Message

From: Dykes, Teresa [Dykes.Teresa@epa.gov]
Sent: 7/24/2018 8:11:44 PM
To: Ayres, Sara [Ayres.Sara@epa.gov]
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

I was just doing the same thing- i.e., putting in memo format. I will let you take the lead- as I am trying to get my management's attention on this!

Terri Dykes
Senior Attorney
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Ave. NW
Washington, DC 20460
202.564.9883

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From: Ayres, Sara
Sent: Tuesday, July 24, 2018 4:09 PM
To: Dykes, Teresa <Dykes.Teresa@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

I think my office wants to share with our Office Director first to make sure he's OK with Keith moving forward with the request. I'm formatting the document now and they will hopefully brief David tomorrow.

Sara Ayres
Air Branch
USEPA / OECA / OC / MAMPD
ayres.sara@epa.gov
(312) 353-6266

From: Dykes, Teresa
Sent: Tuesday, July 24, 2018 3:02 PM
To: Ayres, Sara <Ayres.Sara@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Think we should share this in draft with Keith now?

Terri Dykes
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From: Ayres, Sara
Sent: Tuesday, July 24, 2018 12:08 PM
To: Dykes, Teresa <Dykes.Teresa@epa.gov>; Lischinsky, Robert <Lischinsky.Robert@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Here it is with Rob's comments incorporated. I'm not sure who the regional workgroup member is, perhaps Keith could look it up in the ADP Tracker. Let me know if you have questions. Thanks.

Sara Ayres
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(312) 353-6266

From: Dykes, Teresa
Sent: Tuesday, July 24, 2018 10:46 AM
To: Lischinsky, Robert <Lischinsky.Robert@epa.gov>; Ayres, Sara <Ayres.Sara@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

BTW- I can't figure out who the regional office member is on the workgroup but I know that Region 1 would clearly be an interested party, as it seems regional offices are not considered Core Offices. Not sure we can advocate for them- but as mentioned in the May AEM meeting, they seem to have a very big interest in this action.

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From: Lischinsky, Robert
Sent: Tuesday, July 24, 2018 11:42 AM
To: Ayres, Sara <Ayres.Sara@epa.gov>
Cc: Dykes, Teresa <Dykes.Teresa@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Sara,

In addition to Terri's edits/additions, I have a few revisions (redline/strikeout) below.

Thanks.

Rob

From: Ayres, Sara
Sent: Tuesday, July 24, 2018 10:23 AM
To: Dykes, Teresa <Dykes.Teresa@epa.gov>

Cc: Lischinsky, Robert <Lischinsky.Robert@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Here is the draft with your info added. Let me know if you think we need anything else. Thanks.

The re-proposal of NESHAP General Provisions amendments removing the Once-In-Always-In policy is currently ~~approved as~~ a Tier 3 action. Being a Tier 3 action is a remnant of a prior 2007 proposal and has remained a Tier 3 for scheduling purposes. However, given the potentially significant nature of the compliance and enforcement ramifications of making such changes, OECA (both the Office of Compliance and Office of Civil Enforcement) ~~we~~ believe that a higher Tier is more appropriate. Although the current workgroup is composed of all interested Offices, including OECA, and is actively engaged in the ongoing action, ~~has been active in involving interested parties and offices,~~ Tier 3 does not ensure the workgroup members are given ~~afford us~~ the opportunity to timely review ~~see~~ and provide input on specific options presented to OAR management for consideration, and does not allow the workgroup members ~~us~~ to provide a formal office position on whichever options are eventually moved forward.

These proposed amendments will potentially change EPA policy on which rules apply to a significant number of affected facilities, some of whom already have been issued ~~written~~ EPA Applicability Determinations relevant to the policy ~~from the Agency~~ that could no longer be relied upon. ~~would no longer be correct.~~ This rule will need (and it is currently planned) to contain a discussion on what limits are enforceable as a practical matter to ensure that a source operates as an area source. We need to ensure any discussion on this issue comports with current law and policy. There may also be implications for ongoing enforcement actions. Such significant impacts seem worthy of a higher Tier to ensure all considerations are appropriately addressed.

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From: Dykes, Teresa
Sent: Tuesday, July 24, 2018 9:18 AM
To: Ayres, Sara <Ayres.Sara@epa.gov>
Cc: Lischinsky, Robert <Lischinsky.Robert@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Attorney Work Product / Ex. 5

Terri Dykes
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From: Ayres, Sara
Sent: Tuesday, July 24, 2018 8:51 AM
To: Dykes, Teresa <Dykes.Teresa@epa.gov>
Cc: Lischinsky, Robert <Lischinsky.Robert@epa.gov>
Subject: FW: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Terri,

We're drafting a justification for a possible uptier request, see the draft below and let me know if you have comments/additions/questions. Thanks.

Sara Ayres
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USEPA / OECA / OC / MAMPD
ayres.sara@epa.gov
(312) 353-6266

From: Ayres, Sara
Sent: Friday, July 20, 2018 11:13 AM
To: Lischinsky, Robert <Lischinsky.Robert@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

OK, here's a first draft of the justification paragraph:

The re-proposal of NESHAP General Provisions amendments removing the Once-In-Always-In policy is currently approved as a Tier 3 action. Given the potentially significant nature of the compliance and enforcement ramifications of making such changes, we believe that a higher Tier is more appropriate. Although the current workgroup has been active in involving interested parties and offices, Tier 3 does not afford us the opportunity to see and provide input on specific options presented to management for consideration, and does not allow us to provide a formal office position on whichever options are eventually moved forward. These amendments will potentially change EPA policy on which rules apply to a significant number of affected facilities, some of whom already have written Applicability Determinations from the Agency that would no longer be correct. There may also be implications for ongoing enforcement actions. Such significant impacts seem worthy of a higher Tier to ensure all considerations are appropriately addressed.

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From: Lischinsky, Robert
Sent: Friday, July 20, 2018 8:56 AM
To: Ayres, Sara <Ayres.Sara@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

No, not yet anyway. I spoke to Keith yesterday after seeing his e-mail. Per the process he provided in his e-mail, it would seem we would need to provide him the justification for why we believe there is a need for an uptier and he would then make the request with the justification. So, we wouldn't necessarily have to bring this to Susan. (But David might want to do so anyway)

I will discuss this with Martha/Rick at Monday's MAMPD mgrs. meeting. I am sure they will want to put this issue on the MAMPD Weekly with David scheduled for Wednesday. We will see what he wants to do. In the meantime, you might as well draft a brief justification for why we would want to uptier (short paragraph that we may want to include with the agenda item on next week's Weekly).

Thanks.

Rob

From: Ayres, Sara
Sent: Friday, July 20, 2018 7:54 AM
To: Lischinsky, Robert <Lischinsky.Robert@epa.gov>
Subject: FW: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

FYI, not sure how/if you want me to respond to this. Thanks.

Sara Ayres
Air Branch
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ayres.sara@epa.gov
(312) 353-6266

From: Lamson, Amy
Sent: Thursday, July 19, 2018 11:51 AM
To: Farrar, Wanda <farrar.wanda@epa.gov>; Bartlett, Keith <Bartlett.Keith@epa.gov>
Cc: Ayres, Sara <Ayres.Sara@epa.gov>; Dykes, Teresa <Dykes.Teresa@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

I agree that schedule alone is not an adequate rationale for a tier. I can discuss this with my management regarding whether a tier change is appropriate, but it would be helpful to know whether other offices are recommending a tier change.

Amy Lamson
Regulatory Management Division, Acting Director
OA/OP/ORPM
U.S. EPA
202-564-3949

From: Farrar, Wanda
Sent: Thursday, July 19, 2018 12:46 PM
To: Bartlett, Keith <Bartlett.Keith@epa.gov>
Cc: Ayres, Sara <Ayres.Sara@epa.gov>; Dykes, Teresa <Dykes.Teresa@epa.gov>; Lamson, Amy <Lamson.Amy@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Adams, Darryl <Adams.Darryl@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Good Afternoon Keith,

Does your management want this action re-tiered? I am unaware of any ADP requirements to do so. (OP, please "chime in" if there is.) If tier level is a concern, a tier change request is an option. We have no problem adding interested offices to this workgroup. Please let me know if your office has a request that should be presented to our management.

Many thanks,
Wanda

From the desk of:
Wanda Farrar

From: Bartlett, Keith
Sent: Thursday, July 19, 2018 11:01 AM
To: Farrar, Wanda <farrar.wanda@epa.gov>
Cc: Ayres, Sara <Ayres.Sara@epa.gov>; Dykes, Teresa <Dykes.Teresa@epa.gov>
Subject: RE: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Wanda, thank you for this information.

I don't understand the rationale for both not re-tiering a rule from 2007, and for keeping a rule a Tier 3 so that it can proceed on a certain predetermined schedule. Whose schedule? The Rule itself should dictate the Tier, regardless of the need to get a rule out the door on some predetermined schedule.

Will OAR answer that question?

I am happy to discuss –

Keith

From: Farrar, Wanda
Sent: Thursday, July 19, 2018 10:39 AM
To: RSC Core <RSC_Core@epa.gov>
Subject: Re-proposal of OAR SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In

Good Day RSC,

OAR has received questions re: SAN 4908 – NESHAP Amendment: General Provisions for Once In Always In. This is a re-proposal of the 2007 proposal. OAR staff has been working w/the workgroup since April of this year. When work was re-started on this action, the need to keep this action as a tier 3 in order to keep on schedule was discussed. However, OAR agreed to provide the workgroup information and input, including review of the draft proposal prior to moving to OMB. The kick-off meeting was on 4/12/18 and subsequent meetings were on 5/10/18 and 6/14/18. Our next meeting is scheduled for 08/09/18. In addition to the monthly meetings with the ADP WG, we have had multiple focused meetings between OAQPS, OGC, and OECA. (Our meetings have included from OECA- Sara Ayres and Theresa Dykes. Sara has been working with us on the compliance aspects of our proposal while Terri has been working with us on the enforcement aspects.)

If there are questions or concerns, please email to me. Thank you!

Wanda

Workgroup Members (please provide any updates):
Sara Ayres, Teresa Dykes, OECA
Scott Jordan, OGC
Barry Elman, OP
Susan Lancey, R01
Lee Page, Yolanda Adams, R04
Ward Burns, R07

NESHAP Amendment: General Provisions for Once In Always In - IBM Lotus Notes

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NESHAP Amendment: General Provisions for Once In Always In
SAN: 4908 | RIN: 2060-AM75
OAR/OAQPS/SPPD
Tier 3 Regulation
OMB: Supplemental NPRM - Significant (confirmed)

EPA ACP TRACKER

Action Information

TRACKER Status: Development

SAN: [redacted]
RIN: 2060-AM75

Action Type: Regulation
AAShip: OAR
Division: SPPD
Office: OAQPS
Branch: PSG
Working Title: NESHAP Amendment: General Provisions for Once In Always In

Full Title: Reclassification of Major Sources as Area Sources Under Section 112 of the CAA

Tiering

Tier Status: Approved
Tier Approval Date: 10/1/2004
Tier Level: 3

Regulatory Reporting

Reg Agenda?: Yes

Action POCs - Elineth Torres, Debra Dalcher

Primary POC: Elineth Torres (OAR/OAQPS/SPPD/PSG): 919-541-4347

Secondary POC: Debra Dalcher (OAR/OAQPS): 919-541-2443

Internal Abstract:

These amendments would address when a major source can become an area source, and, thus, become not subject to national emission standards for hazardous air pollutants (NESHAP) for major sources under Clean Air Act (CAA) section 112. The amendments will implement the EPA's plain language reading of the CAA section 112 definitions of "major" and "area" sources as discussed in the January 2018 William Wehrum memorandum titled "Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act." (See notice in 83 FR 5543, February 8, 2018.) This action will provide an opportunity for interested persons to provide comment on many of the same issues covered in the 2007 NESHAP: General Provision Amendments (72 FR 69, January 3, 2017).

1 document selected

Office (Network)

9:48 AM
7/19/2018

From the desk of:
Wanda Farrar