoustical insulation, sound control and absorbency, and fire protection. Six companies produce mineral wool; five of these are small businesses. All the known mineral wool production plants are major sources of HAP.

This proposed rule is a reproposal of the Mineral Wool RTR, which was proposed in 2008. However, that proposal was based upon one source test data point (from the National Emissions Inventory). EPA learned after proposal that the one plant for which EPA had test data closed down during the development of the proposed rule, and EPA did not receive additional data during the comment period on which to support a no-risk conclusion. Moreover, the issues raised by litigants under the Brick MACT, the petition, and the General Provisions vacature were not addressed by the 2008 proposal. Therefore, EPA decided to collect new data from operating facilities on which to assess risk, and repropose the Mineral Wool RTR along with the other MACT amendments required by recent litigation. The EPA is under court order to repropose these amendments to the Mineral Wool MACT by October 31, 2011.

On June 2, 2011, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Sector Policies and Programs Division within EPA's Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA). It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during this process as well as from public comment on the proposed rule.

The options the Panel identified for reducing the rule's economic impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with the Clean Air Act.

SUMMARY OF SMALL ENTITY OUTREACH

Before beginning the SBAR Panel Process, EPA actively engaged in outreach with entities that would potentially be affected by the upcoming rulemaking through conference calls and in person meetings. Additionally, EPA conducted site visits to two potentially affected facilities. The trade association for this industry, North American Insulation Manufacturers Association (NAIMA), accompanied EPA to these site visits.

Prior to convening the Panel, EPA conducted outreach with small entities that will potentially be affected by these regulations. In April 2011, EPA invited SBA, OMB, and five potentially affected small entity representatives to a conference call and solicited comments from them on preliminary information sent to them. EPA shared the small entities' written comments with the Panel as part of the Panel convening document.

After the SBAR Panel was convened, the Panel distributed additional information to the small entity representatives (SERs) on June 9, 2011, for their review and comment and in preparation for another outreach meeting. On June 16, the Panel met with the SERs to hear their comments on the information distributed in these mailings. The SERs were asked to provide written feedback on ideas under consideration for the proposed rulemaking and responses to questions regarding their experience with the existing requirements. The Panel received written comments from the SERs in response to the discussions at this meeting and the outreach materials. See Section 8 of the Panel Report for a complete discussion of SER comments. Their full written comments are also attached. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFEA and developed the findings and discussion summarized below.

PANEL FINDINGS AND DISCUSSION

Under section 609(b) of the RFA, the Panel is to report its findings related to these four items:

- 1) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.
- 2) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- 3) Identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.
- 4) A description of any significant alternatives to the planned proposed rule which would minimize any significant economic impact of the proposed rule on small entities consistent with the stated objectives of the authorizing statute.

The Panel's most significant findings and discussion with respect to each of these items are summarized below. To read the full discussion of the Panel findings and recommendations, see Section 9 of the Panel Report.

A. Number and Types of Entities Affected

Six companies exist in this industry; five of the six companies are small businesses. All small businesses in the mineral wool production industry operate under NAICS code 327993.

B. Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule under consideration potentially impacts small businesses by requiring new emission limits on processes that were not regulated under the MACT standard promulgated in 1999, by requiring emission limits for pollutants that were not regulated under the MACT, or both processes and pollutants not regulated under the MACT. All companies are subject to Title V operating permits requirements, and as such will be required to add the newly regulated processes to their operating permits along with compliance demonstrations that the processes meet each pollutant emission limit in the rule. Compliance testing will be required to be conducted using EPA methods for each pollutant. Reporting and recordkeeping requirements are not expected to change from the MACT, with the exception of additional pollutants and processes included in such reports.

C. Related Federal Rules

National Ambient Air Quality Standards for Sulfur Dioxide: The most prevalent technology for reducing COS emissions will increase emissions of SO₂. Under the current NAAQS, none of the small entities are in nonattainment areas, so installation of emissions control equipment should not subject them to additional permitting requirements under the SO₂ NAAQS. However, EPA cannot make such assurances about future NAAQS or future nonattainment zones, so there is a risk that future compliance with this rule could trigger additional emissions control requirements through the Title V/PSD permit program.

Greenhouse Gases: Most emissions control strategies identified by EPA during the Panel would increase the energy intensity of mineral wool production. Although the Panel does not have specific information about the GHG emissions of individual facilities in this industry, these facilities could be subject to GHG permitting as that program is phased in under the Tailoring Rule.

D. Regulatory Flexibility Alternatives

The Panel agrees that EPA does not have discretion in a number of areas that SERs commented upon. Specifically, the EPA does not have the discretion to set the MACT floor emission limits at levels suggested by the SERs. The Panel recognizes that EPA has the authority to review the MACT standard for completeness, risk, and technology improvements, and that the Agency is currently under court order to conduct the risk and technology review for the mineral wool source category and propose amendments to the standard by October 31, 2011 and promulgate the amendments by October 31, 2012. However, whenever opportunities for regulatory flexibility arise, and when that regulatory flexibility can work to lessen impacts to small businesses, the Panel recommends that EPA propose amendments to the mineral wool MACT that offer such regulatory flexibility to the maximum extent possible. Specifically, these opportunities arise in the following situations:

- Selection of the averaging method in calculating the MACT floor for COS from cupolas and phenol, formaldehyde, and methanol emissions from collection and curing processes; and
- Subcategorization of regulated processes, when appropriate.

The Panel recommends that EPA not require beyond the floor (BTF) emission limits for the mineral wool industry. Such limits are likely to have additional cost impacts to industry. In addition, EPA did not identify BTF measures for consideration and has found that the results of the risk assessment show acceptable risks from this source category.

The Panel recommends subcategorization of collection along the lines described in Section 3 of the Panel Report, specifically, subcategorization for vertical collection and curing, horizontal collection and curing, and drum collection and curing. Based on available information, the Panel believes that

emission standards based on the average emission limits across both collection and curing processes at each of the three subcategories would minimize the burden on small entities while fully complying with EPA's obligations under section 112. The Panel also recommends setting MACT limits for new sources equal to MACT limits for existing sources.

The Panel recommends that EPA allow the maximum amount of time within its discretion (3 years) and work with state permitting authorities to provide for the additional year permitted by the statute.

The Panel recommends that EPA provide a detailed discussion in the preamble to the proposed rule that outlines the manner in which small entities may demonstrate compliance with the rule, when finalized, during start-up and shutdown. The Panel also recommends that EPA propose allowing an affirmative defense against compliance actions for malfunction events, consistent with other section 112 rules recently promulgated.

Sincerely,



Alexander Cristofaro
Small Business Advocacy Chair
Office of Policy
U.S. Environmental Protection Agency



Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget



Dr. Winslow Sargeant
Chief Counsel
Office of Advocacy
U.S. Small Business Administration



Peter Tsirigotis
Director, Sector Policies and Programs Division
Office of Air and Radiation
U.S. Environmental Protection Agency

Enclosure

OCT 26 2011