

TSCA Rulemaking Overview

Technical Track Working Group

August 7, 2013

- ANPRM 6/16/2010 PCBs: Reassessment of Use Authorizations. EPA is reassessing its TSCA PCB use and distribution in commerce regulations. Of particular interest is to the SRRTTF are the use of 50 ppm in excluded PCB products, the use of non-liquid PCBs (caulks and paints), excluded manufacturing process, quantifiable level/level of detection, and recycled PCBs.¹
- 7/15/2013: **EPA Seeks Input for Potential Rule Revisions on Existing Uses of PCBs.** Seeks nominations from individuals who represent small businesses, small governments, and small not-for-profit organizations to provide input to a federal panel that will explore changes to existing uses of polychlorinated biphenyls (PCBs).²

The panel is being established under the Regulatory Flexibility Act, which requires that EPA evaluate proposed rules be evaluated for the **economic impact on small entities**.

The Regulatory Flexibility Act requires agencies to establish a Small Business Advocacy Review (SBAR) Panel for rules that may have a significant economic impact on a substantial number of small entities. The SBAR panel will include federal representatives from the Small Business Administration (SBA), the Office of Management and Budget (OMB), and EPA.

- Doug Krapas, Inland Empire Paper and Rick Eichstaedt, Center for Justice have self-nominated to provide input to the panel. The SRRTTF submitted letters of support for these two representatives: http://srرتf.org/?page_id=802

Participation is expected to consist of:

- 1 or 2 meetings (in person or by phone)
- Opportunity to submit comments to the panel.

EPA is required to provide the following for review:

- Draft regulatory text (whatever has been prepared to date)
- Economic Impact data (not full analysis but some quantitative/qualitative information)
- Regulatory alternatives
- Since the RFA places the legal basis for the proposed rule outside the purview of the Panel, the RFA does not require EPA to provide technical/legal information to the Panel. But that will be included in the Initial Regulatory Flexibility Act Analysis (see below for process).

¹ <http://srرتf.org/wp-content/uploads/2013/07/PCB-Rule-Revision-Request.pdf>

² <http://srرتf.org/wp-content/uploads/2013/07/PCB-Rule-Revision-Request.pdf>

- The SBA Office of Advocacy as the option of weighing on these pending rules. In the past, this office has provided comment on TSCA topics such as science-based assessments of chemicals, hazard assessments, etc. See: <http://www.sba.gov/advocacy/816/729901>

From an April 15, 2013 Chemical and Engineering News article:

- ✓ SBA OA Describes its mission as offering technical assistance and financing to entrepreneurs
- ✓ Recommendations and comments on some of the EPA rules mirror the scientific arguments made by the American Chemistry Council
- ✓ ACC meets with this organization and participates on its roundtables
- ✓ Has been criticized for ignoring the market opportunities that small business offers to produce alternatives
- ✓ SBA OA Receives \$9 million/year; staff of 50; the 3 environmental staff not scientists but attorneys
- ✓ The Center for Effective Government asked Congress to investigate their activities

5) This is one of several steps in the rulemaking process. EPA must also evaluate:

- Environmental health or safety effects on children pursuant to EO 13045, "Protection of children from Environmental Health Risks and Safety Risks"
- Human health or environmental effects on minority or low-income populations pursuant to EO 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." ³

The RFA Process ⁴

Proposed Rulemaking

- 1) The TSCA rulemaking is at the pre-proposal stage.
- 2) Before issuing the proposed rule EPA must evaluate it for its potential impact on small business.
 - A Screening Analysis is used to determine if EPA can certify as "no significant impact"
 - If there is the potential for a significant impact, then an *Initial Regulatory Flexibility Analysis* is prepared. This describes the economic impact of the proposed rule on small business entities.
- 3) The Small Business Advocacy Review Panel
 - Reaches out to representatives likely to be affected
 - **Prepares a report to EPA that includes impacts of the rule and ways to reduce impacts.**
- 4) From the perspective of timing, IFRA can be prepared independently of the panel but the IFRA and the panel should inform each other and the IFRA should not be completed until the panel report is signed.

Final Rulemaking

A similar process occurs during the final rulemaking. If the final rule can't be certified as not impacting small business, then EPA prepares a compliance guide.

³ 75 FR 17666, April 7, 2010.

⁴ Adapted from, *EPA's Action Development Process: Final Guidance for EPA Rulewriters: Regulatory Flexibility Act*, OPEI Regulatory Development Series, USEPA, November 2006.