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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

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September 26, 2000

The Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Browner:

The purpose of this letter is to express my concern regarding the U.S. Environmental Protection Agency's (EPA/Agency) apparent failure to determine the impact on small businesses of the Agency's proposed rule to impose prohibitions on substitutes for ozone-depleting substances (65 Fed. Reg. 42653, July 11, 2000). The Red Tape Reduction Act, otherwise known as the Small Business Regulatory Enforcement Fairness Act (SBREFA), exists to ensure that EPA determines and considers the impact of its proposed rules on small business. In this case, EPA may be jeopardizing the fate of many small businesses, including a constituent of mine from Missouri, by ignoring its responsibilities to small businesses under SBREFA.

The 1990 Clean Air Act Amendments and the Montreal Protocol were developed to move the nation away from using compounds such as CFCs, which deplete the ozone. We all use substitutes for ozone-depleting substances (ODSs) in refrigerators and air conditioners, life preservers, fire extinguishers, cleaners, home insulation and inks. Because the ODS substitutes are themselves not totally environmentally friendly, EPA promulgated the Significant New Alternatives Policy (SNAP) program in 1994 to phase out manufacturing of ODS substitutes.

The current phase-out time allows companies to find, test, register and spread out the costs of new compounds to replace ODS substitutes. This includes the time necessary to deplete stocks in existence when the manufacturing ban goes into place. For example, the ODS substitute HCFC-22 may be produced and imported until 2010. Use may continue after that date until stocks are depleted. However, despite the current production and manufacturing deadline, EPA now proposes to set deadlines for use of ODS substitutes. In the case of HCFC-22, EPA proposes to prohibit the use of the compound after 2005, five years before the current production deadline.

EPA's decision to establish a new ODS substitute use deadline, will impose a substantial financial burden on firms, especially small businesses. Companies will need to find, test, register for use, and integrate into the marketplace new environmentally friendly compounds. A family owned small business in Earth City, Missouri, recently wrote to me that it employs 62 people and uses HCFC-22 to supply urethane foams to the marine, housing, transportation and refrigeration industries. The firm estimates the proposed regulation would force it to spend \$3 to \$4 million to test, develop and certify new versions of its products. Costs would include purchasing potential raw materials, extensive lab and field tests, and registering with a host of agencies and organizations such as EPA, the Department of Housing and Urban Development, the Coast Guard and Underwriters Laboratories. While a company like Dow Chemical could sustain such costs, this small business might not survive such a burden.

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My Missouri constituent will not be the only small business bearing substantial costs associated with this proposed rule. This proposed rule will likely impact roughly 3,000-4,500 small business recreational boat builders, roughly 750 small business rotational molders, roughly 65 small business truck body builders, roughly 40 small business door manufacturers and roughly 20 small business commercial refrigeration manufacturers.

In following up on this constituent's concerns, the Small Business Committee (Committee) contacted EPA only to find that EPA conducted no economic analysis of the proposed rule's impact on small businesses. Apparently, the only impact analysis for the rule was ordered by the Office of Management and Budget for appliance manufacturers - just one affected sector and dominated by large corporations. The EPA official contacted by the Committee and responsible for the rule was under the impression that "EPA was not required to do an economic analysis for this rule." With no facts to support its position and no analysis to support its beliefs, EPA's SBREFA certification of no significant economic on small business appears baseless and invalid.

EPA may improperly believe that its previous analysis in support of the SNAP program obviates any further need for small business impact analysis. This could not be further from the truth. EPA promulgated the SNAP program (59 Fed. Reg. 13044, March 18, 1994) two years before enactment of SBREFA. Additionally, this proposed rule will impose expensive new use prohibitions on small businesses beyond the original SNAP manufacturing limitations.

After the Agency's mishandling of the proposed Lead PBT rule last year, I am astonished that EPA did not learn its lesson and live up to its small business obligations with subsequent proposed rules. This includes, as described by EPA's *Revised Interim Guidance for EPA Rulewriters*, March 24, 1999: 1) outreach to small businesses to gather information on the rule's impacts, 2) a thorough preliminary screening analysis sufficient for a meaningful determination of small business impact, and 3) if required by SBREFA, formal participation by small businesses in an Advocacy Review Panel to develop a proposed rule which meets the Agency's environmental goals while minimizing the rule's impacts on small business. Federal statute, EPA guidance, and the needs of small business obligate EPA to no less.

The Agency's complete abdication of its small business obligations in this case places this proposed rule in grave danger. Therefore, please forward to my office by October 6, 2000, either a declaration that EPA will go back and perform its small business obligations as mandated by statute and EPA guidance or documentation that EPA can support its current position. Further information on these options is included in the enclosed page. In the meantime, I trust that EPA will not finalize this rule until these issues are resolved. If you have any questions regarding this issue, please contact John Stody at 224-5175. Thank you in advance for your attention to this matter.

Sincerely,


Christopher S. Bond
Chairman

Enclosure

**Options Available for EPA to Live Up to Its Small Business Obligations
As Mandated by SBREFA and EPA Guidance**

1. A declaration that EPA will:
 - a) go back and conduct a thorough preliminary screening analysis supported by meaningful small business outreach and collection of information on small business impact, as described by Agency guidance,
 - b) reconsider, based upon the preliminary screening analysis, the Agency's certification of no significant economic impact on a substantial number of small business entities,
 - c) if unable to recertify no significant impact, undertake further small business outreach and a SBREFA Advocacy Panel Process, as described by Agency guidance, and
 - d) modify the proposed rule to address small business concerns in accordance with the Advocacy Panel Process, if convened.

or

2. A detailed description of:
 - a) the types of entities subject to the rule's requirements,
 - b) the types of small entities subject to the rule's requirements,
 - c) any small entities potentially subject to the rule's requirements,
 - d) any small entities adversely affected by the rule's requirements,
 - e) an analysis of whether the rule will have a significant economic impact on a substantial number of small entities, supported by qualitative and quantitative information, and
 - f) the information gathering process undertaken by the Agency to assemble this data, including a description of any small business outreach.

A discussion of this preliminary screening analysis, as well as the entire SBREFA review process for proposed rules, is included in EPA's *Revised Interim Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act*, March 29, 1999.