



## Advice & Counsel

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### SBREFA (And Other Acronyms)

**Dear Advice and Counsel,**  
**At AESF Week, I heard a vague reference to something that sounded like "say briefa," and that it might help the small business community survive the onslaught of regulations coming down the pike. This doesn't make any sense to me. What is this "say briefa"?**

**Signed, Brief Me**

Dear Brief,

SBREFA is quite a mouthful of acronym, but it stands for "Small Business Regulatory Enforcement Fairness Act." This act was signed into law by President Clinton, March 29, 1996. It requires regulators to minimize the impact of regulations that they finalize on small businesses. It establishes a 60-day congressional review period following any final regulation by any Federal Agency or Department. That's 60 Congressional days, not calendar days, which may take several months to occur.

Before the rule can take effect, the regulating agency must provide to Congress a report containing:

- a. A Copy of the rule
- b. The effective date

c. A concise summary, including the financial impact of the rule on small businesses.

If the rule is estimated to impact small businesses a total amount greater than \$100,000,000, a separate analysis/report must be filed with Congress by the Comptroller's Office.

Congress may vote to approve the regulation as written, or they may vote to disapprove the regulation. An approved regulation goes into effect on the date specified by the agency promulgating the regulation. A "disapproved" regulation goes to the President for assent or veto. If the President also disapproves the regulation, the rule must be re-written (start at the beginning again) or discarded by the issuing agency. If the President vetoes the disapproval, an override is necessary to officially disapprove the rule and send it back to the issuing agency. If the veto can not be overridden, the rule goes into effect.

SBREFA gives Congress a "second look" at assuring our representatives that the "Act" they passed is really addressed by the regulations that are written under the guidelines and

language of the "Act." In other words, Congress does not make regulations. A bill may simply indicate that Congress wants the waters of the U.S. to be "clean." It's up to the regulators to write regulations that achieve the vision/goals that Congress and the President set out in the legislation.

Other provisions in SBREFA are:

- Judicial review of any final regulations' compliance with the Regulatory Flexibility Act (1980). In other words, the regulated community has the power to have a judge decide if a regulation meets the requirements of the referenced act. Regulators must outline alternatives to the final regulation that would accomplish the same objectives.
- If a regulating agency loses a court case under SBREFA, there are provisions for the prevailing party to be paid for their legal fees.
- The regulating agency is required to provide guidelines specific to small businesses on how to comply with the regulation it finalized.
- EPA and OSHA are required to convene a small business advisory panel and obtain input from small businesses before any regulation is proposed.

**How SBREFA Can Help  
The Metal Finishing Industry**  
Keep in mind that Congress needs to be convinced that a regulation does not meet its intent, or does not meet any one of the provisions within SBREFA. Examples that might be brought to the attention of Congress in the near future:

MP & M

The following points can be used to argue that Congress must review the MP&M regulations, if they are

finalized in any manner close to those proposed in 1995:

- The Metal Products & Machinery Regulations are very difficult to justify on a cost-benefit basis. The proposed regulations were based on a weak database and technology that had been in use for many years, yet that same technology was suddenly capable of meeting much more stringent discharge concentrations.
- Non-toxic parameters, such as iron and aluminum, were proposed to be regulated when even the POTWs indicated that there was no need for regulating them. In fact many POTWs add these ingredients to their systems as coagulants and/or nutrients. Some proposed average discharge concentrations were at the level of detection of all but the most sophisticated analytical instrumentation. The proposed regulation included industries already regulated, which may conflict with the Regulatory Flexibility Act.

#### OSHA

The Public Citizen's Health Research Group, and the Oil, Chemical and Atomic Workers Union have petitioned OSHA to lower the exposure PEL (Permissible Exposure Limit) of workers exposed to hexavalent chromium. OSHA is therefore considering a lowering of the existing PEL (52 µg/M<sup>3</sup>) by as much as a factor of 100.

If finalized at such low levels, this would create a worker exposure standard that is far more stringent than any other in the world. There are concerns that the proposed rule may not address differential factors, such as differences in exposure types or different industry types. If the final standard OSHA promulgates is not economically achievable or fails to meet other SBREFA requirements, Congress should review it.

#### Clean Air Act

EPA recently made a splash announcement that the existing particulate standards were insufficient to protect public health. In a nutshell, particulates that are as small as 2.5 microns must also be regulated (currently, particulates greater than 10 microns are regulated). Industry is concerned that the cost of compliance

will break the bank, and especially be hard on small businesses. Congressional overview of regulations finalized under this revision of regulations under the Clean Air Act will be high on the list of requests from industry.

#### What Can You Do?

It sounds a bit like a broken record, but each individual and each small company must stay involved—or decide to become involved—with their representatives in Congress. If

those representatives don't hear that a regulation is going to have a big impact on your survival, the chances are remote that Congress will vote to disapprove it, or even pay much attention to it. The NAMF/AESF/MFSA Government Advisory Committee is actively reviewing regulations even before they are proposed, in an effort to assess the potential impact on our industry. They can only do so much. The rest needs to come from the grass roots. **P&SF**