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Attention: Docket ID Number EPA-HQ-OA-2017-0190
Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: U.S. Environmental Protection Agency's Request for Comment, "Evaluation of Existing Regulations"

Dear Ms. Rees:

The American Fuel & Petrochemical Manufacturers (AFPM) respectfully submits these comments in response to the Environmental Protection Agency's (EPA or Agency) Request for Comment, titled "Evaluation of Existing Regulations."[1] AFPM recognizes this information will assist EPA's Regulatory Reform Task Force (Task Force) in evaluating existing regulations to alleviate unnecessary regulatory burdens, as directed by Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (EO 13777).[2]

AFPM is a national trade association representing nearly 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. Millions of Americans use products produced by AFPM members every day. Our members serve the American people responsibly and effectively by manufacturing virtually all U.S petroleum fuels and petrochemicals, strengthening economic and national security, and providing jobs directly and indirectly for over four million people.

While domestic fuel and petrochemical manufacturers have invested and will continue to invest substantial capital in environmental protection, AFPM member companies face regulatory obstacles that can undermine the ability of petrochemical manufacturers and refiners to create jobs and compete in the global economy. It is a truism that our modern lifestyle is inextricably linked to the fuels and petrochemicals AFPM members produce. AFPM supports clear and reasonable regulations that are science and data driven, create a level playing field upon which to compete, and have benefits that exceed the regulation's costs. That said, the U.S. regulatory burden, if left

[1] "Evaluation of Existing Regulations, 82 *Fed. Reg.* 17,793 (April 13, 2017).
[2] "Presidential Executive Order on Enforcing the Regulatory Reform Agenda," February 24, 2017, https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda.

unchecked, creates an economic incentive to produce these essential products outside the country, threatening well-paying jobs, tax revenues, and the security of the nation.

The market policy and infrastructure factors affecting the American fuel supply have created a high-cost environment that hampers our nation's economy and threatens our critical refining infrastructure. Unfortunately, government regulation has the ability to make matters even worse. Proposed new regulations and unnecessary tightening of existing standards threaten to raise energy costs for every American consumer, with little or no environmental benefit.

AFPM supports sensible regulations as important tools to protect our well-being by providing rules for all businesses to live by. Too often, however, the U.S. regulatory regime is opaque, duplicative, or outright conflicting—creating uncertainty for businesses, shuttering good projects, and ultimately harming consumers. There are common sense regulatory reform measures that will promote transparency, good government, and sound science without compromising the environment, health, or safety. Far from undermining sensible regulation, such reforms would allow regulated entities to deliver better results for less cost.

These comments highlight EPA regulations AFPM believes are most burdensome for our members and their business operations. We have included recommendations to either eliminate some of these requirements or modify them as appropriate. To facilitate EPA's review, we have divided these comments into three broad categories: 1) Stationary Sources; 2) Fuels; and 3) Toxic Substance Control Act (TSCA) and Lautenberg Chemical Safety Act (LCSA) Implementation.

A. Stationary Sources

The following are the five stationary source regulations of greatest concern to AFPM members:

1. Risk Management Plan (RMP) – 40 CFR Part 68

In August 2013, following the explosion of the fertilizer plant in West, Texas, President Obama issued Executive Order (EO) 13650, entitled "Improving Chemical Facility Safety and Security." The EO directs the federal government to improve operational coordination with state and local partners, improve federal agency coordination and information sharing, modernize policies, regulations and standards, and work with stakeholders to identify best practices in chemical facility safety and security. The Department of Homeland Security (DHS), Occupational Safety and Health Administration (OSHA) and EPA were to work in conjunction to achieve these objectives. Using this EO as justification, EPA proposed significant modifications to the existing RMP regulations. On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms and Explosives said that the West, Texas facility fire had been deliberately set. Because the incident was caused intentionally, the recently-promulgated RMP revisions would not have prevented the incident.

AFPM members have significant concerns surrounding the new requirements to compel disclosure of potentially security-sensitive information to emergency responders and the public, perform inherently safer technology assessments and third-party audits, and eliminate the use of representative sampling when performing a compliance audit. Particularly, sharing security-sensitive information is adverse to DHS's mission to protect our nation's security.

EPA's RMP revisions relied on an erroneous cost-benefit analysis. Some of the revisions compromise safety by limiting the ability of companies to hire qualified auditors and diverting resources to inherently safer technology analysis that provides little safety benefit when conducted after a facility is already built. Furthermore, EPA did not respect the jurisdictional lines between itself and OSHA on these issues, as OSHA has primary jurisdiction over the "inside the fence line" requirements that EPA relied on to justify its cost-benefit calculations.

As such, AFPM and five other industry associations filed a petition for reconsideration with EPA and a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. The coalition is challenging aspects of the rule that compromise security and fail to enhance safety. The petition urges EPA to seek further public comment on various issues surrounding the rule, such as investigators' finding that arson caused the fire that served as the foundation of EO 13650 and the subsequent RMP revisions. In addition, the petition asks EPA to seek feedback on changes in the final rule that expanded provisions for disclosure of facility data and the scope of auditing requirements, as well as whether the rule's independent audit and safer technologies analysis provisions are justified. In response to the petition, EPA agreed to delay the rule's effective date from March 21 to June 19 in order to reconsider the regulation, and has proposed to further delay the effective date until February 19, 2019.

Moreover, the RMP rules significantly overlap with and are redundant to the OSHA Process Safety Management Rules in 29 C.F.R. §1910.119. This overlap/redundancy can lead to duplicative and inconsistent regulations. It can also lead to differing interpretations between OSHA and EPA. AFPM members believe this is an area that is especially ripe for reform and revision.

Recommendation

EPA should withdraw the revisions to the RMP rules and allow OSHA to take the lead on process safety management.

2. Ozone NAAQS – 40 CFR Part 50; 40 CFR Part 58

Under the Clean Air Act, EPA must review national ambient air quality standards (NAAQS) for criteria pollutants at least every five years and revise them "as may be appropriate." Primary NAAQS must be set at a level "requisite to protect the public health" with "an adequate margin of safety." Secondary NAAQS must specify a level of air quality "requisite to protect the public welfare from any known or anticipated adverse effects." In a final rule published in the Federal Register on October 26, 2015, EPA lowered the primary and secondary ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.[3]

On December 23, 2015, AFPM and numerous other entities filed petitions for review in the U.S. Court of Appeals for the D.C. Circuit. EPA petitioned the court to postpone oral argument and the Court placed the case in abeyance. EPA is to file status reports and a motion to govern further proceedings after EPA takes action on the 2015 standard. AFPM's primary concern with EPA's rule is the attainability of the standard. AFPM continues to advocate for a legislative solution on

[3] "National Ambient Air Quality Standards for Ozone," 80 *Fed. Reg*. 65,292 (Oct. 26, 2015).

ozone that would provide meaningful relief for companies faced with more stringent permitting requirements and regulations as a result of the new standard, but the Administration should also consider what avenues may exist for regulatory relief, including with respect to associated implementation rules, such as the Exceptional Events Rule.[4]

EPA's decision to lower the ozone standard from 75 parts ppb to 70 ppb will force many counties across the United States into non-attainment with the ozone NAAQS, increasing the burden on state and local governments and industry. Nonattainment areas are subject to numerous Clean Air Act requirements, including the submittal of state plans to bring an area into attainment, application of reasonably available control technology ("RACT") requirements, permit requirements for the construction and operation of new or modified major sources and other measures that a state or EPA may determine are necessary or appropriate in order to bring an area into attainment. *See* 42 U.S.C.§ 7502. These requirements can both inhibit the ability of industry already located in a nonattainment area to expand as well as raise costs and act as a disincentive for new industry to locate in a nonattainment area.

During the 2015 ozone NAAQS rulemaking, EPA identified 241 counties that would not meet the 70 ppb ozone standard based on 2012-2014 data.[5] But under EPA's current ozone designation process, nonattainment areas are not limited to counties that have measured air quality above a NAAQS; instead, EPA stated that "it is important to examine ozone-contributing emissions across a relatively broad geographic area associated with a monitored violation . . . EPA intends to consider information relevant to designations associated with the counties in the Combined Statistical Area (CSA), or where appropriate, the Core Based Statistical Area (CBSA) in which the violating monitor is located."[6] If this process is followed, new nonattainment areas will need to be established for the 70 ppb standard and existing nonattainment areas must be reevaluated to determine whether they should be expanded under a "weight of the evidence analysis" based on the evaluation of air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries.[7]

Conversely, however, EPA has also projected that a combination of on-the-books federal regulations and implementation of the existing 75 ppb ozone standard would achieve air quality meeting or exceeding a 70 ppb standard across virtually the entire country outside of California by 2025. Thus, EPA has been proceeding apace with the designation process for the 2015 ozone NAAQS – planned for 2017 – while it also has information indicating that further burdening state and local governments with new ozone designations and re-designations of existing nonattainment areas will occur when air quality in most of the country is moving towards attainment of the 2015 NAAQS.

AFPM recognizes that the five-year cycle is part of the statutory design of the Clean Air Act and that other implementation measures are based in statute. But the Administration can ease the burden on states and businesses by further considering how improving air quality can be accounted for considered during the implementation process for the 2015 ozone NAAQS.

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[4] "Treatment of Data Influenced by Exceptional Events," 81 *Fed. Reg*. 68,216 (Oct. 3, 2016).
[5] "2015 Ozone Standards," https://ozoneairqualitystandards.epa.gov/OAR_OAQPS/OzoneSliderApp/index.html#.
[6] "Area Designations for the 2015 Ozone National Ambient Air Quality Standards," Memorandum from Janet McCabe to EPA Regional Administrators, February 25, 2016 at 5.
[7] *Id.* at 6.

For example, EPA has previously implemented policies like Early Action Compacts designed to both achieve air quality standards and avoid imposing the burdens that flow from nonattainment designations. This process used a "nonattainment deferred" status for areas, dependent upon the achievement of certain milestones. Thus, EPA should fully explore whatever additional flexibility it may possess to implement NAAQS in a reasonable manner which recognizes the cumulative impact of finalizing more stringent NAAQS in 1997, 2008 and 2015, the overall downward trend in ozone concentrations,[8] and improvements in air quality that can be projected in future years. Such an approach will allow state resources to be allocated more effectively and reduce resulting economic hardship, while still achieving intended air quality improvements.

EPA should also review rules and guidance that the previous Administration relied on when it promulgated the 2015 ozone NAAQS. Specifically, EPA should review rules and guidance for "exceptional events" which rely on authority within Clean Air Act §319(b), the Agency's interpretation of international transport provision contained in Clean Air Act §179B, and the available classification of an area as a "rural transport area" pursuant to Clean Air Act §182. AFPM previously filed detailed comments regarding all three provisions as part of the comments it filed on the proposed 2015 ozone NAAQS.[9] Among other recommendations, AFPM urged EPA to allow for greater state flexibility in "flagging" and excluding exceptional event data, clarify that relief under the international transport provisions is available to non-border states and that such relief is intended to be widely available on a consistent basis, and that EPA should take additional steps to issue workable regulations or guidance for use of the rural transport area designation.

Regarding EPA's recent rulemaking and guidance for Exceptional Events, the information lacks objective, science-based criteria for approving a demonstration. For example, the guidance document discusses "Q/D" (fire emissions divided by the distance from the fire) for wildfire-related ozone events. However, Q/D appears inconsistent with peer reviewed scientific analyses that clearly demonstrate that for most wildfire plumes, ozone concentrations increase with distance from the fire (Jaffe and Wigder 2012). Another inconsistency with EPA's exceptional event guidance lies in the discussion of the possible use of statistical analyses to quantify the ozone increment related to exceptional events. In the guidance, EPA requires an overly conservative methodology that is inconsistent with EPA's prior approval of an ozone exceptional event that used a similar statistical analysis but not by the overly conservative methodology described by EPA in the guidance. This guidance states "*The difference between the predicted values and the measured values are analyzed, and the 95th percentile of those positive differences (observed [ozone ("O3")] is greater than predicted) is recorded. This 95 percent error bound is added to the O3 value predicted by the regression equation for the flagged days, and any difference between this sum and the observed O3 for the flagged day may be considered an estimate of the O3 contribution from the fire...*" [Emphasis added] The 95th percentile of positive values is equivalent to the 97.5th percentile of all values. The California Air Resources Board applied this statistical method in a successful exceptional events case demonstration for 2008 California wildfires (CARB 2011), and EPA cited this element in its approval documentation (April 13,

[8] National ozone levels (as measured over 8 hours) have decreased 22% since 1990. *See* https://gispub.epa.gov/air/trendsreport/2016.

[9] American Fuel & Petrochemical Manufacturers' Comments on the Environmental Protection Agency's Proposed Rulemaking: National Ambient Air Quality Standards for Ozone (Docket No. EPA-HQ-OAR-2008-0699-2114.), March 17, 2015 at 25-34.

2011). However, the CARB analysis did not apply the stringent error bound requirements of considering only the positive differences, but was accepted in any case.

AFPM calls upon EPA to take immediate steps to increase the transparency of data EPA relies on for NAAQS rulemakings. EPA should ensure that all scientific and technical information that the Agency relies on to determine the level of a NAAQS is publicly available to ensure opportunities for independent analysis of the data. In addition, EPA should reform the Clean Air Scientific Advisory Committee (CASAC) and increase the diversity of CASAC membership to include qualified professionals in regulated industries.

Recommendations

EPA should:

- Support a more flexible implementation of non-attainment designations for the 2015 ozone NAAQS to allow for full implementation of the 2008 ozone NAAQS as well as for implementation of other federal and state rules that will reduce ozone formation.
- Empanel CASAC with diverse membership to include qualified professionals within industry, consulting, and state environmental agency backgrounds.
- Revise and reissue the exceptional events rule and guidance, taking into account comments related to science-based information about fire-related events and objective approval criteria that clarify what constitutes and adequate demonstration.

3. Refinery Sector Rule (RSR) – 40 CFR Part 60, Subparts J and Ja; 40 CFR Part 63, Subparts CC and UUU

Under the Clean Air Act, EPA is required to regulate hazardous air pollutants (HAPs) from "major" sources (i.e., those that emit 10 tons per year (tpy) or more of a listed HAP, or 25 tpy or more of a combination of HAPs). EPA must develop standards for HAPs based on the maximum achievable control technology (MACT) used at the best-controlled facilities within an industry. The petroleum refining and petrochemical industries are subject to a number of MACT standards. EPA also must develop and implement a program for assessing risks remaining after facilities implement MACT standards (i.e., residual risk), and may issue regulations to reduce residual risks to protect the public health with an "ample margin of safety." The residual risk provisions require EPA to consider costs, energy, safety and other relevant factors as it regulates to prevent "adverse environmental effects." If necessary, EPA must issue risk-based regulations within eight years after the promulgation of the MACT standard.

Beginning in 2006, EPA conducted a thorough residual risk review that concluded that the existing 40 CFR 63 Subpart CC and UUU standards for petroleum refineries did not have residual risks requiring further rules. This was finalized in a rule signed by EPA on January 16, 2009. However, the final rule was withheld from publication at the request of the Obama Administration and withdrawn in 2009."

After withdrawing the completed refinery residual risk rule in 2009, EPA began a second residual risk analysis and finalized the Refinery Sector Rule on December 1, 2015,[10] and subsequently clarified the compliance dates in a second final rule published on July 13, 2016.[11] AFPM supported EPA's process to evaluate the residual risk remaining after full implementation of the refinery MACT rules. As demonstrated by EPA's analysis for this rule, refinery emissions do not pose a significant residual risk to the public. But despite this fact, EPA included significant new compliance requirements in the December 2015 rule. AFPM does not believe that the additional regulation of these sources is authorized under the Clean Air Act because EPA concluded that the risks were acceptable. Further, much of the rulemaking eliminated various allowances for emissions during startups, shutdowns, and malfunctions as a result of EPA's overly broad interpretation of Sierra Club v. EPA, 551 F.3d 1019 (D.C. Cir. 2008).

Furthermore, in setting new standards for controlling flare emissions, EPA erroneously went far beyond the MACT "floor" of the best 12 percent controlled flares, in requiring flare compliance for several parameters based on a 15-minute block average compliance period, an example of EPA over-reaching its Congressional mandate to set the MACT floor based on the best performing 12 percent. The 15-minute block average compliance period does not represent the best 12 percent of flares. We are unaware of any flares controlled to a 15-minute block average compliance period prior to this rulemaking. Even the flares subject to Consent Decrees were required to comply on a rolling 3-hour basis prior to this rulemaking. We provided comments to EPA in support of a rolling 3-hour compliance period and against the 15-minute block average compliance period, but EPA finalized the rule with the 15-minute block average compliance period.

In response, AFPM and the American Petroleum Institute (API) filed a joint petition for review in the D.C. Circuit and administrative petitions for reconsideration of EPA's refinery sector residual risk rule as a number of issues need to be clarified. A collection of environmental groups also filed petitions for review and reconsideration, seeking to tighten EPA's emissions standards for flares and pressure relief devices. The lawsuit has been placed in abeyance while EPA considers the pending petitions for reconsideration.

On June 16, 2016, EPA granted the environmental groups' petitions for reconsideration and requested comment on the following aspects of the final rule: 1) work practice standards for pressure relief devices and emergency flaring events, including the assessment of risk from the implementation of these standards; 2) alternative work practice standards for delayed coking units employing a water overflow design; and 3) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling stations that consistently record benzene concentrations below 0.9 micrograms per cubic meter. While these issues go beyond those raised by AFPM and API in their petitions for reconsideration, the letter granting reconsideration stated that EPA may grant reconsideration of additional issues in the future. AFPM and API submitted comments opposing the environmental groups' petition and are awaiting a decision. EPA has also not yet made a determination on the AFPM/API petition for reconsideration.

[10] "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards," 80 *Fed. Reg*. 75,178 (Dec. 1, 2015).
[11] "National Emission Standards for Hazardous Air Pollutant Emissions: Petroleum Refinery Sector Amendments," 81 *Fed. Reg*. 45,232 (July 13, 2016).

Recommendations

EPA should:

- Reject the environmental groups' petitions for reconsideration and retain the challenged provisions. In addition, since compliance deadlines are approaching in 2018, EPA needs to take action on the AFPM/API petition in order to ensure regulatory certainty;
- Revise the flare compliance requirements to replace all 15-minute block average compliance periods with a rolling 3-hour compliance period. EPA should make this change quickly to alleviate the need for compliance planning and expenditures related to the shorter compliance period currently in the rule; and
- Eliminate the fenceline monitoring provisions as EPA has found insufficient risk to justify their inclusion.

4. Recommendations for Revising New Source Review (NSR) and Prevention of Significant Deterioration (PSD)

In 2002, EPA promulgated a package of NSR reform regulations. These regulations contained provisions that changed the test for measuring whether a significant net emissions increase occurred (allowing use of "projected actual emissions") and allowing for a longer baseline period in order to determine past emissions and therefore whether an emissions increase triggering NSR had occurred. The 2002 NSR reform package also contained other provisions providing for plantwide applicability limits (PALs) which included a simplified "facility-wide actuals" emission test under which PSD/nonattainment new source review (NNSR) permitting would not be triggered if the facility-wide actual emissions for a given pollutant did not increase above the PAL.

In the years since this effort, EPA has offered small "fixes" for grandfathering facilities when NAAQS are lowered and other implementation rules and guidance have been proposed or finalized designed to reduce NSR analysis and permitting burdens. But the time has come for a more comprehensive review of the NSR program and exploration of legislative and regulatory changes to the program.

Recommendation

The Administration should consider the following modifications to the permitting process, including revisions to the PSD/NNSR program:

- Eliminate the need to consider emissions increases from non-modified affected emission units;
- Allow project netting so that emissions reductions associated with a project can be considered in Step 1 of the PSD/NNSR applicability analysis;
- Use a "potential to potential" comparison of emissions to determine whether PSD/NNSR is triggered; and/or
- Provide a definition of "project" to address uncertainty around project aggregation.

5. Refinery Effluent Limit Guidelines

With respect to the Clean Water Act (CWA) and national pollutant discharge elimination system (NPDES) permitting, EPA is currently undertaking a study to determine whether to revise the petroleum refining effluent limit guidelines (ELGs) for NPDES permits. As a first step, AFPM urges EPA and the Administration to consider whether new regulations are necessary or beneficial before burdening industry with an extensive information collection request (ICR). EPA has stated that it is investigating two theories: (1) whether there has been an increase in loadings to refinery wastewater treatment plants resulting from increases in heavy Canadian crude feedstock; and (2) whether there are increase loadings to refinery wastewater treatment plants as a result of the installation of air pollution control equipment (e.g. fluid catalytic cracking unit (FCCU) scrubbers).

Over the past several decades, AFPM members have invested billions of dollars in technologies to modernize their wastewater treatment facilities to meet the Total Maximum Daily Load (TMDL) developments, NPDES permit revisions (every 5 years at a minimum), and water quality-based effluent limits (WQBEL). Therefore, AFPM requests that EPA further study existing data (eliminating the overly conservative estimations commonly found in the Toxics Release Inventory) and identify the gaps that are not covered by TMDL and WQBEL before embarking on another data collection effort through the ICR that EPA is preparing to issue. This would better utilize scarce agency resources as well as reduce unnecessary burdens on industry. Further, AFPM believes that reviewing available data, as recommended above, will support a conclusion that further rulemaking is unnecessary.

Recommendation

AFPM does not support EPA pursuing a refinery ELG rulemaking based on unclear drivers and objectives from EPA. AFPM recommends that EPA positively state that there is no need to revise the refinery ELG.

Other key regulations of concern to AFPM members:

6. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Financial Assurance

CERCLA 108(b) addresses the promulgation of regulations that require certain classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register on January 6, 2010, and a Notice of Intent to proceed with Rulemaking in the Federal Register on January 11, 2017.

The ANPRM identified additional classes of facilities within three industry sectors that may warrant the development of financial responsibility requirements under section 108(b)—the Chemical Manufacturing industry (NAICS 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry

(NAICS 2211). A court order[12] established a schedule for EPA's regulatory response, with the hard rock mining industry chosen as the first industry sector with other industries to follow.

Factors EPA may consider in the decision on whether to propose requirements for an industry sector include: 1) the amounts of hazardous substances released to the environment; (2) the toxicity of these substances; 3) the existence and proximity of potential receptors; 4) contamination historically found from facilities; 5) whether the causes of this contamination still exist; 6) experiences from Federal cleanup programs; 7) projected costs of Federal clean-up programs; and 8) corporate structures and bankruptcy potential. EPA's action will consider whether section 108(b) financial assurance will effectively reduce these risks. The proposed rule for the hardrock mining industry (82 Fed. Reg. 3,388) is contrary to the new administration's priority to focus on promoting U.S. businesses, industries, and job creation, and may add a potentially unnecessary additional financial burden on this industry group. Additionally, many of these facilities are already required to maintain financial assurance under State programs, raising the question of why additional Federal requirements are necessary.

Since many of the affected facilities are likely to be already required to have Resource Conservation and Recovery Act (RCRA) financial assurance, this requirement should be deemed unnecessary. It is not clear what additional benefit this regulation will provide or what additional activities it will cover.

Recommendation

AFPM does not support a rulemaking process for additional financial assurance at this time as the benefits have not been adequately demonstrated.

7. Elimination of "Once in Always in" policy for MACT rules

On January 3, 2007, EPA proposed amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors.[13] This policy clarified when a major source of hazardous air pollutants can become an area source – by obtaining federally enforceable limits on its potential to emit – rather than comply with major source requirements. The proposed amendments would allow a major source to become an area source at any time by limiting its potential to emit HAPs to below the major source thresholds of 10 tpy of any single HAP or 25 tpy of any combination of HAPs. EPA also proposed revising tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions proposed through this notice.

After receiving comments, no further action was taken on this proposed rule.

[12] Idaho Conservation League, et al., No. 14-1149 (D.C. Cir. 2016).
[13] "Potential to Emit for MACT Standards – Guidance on Timing Issues," May 16, 1995, https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf.

Recommendation

AFPM recommends that EPA finalize this rule, as proposed to minimize the long-term compliance burden for sources that reduce emissions below the major source threshold. Finalizing this rule would provide a powerful incentive for facilities to reduce emissions to below the major source threshold, where possible and practicable.

8. Hazardous Waste Generators Improvement Rule

EPA recently published the Hazardous Waste Generators Improvement Rule.[14] The rule is helpful in some respects but imposes additional burdens in others. For instance, it causes waste generators who violate even one "Condition for Exemption" to be treated as if it was a violation of a waste treatment, storage, and disposal facilities (TSDFs) requiring a RCRA permit even though waste generators are not required to comply with as many regulations as a TSDF. Violation of a single minor condition can therefore mean that an otherwise exempt facility must obtain a RCRA permit and can be cited for violations of numerous regulations and permit conditions. This regulatory change contradicts the clear intention of Congress that RCRA permits not be required of hazardous waste generators who do not treat, store, or dispose of the waste.

Recommendation

EPA should revise the provisions equating a generator violation as a TSDF violation and the need for so many conditions constraining RCRA generators from realizing the improvements in the final rule.

9. Site Remediation MACT

EPA has proposed changes to the NESHAP for the Site Remediation source category.[15] The proposal would expand the regulatory program to include air emissions associated with site remediation conducted under the authority of CERCLA and RCRA. Eliminating the exemption will subject such remediation sites to new regulatory burdens and expense, when such sites are already subject to RCRA and CERLCA air emission controls. The agency itself acknowledges that the expansion is redundant and unnecessary, stating in the proposal that "[w]e do not anticipate any [Hazardous Air Pollutant (HAP)] emission reductions from the proposed removal of the RCRA/CERCLA exemption." 81 FR 29825. Thus, by the Agency's own admission, this is a proposed rule that, if finalized, would impose new regulatory burdens, yet achieve no environmental benefit.

Recommendation

AFPM supports withdrawing this proposed rule in its entirety and maintaining the current RCRA/CERCLA exemption.

[14] 40 CFR Part 260-265; 40 CFR Part 268; 40 CFR Part 270; 40 CFR Part 279.
[15] "National Emission Standards for Hazardous Air Pollutants: Site Remediation, 81 *Fed. Reg.* 29,821 (May 13, 2016).

10. EPA's Tentative Denial of a Petition to Expand the Corrosivity Characteristic to Include Solids

In 81 *Fed. Reg*. 21,295 (April 11, 2016), EPA responded to a court-ordered deadline and agreement to evaluate expanding the definition of corrosive hazardous waste (HW) (D002 waste code) to include solids. EPA proposed to reject the Public Employees for Environmental Responsibility (PEER) petition requesting this expansion on the grounds that it fails to demonstrate that the revisions are necessary to protect human health. Other programs, such as OSHA's worker safety regulations, address the petitioner's stated concerns as well.

Recommendation

AFPM supports EPA's denial of the petition, maintaining the current definition of the HW corrosivity characteristic.

11. Hazardous Waste Import-Export Rule

The proposed revisions of the existing regulations will require hazardous waste exporters and receiving facilities recycling or disposing hazardous waste from foreign sources to maintain a single publicly accessible Website (''Export/Import Web site'') to which documents can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste import and export shipments.

Recommendation

AFPM supports withdrawing this regulation as it will likely not add to protection of human health and the environment. The existing system of documentation under RCRA adequately tracks the fate of imported or exported hazardous waste.

12. Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater

EPA issued updated CWA guidance, which is used in setting water quality standards and is relevant to CWA discharge permits and other regulatory programs (e.g., RCRA ecological risk assessment).[16]

The updated criteria are overly conservative in the application of selenium standards to lentic and lotic water bodies and in the corresponding fish tissue standards, which are not applicable in all instances. Revised implementation guidance should clearly state that flexibility to evaluate area-specific appropriate fish species and area water body conditions is necessary and prudent. As an example, the recently issued criteria are based on warm water fish uptake; however, the regulations need flexibility to account for local sensitive aquatic species.

[16] "Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater," 81 *Fed. Reg.* 45,285 (July 13, 2016).

Recommendation

AFPM supports a reevaluation of this guidance based upon more realistic assumptions, such as accounting for local sensitive aquatic species.

B. Fuels

Key Fuels Regulation facing AFPM members:

1. Renewable Fuel Standard (RFS) – 40 CFR Part 80, Subpart M

One of the biggest challenges American fuel manufacturers are experiencing today involves the regulatory conflicts and problems with the size and scope of EPA's RFS program. The RFS is an unworkable policy that disadvantages consumers, drives up costs, and fails to achieve its purported goals.

The Energy Independence and Security Act of 2007 (EISA) expanded the RFS to include a de facto mandate for 15 billion gallons of corn ethanol by 2015. EISA also established an advanced biofuels mandate that includes three subcategories: cellulosic biofuels, biomass-based diesel, and "other advanced." "Other advanced" biofuels have regulatory significance because the statutory sum of cellulosic biofuels and biomass-based diesel is less than the total advanced biofuels requirement and must be made up with ethanol derived from sugar, additional cellulosic biofuels, or additional biomass-based diesel. Under EISA, the total renewable mandate will increase to 36 billion gallons by 2022 unless EPA waives or revises the annual mandates. The Congressionally-forecasted quantities of "other advanced" biofuels are particularly problematic because the cellulosic industry failed to commercialize drop-in renewable fuels, such as cellulosic gasoline.

AFPM opposes government-mandated biofuel blending, which distorts the free market's efficient allocation of transportation fuels and disadvantages consumers. The statutory RFS provisions contain an aggressive schedule for mandating the use of a large amount of ethanol. Declining gasoline demand and increasing ethanol mandates under the RFS threaten our nation's fuel supply. Moving beyond the E10 blendwall[17] is not feasible because higher ethanol blends are not suitable for widespread distribution given the incompatibility of these blends with the existing fleet of motor vehicles, small engines, marine engines, and fuel distribution infrastructure.

Recommendation

EPA should use realistic projections of the demand for gasoline/ethanol blends and E85, and for the production of cellulosic biofuel. The Agency should must use its waiver authority to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the overall mandate for renewable fuel does not exceed the E10 blendwall. EPA must continue to recognize the blendwall and realistic E0 demand and should not set an RFS mandate that would cause the average mandated ethanol content to exceed 9.7 percent of projected gasoline demand.

[17] "E10" refers to a blend of 90 percent gasoline and 10 percent ethanol.

In addition, EPA should move the existing point of obligation to the position holder at the blending rack. This would make the RFS more equitable by leveling the playing field between refiner and large exempt blenders. AFPM petitioned EPA to move the point of obligation on August 4, 2016. EPA subsequently proposed a denial of the petition on November 22, 2016, and closed the comment period on February 22, 2017.

In addition to the RFS recommendations above, AFPM has additional suggestions for EPA fuels regulations that should be deleted/eliminated or modified, including:

Topic	Discussion	Recommendation
Winter Reformulated Gasoline (RFG) and winter conventional gasoline (CG) 40 CFR Part 80	Currently, CG and RFG are segregated year-round. The RFG segregation restrictions are unnecessary because all RFG downstream of a refinery must meet RFG specifications anyway. Minor mixing of non-RFG products, as can occur in normal product distribution systems, that does not cause RFG to be off-spec with EPA compliance specifications (benzene, sulfur, and VOC-reduction) should not be prohibited. This will provide optimization of fuel distribution and storage through the reduction of the need to downgrade expensive RFG to lower-valued products (such as transmix or conventional gasoline).	Delete requirements to segregate winter RFG and winter conventional gasoline. Assuming EPA removes the distinction between RFG and conventional gasoline in the non-VOC season (winter), it also should: • Remove the survey requirement for winter RFG (because there would not be winter RFG any longer) in 80.68; and • Adjust the total number of surveys and samples so that the sample size is based on a statistically supported calculation to provide the prescribed level of accuracy in the survey results. Any other current minimum sample requirements should also be removed.
The RFG survey oxygen program to verify downstream oxygenate blending 40 CFR Part 80	Since all RFG has been E10 since 2006, a retail survey is an unnecessary expense. The RFS regulations are requiring ethanol blending at or near the blendwall rendering the survey pointless and no longer necessary.	Eliminate the RFG survey oxygen program in 80.69.
Mandatory Greenhouse Gas (GHG) emissions reporting	EPA was required by the appropriations bill for FY 2008 (P. L. 110-161) to develop a program for reporting GHG emissions. Reporting	Delete requirements for mandatory GHG emissions reporting.

40 CFR Part 98	has been required for years without an associated GHG emissions control requirement.	
Fuel registrations 40 CFR Part 79	Refiners are required to submit duplicative information on multiple EPA reporting forms, resulting in redundant reporting requirements.	• Eliminate the Fuel Manufacturer Quarterly Report for Motor Vehicle Gasoline or Diesel Fuel as it serves no purpose or provides duplicate information (EPA Form 3520-12Q). • Eliminate the Fuel Manufacturer Annual Report for Motor Vehicle Gasoline or Diesel Fuel as it also serves no purpose or provides duplicate information (EPA Form 3520-12A).
Reid Vapor Pressure (RVP) of the complex model valid range for RFG 40 CFR Part 80	EPA has promulgated ranges for several gasoline parameters. One of these is a lower limit for RVP in the complex model at 80.45, 6.4 psi.	Change the lower RVP of the complex model valid range for RFG to 6.0 psi.
RFS program 40 CFR Part 80	Renewable volume obligations should not include transmix. Transmix is not gasoline or diesel fuel and cannot be used directly as a transportation fuel.	Allow refiners to back out transmix from their gasoline and diesel production when calculating their renewable fuel obligations (RVOs) in the RFS program.
Gasoline properties required for certification and reported to EPA in batch reports 40 CFR Part 80	The only EPA compliance standards for gasoline are benzene, sulfur, and summertime volatility (RVP for conventional gasoline and RFG volatile organic compounds (VOC) reduction). Other gasoline parameters (*i.e.*, olefins, aromatics and distillation) are currently required to be reported to EPA for every batch of gasoline produced or imported. These other parameters were necessary for complex model compliance. However, the complex model is only used now for summer RFG VOC. The batch reports should be revised.	The following should be the <u>only</u> properties reported on batch reports: • All batches – Sulfur and benzene • All summer batches – RVP • All summer RFG batches – VOC Reduction and supporting test results (oxygen, E200, E300, aromatics, and olefins) In addition to removing the reporting requirements and obsolete regulatory certification sections, the regulations, primarily at

		§80.47, should be clarified that EPA-required tests need only be run if the property is used in determining compliance with an EPA standard or an EPA reporting requirement. This will reduce compliance exposure with regard to running an EPA-required test method incorrectly. For instance, we may still run distillation year-round for all gasoline batches, but running it flawlessly by the EPA-prescribed version of the D-86 test method would only carry compliance implications for summer RFG batches. Another value is *the complex model limits would no longer apply* for all conventional gasoline and for all non-VOC RFG, reducing a current refinery constraint. --- OR --- Eliminate gasoline batch reporting altogether The gasoline batch reports support the refiner's benzene, sulfur, and volatility compliance reporting. The annual attestation is sufficient to check that the refiner's testing records support the refiner's compliance with the standards. The batch reporting is duplicative and burdensome. The two options above reduce the number of parameters in

		batch reports or eliminate batch reporting altogether and apply to individual batches and composites of batches.
Independent laboratory sampling and testing of RFG (or at least non-VOC RFG) 40 CFR Part 80	In the early days of the RFG program, with uncertainty around how refinery labs would perform, the independent laboratory option seemed to make sense to help EPA evaluate if a particular refinery laboratory was having testing performance issues. Today, especially under the Tier 3 rule, refineries have more stringent lab performance requirements. The independent lab requirement no longer adds value and only causes extra cost and delay in producing RFG. This could reduce the cost of producing RFG, including the cost of independent sampling and testing, and reduce shipping delays while waiting for independent lab sampler.	Eliminate independent laboratory sampling and testing of RFG (or at least non-VOC RFG).
The Substantially Similar (SubSim) Interpretive Rule 73 Fed. Reg. 22277 (April 25, 2008)	The current SubSim Interpretive Rule refers to a 1988 version of ASTM D4814. Today's fuel is being manufactured to meet modern versions of D4814. Differences exist between the 1988 version and the current versions that cause sub-optimization of the fuel pool. This would enable greater optimization during fuel production by only having to meet a single, modern specification.	Update the SubSim Interpretive Rule.
RFG reporting 40 CFR Part 80	AFPM would like to see the elimination of quarterly RFG reports, as annual reports are sufficient for EPA's statistical and enforcement needs.	Amend 40 CFR Sec. 80.75 to require annual reporting.
Volumetric Additive Reconciliations (VARs) 40 CFR Part 80	AFPM members are striving to reduce administrative tasks, and reduce compliance exposure with regard to ensuring each of the required elements are placed on a VAR record each month for each additive system. This	Eliminate required VARs.

	requirement is unnecessary to ensure compliance with the regulatory requirement that certified detergent additives be used in all gasoline.	
EPA administrative *pre*view of Office of Transportation and Air Quality Registration (OTAQREG) registration changes	When a company submits a registration change, duly signed by the responsible corporate officer (RCO), such changes should be accepted as submitted, and should not be subject to an EPA review prior to making the changes effective. The delay caused by EPA's review/approval queue is unnecessary. If EPA reviews changes after they are effective and the changes are found to be in violation, the company should bear the burden of the erroneous submission. The main value of an electronic submission system should be speed. This value is negated when EPA previews everything before it is effective. AFPM requests a reduction in wait time to make registration changes.	Eliminate EPA administrative *pre*view of OTAQREG registration changes.
Ultra low sulfur diesel (ULSD) 40 CFR Part 80, Subpart I	AFPM is seeking increased clarity around applicable requirements. Subpart I is riddled with expired requirements, making it very difficult for regulated parties (and the regulators) to understand the requirements.	Eliminate expired elements of 40 CFR Part 80 Subpart I (ULSD).
Detergent additive regulations 40 CFR Part 80	The "Interim" detergent additive program was implemented in 1996 (effective in 1997) at 80.161, but the requirements remain listed in the CFR. Retaining expired requirements in the regulations complicates a regulatory entity's compliance.	Eliminate §80.141 through §80.160.
Gasoline Toxics 40 CFR Part 80, Subpart J	40 CFR Part 80, Subpart J, Gasoline Toxics, was effectively replaced by Subpart L, Gasoline Benzene. Removal of this obsolete regulation will increase understanding of applicable requirements.	Eliminate 40 CFR Part 80, Subpart J, Gasoline Toxics.

Lead and phosphorous test methods 40 CFR Part 80	Section 80.3 references appendices of Part 80 as test methods to test for lead and phosphorus. These methods are antiquated and should be replace with references to the appropriate ASTM test methods.	Eliminate §80.3 in 40 CFR (lead and phosphorous test methods).
RFS 0104 reports 40 CFR Part 80	All information for the RFS 0104 report comes straight from the EPA Moderated Transaction System (EMTS) except the volume of biofuel held at the end of the quarter and even that is not required for obligated parties. If the biofuel inventories are necessary, maybe it can be set up to enter that into EMTS, or have just a single annual report of inventories for non-obligated parties. EPA already has access to this information and should not maintain a separate reporting requirement for information it already has in its possession.	Eliminate the quarterly RFS 0104 reports.
Downstream Oxygenate Blending 40 CFR Part 80	There are four separate programs that govern the inclusion of downstream oxygenates in gasoline, each with distinct testing requirements: 1) anti-dumping, 2) RFG, 3) gasoline benzene and 4) gasoline sulfur - Conventional blendstock for oxygenate blending (CBOB) may be included if it meets requirements of 80.101(d)(4)(ii) - must demonstrate added by refiner or have contract with downstream oxygenate blending (currently only 18 percent accounted for) - RFG 80.69(a) – hand blend and in-use retail survey to ensure oxygenate was added downstream - Tier 2 gasoline sulfur allowed 0 ppm ethanol in calculations, now Tier 3 (beginning 2017) requires refiners to test for ethanol content or assume 5 ppm (this also necessitates testing neat reformulated blendstock for oxygenate blending	Simplify and modernize the programs, ideally using one methodology for CG/RFG, which covers all programs and would maintain the level of stringency. Options: Test hand blends for all gasoline (instead of only for RFG), or refinery gate sampling and testing for all gasoline.

	(RBOB)/CBOB, in addition to hand blended sample testing required per 80.69, etc.) - Gasoline benzene allow refiners to be included in RFG (if 80.69 is met) or 80.101(d)(4) is met Many reporting options and requirements create burden, causes refiners to blend conventional gasoline (CG) that is cleaner than RFG, and test both neat and oxygenated blended samples.	
Emergency response streamlining and enhancement 40 CFR Part 80	The variation of procedures in response to a temporary fuel supply interruption (such as a hurricane) from state to state creates challenges from a timing and complexity standpoint. In some states, response is only available if the interruption/shortage is due to a named storm, and some states would only offer enforcement discretion. In addition, the level of approval varies from a state agency approval to needing the Governor's signature (always slower), etc. There should be a consistent, Federal process, and in return, EPA needs to let states drop any NAAQS exceedances during this time from Attainment determinations. This would remove the major concern for states in these waivers being granted by removing the potential penalty for these actions.	A Federal process to either self-implement or receive rapid approval for summer gasoline RVP waivers in case of temporary supply interruptions.
Butane blending 40 CFR Part 80	Six reports are required for butane blending and as a result, there is much redundancy.	Streamline and eliminate redundancies of butane blending reporting requirements.
Gasoline Loading Racks 40 CFR 63 Subpart XX	There needs to be an efficient means for temporary relaxation of some of the Federal rules on Gasoline Loading Racks (40 CFR 63 Subpart XX) to allow for open dome loading during periods of supply interruption. The regulation requires loading to be controlled using a vapor recovery	The regulations should recognize temporary situations when there is a supply disruption.

	system, and that greatly slows down the loading time and truck turnaround. EPA offers enforcement discretion, which is not sufficient. Perhaps states should be authorized to grant permission, since they have a better grip on local conditions and needs than Federal policymakers.	

C. TSCA and LCSA Implementation

The following comments are organized by opportunities that AFPM believes EPA can take advantage of when finalizing regulations to implement the LCSA. Comments on EPA's existing chemical work plan and new chemicals program are also included. AFPM is also commenting on certain policies, procedures and guidance that are integral to TSCA but have not been included in any existing or proposed regulations. AFPM sees a unique opportunity for EPA to minimize regulatory burdens as these regulations are implemented.

I. Implementation of the LCSA

a) AFPM supports EPA's efforts to implement the LCSA, wants the subsequent regulations to reflect the intent of Congress, and believes that EPA should meet the deadlines outlined in the statute.

The LCSA requires EPA to promulgate a series of regulations ranging from modernizing the TSCA Inventory to outlining the processes for prioritization of substances, risk evaluation and collection of fees. AFPM fully supports the Agency's efforts to propose the rules and meet the deadlines imposed by LCSA.

While it is important to meet statutory deadlines, it is equally important to reflect the intent of Congress in any regulations required by a particular statute. AFPM believes that if the Agency is fully transparent throughout the rulemaking process, any deviation from the statutory requirements, including deadline obligations, will be understood by stakeholders.

b) EPA has an opportunity to reduce regulatory burdens when finalizing rules that have been proposed to implement the LCSA provisions.

EPA has proposed rules to modernize the TSCA inventory, outline the process for prioritization of substances for further work, and establish a framework for risk evaluations of high priority substances. AFPM has commented on each of those proposals, outlining concerns and offering constructive suggestions. Although some stakeholders may say that congressionally mandated regulations are outside of the scope of EO 13777, AFPM disagrees. The final rules ("TSCA Inventory Notification (Active-Inactive) Requirements" [EPA-HQ-OPPT-2016-0426]; "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act" [EPA-HQ-OPPT-2016-0636]; and, "Processes for Risk Evaluation and Chemical Prioritization Under the Amended Toxic Substances Control Act" [EPA-HQ-OPPT-2016-0400]),

which are expected in June 2017, should meet the general objectives of EO 13777, which are to reduce regulatory burdens. Below are several examples of where regulatory burdens could be reduced while finalizing proposed rules under TSCA.

c) To reduce the burdens associated with new chemical reviews, prioritization of existing substances for work, and the risk evaluation process, EPA should revise its interpretation of the LCSA safety standard's "conditions of use."

In general, EPA's interpretation of "conditions of use" is overly broad and goes well beyond what Congress intended when creating the safety standard. This interpretation has already created additional and unnecessary burdens on the regulated community as well as the Agency. This effect can be seen in the new chemicals program, where EPA is considering uses beyond those identified by the manufacturer. The result has been lengthy reviews, as well as demands for complex toxicity testing (i.e., sub-chronic and chronic inhalation studies) that do not reflect potential exposures from uses identified in the premanufacture notice (PMN).

When creating LCSA, Congress did not intend a dramatic change in the safety standard, nor did it intend for EPA to significantly change the way it conducts risk evaluations for new and existing chemicals. The intent was to allow EPA to more efficiently use its TSCA regulatory tools and to make the Agency's processes and decision-making more transparent and based on the best available science.

There are no provisions in the LCSA that require EPA to consider all conditions of use, nor was that the intent of Congress. In fact, at Section 6(b)(4)(F)(ii) the statute explicitly mentions "sentinel exposures" when requiring EPA to describe its consideration of exposures. Sentinel exposures are employed to represent broad categories of use so that the assessor does not have to go into each specific subcategory of use. Sentinel exposures represent realistic upper-bound exposures within those broad use categories. The exposures are expected to be much greater than other sources or pathways, so if the margin of exposure is at an acceptable level, there is no need to delve into each and every type of use or background source. This approach reduces the regulatory burden on industry and EPA, while ensuring an effective health and safety regulatory program.

AFPM interprets the inclusion of sentinel exposures as a clear message to the Agency that it should not include every conceivable use when determining the scope of a risk evaluation. The intent of Congress was to allow EPA flexibility in its approach to risk evaluation so that the Agency could maximize the efficient use of resources.

The move away from EPA's standard risk assessment practices has already brought the new chemical review process to a sudden halt, impeding innovation in the US and affecting supply chains throughout the economy. The result of EPA's misinterpretation of conditions of use has wasted time and resources by not focusing on the uses and exposures that present the greatest risk. EPA's new approach lacks the type of focus the Agency had for years in the new chemicals program and in other previous risk assessment activities. Prior to EPA's move away from its established risk evaluation approaches, nearly ten times the number of new and often safer chemicals were introduced into the US on an annual basis than in Europe. Currently, the backlog of new chemicals in the review process numbers in the hundreds, which is unprecedented. If this

trend continues, by the end of the year Europe will outpace the US in the number of new chemicals entering commerce, which is directly linked to American innovation.

EPA should not consider uses and exposures outside of those identified by the PMN submitter. That will alleviate the backlog of substances in the new chemical review process and return the Agency to its successful and internationally acclaimed approach to new chemical reviews. Importantly, AFPM is not suggesting that EPA disregard "known, intended, or reasonably foreseen uses" of existing chemicals; rather, the Agency should more narrowly exercise and clearly articulate its discretion in the prioritization and risk evaluation process rules to use qualitative, semi-quantitative and other approaches when evaluating hazards, exposures and risks.

d) Acceptance of robust summaries in lieu of full study reports will reduce regulatory burdens on EPA, the regulated community and other interested stakeholders.

The concept of a robust summary was developed and established as part of the High Production Volume (HPV) Challenge, which was a voluntary program that allowed sponsors to voluntarily submit hazard information to EPA on high production volume chemicals. The idea was to reduce the burdens of gathering full study reports, submitting the full reports to EPA, and Agency staff reviewing them. The format and content of robust summaries was the result of a multi-stakeholder group and designed to provide a technically qualified reviewer with enough information to make a scientific judgment on the study methods, reliability and results. Since then, the concept of a robust summary has been adopted globally through individual environmental authorities, as well as the Organization for Economic Cooperation and Development (OECD) and United Nations environment programs.

Full study reports from laboratory toxicity studies are voluminous and have significant monetary value, often into the hundreds of thousands and even millions of dollars. Great care must be taken to protect that private property and its contents, which creates a burden on both industry and EPA. In addition, reviewing the volumes of underlying data found in a study report should only be reserved for cases of scientific ambiguity, questionable scientific integrity or where there is significant disagreement with the interpretation of results.

EPA adoption of robust summaries will bring about greater consistency in regulatory approaches with countries that have strong trade relationships with the US. Robust summaries will significantly reduce potential burdens on EPA and the regulated community. AFPM believes that there are no issues with adopting the use of robust summaries for actions under TSCA Sections 4, 5, 6, and 8.

e) EPA can reduce the burdens associated with risk evaluations by allowing manufacturers to voluntarily submit risk evaluations conducted by EPA contractors and other approved technical organizations.

Part of the risk evaluation process outlined in TSCA Section 6, as modified by LCSA, is a process by which manufacturers can voluntarily request a risk evaluation on a chemical. The statute directs EPA regarding the number of chemicals that can go through this process at any one time, but gives EPA discretion as to how the process is implemented. AFPM urges EPA to consider expediting the approval or disapproval of dossiers that have already undergone a risk evaluation by an EPA-approved contractor or other technically qualified convener of risk experts. This would create a

pathway for a series of risk evaluations that is parallel and concurrent to the risk evaluations conducted by EPA.

AFPM member companies have a tremendous amount of experience in a variety of different programs that regulate chemicals in commerce. Petrochemicals, refining streams and derivative products tend to be well-studied and have been reviewed through a variety of programs. The dossiers prepared for other programs, such as REACH in Europe, can be easily modified for an evaluation under TSCA. While EPA is busy conducting evaluations on chemicals it selects as high priorities, industry should be afforded the opportunity to hire an EPA contractor or other technically qualified consultancy to convene a panel of experts and conduct a risk evaluation that could be submitted for expedited evaluation by the Agency.

A simple and straightforward process would include the following:

1. Company or consortium retains an EPA contractor or other technically qualified consultancy to conduct a risk evaluation on a chemical, which follows the procedures outlined by EPA;
2. EPA contractor convenes a panel of technical experts to review the dossier of hazard and exposure information;
3. Expert panel reaches a conclusion based on the TSCA safety standard;
4. EPA contractor packages the dossier, list of panelists (including qualifications), review procedures and outcome for submission to EPA;
5. Company or consortium submits package to EPA for expedited review; and
6. EPA makes decision whether chemical meets safety standard.

f) EPA can reduce the burdens associated with modernization of the TSCA Inventory.

AFPM generally supports the approach proposed by EPA to create a list of substances currently in commerce, which will become the Active portion of the TSCA Inventory. AFPM has identified opportunities where EPA can reduce the reporting burden when creating the Active list.

The intent of Congress when crafting TSCA Section 8(b) was to create and continually update an Inventory of substances actually in commerce. It is widely agreed by Congress and stakeholders that the TSCA Inventory no longer reflects an accurate depiction of chemicals in commerce; therefore, Congress added provisions in the LCSA to modernize (reset) the TSCA Inventory. Those provisions are quite clear that the sole purpose of the Inventory reset is to create an Active Inventory that lists chemicals in commerce, and create an Inactive Inventory that lists chemicals that may have been in commerce at some point in the past. Only the chemical names are necessary to create the Active and Inactive lists. Any other information contradicts the objectives set out in Section 8(a)(5)(A) to avoid unnecessary reporting, reduce the costs of compliance and to limit reporting to the entities most likely to have that information.

g) EPA should only require submission of the substance that was manufactured and not require date ranges when reporting substances to the Active portion of the Inventory.

In Unit I.C. of its Federal Register notice, "TSCA Inventory Notification (Active-Inactive) Requirements" at 82 FR 4255 (January 13, 2017), EPA first mentions a requirement for reporting the "date range when manufacture occurred," because the Agency could "obtain confirmation that the chemical substance in question had indeed been manufactured or processed" during the 10-

year time period. EPA reiterates the proposed inclusion of date ranges in Unit III.C. and adds that the information is necessary to limit erroneous reporting outside of the look-back period, ensure the accuracy of the notices, and increase the reliability of commercial activity designations. AFPM does not agree that the reporting of date ranges will achieve any of these objectives.

Date ranges for manufacturing activities are typically not retained for 10 years, so it is very unlikely that companies will have that information. Because companies are unlikely to have date ranges going back 10 years, that information will do nothing to limit reporting of manufacture beyond the 10-year period – i.e., the erroneous reporting.

Date ranges will not ensure the accuracy of information contained in Form A. Companies will already be required to sign a statement verifying the accuracy of reported information. AFPM does not see how adding a date range assures Inventory accuracy.

Date ranges have no impact on the reliability of commercial activity designations. Again, companies will already be signing a statement that assures the accuracy of the submitted information, so adding date ranges does not verify whether a substance was produced or imported. In fact, knowing whether a substance was produced or imported has no purpose in creating an Active Inventory. Only the identification of the substance is necessary for the Inventory reset.

In summary, AFPM sees no purpose for requiring date ranges in Form A submissions. That information will be difficult, if not impossible to ascertain, which presents an unnecessary burden on reporters and runs counter to the objectives set forth in Section 8(a)(5)(A). Eliminating date ranges will reduce the cost of compliance and avoid unnecessary reporting, both of which are objectives outlined in Section 8(a)(5)(A). It will also avoid a situation where EPA is requiring reporting from a party not likely to have that information, which is another objective outlined in that subparagraph.

h) EPA should not require the type of commercial activity when reporting a substance to the Active portion of the Inventory.

Knowing whether a substance was produced domestically or imported is not necessary to determine whether the substance was in commerce during the past 10 years. The purpose of the Inventory reset is solely to create a list of chemicals that are active in commerce. It doesn't matter if the chemicals were produced or imported, since both fall under the definition of "manufacture." AFPM urges EPA to delete the requirement to report the type of commercial activity, which will further the Agency's goals of reducing "unnecessary" reporting and reducing the cost of compliance, both outlined explicitly in Section 8(a)(5)(A).

i) EPA should ensure that a company no longer intending to sell a chemical into commerce is not responsible for reporting to the Inventory reset, even if that company manufactured the substance within the past 10 years.

There are many reasons that businesses cancel or divest products or product lines. In cases where businesses or product lines are sold or merged, the new entity that intends to sell those substances into commerce should be responsible for and be afforded the opportunity to report for the purpose of being placed on the Active portion of the Inventory. The company that sold the business or product line should not be responsible for reporting because there is no longer intent to distribute

that substance for commercial purposes and there is a high likelihood that the pertinent records were transferred as part of the business transaction. One of the objectives of TSCA Section 8(a)(5)(A) is to limit reporting to the entity most likely to have the information. In this case, the seller would not likely have that information.

Another example is a company experiencing a temporary domestic supply disruption sometime in the past, which could have been the result of a supply shortage in the US, and then being forced to obtain a substance from a non-domestic source for a limited time. The company had and still has no intent to import in the future, as this was a temporary situation. The company should not be required to report that substance to the Active Inventory if there was and still is no intent to distribute the substance in commerce in the future.

j) Polymers on the current TSCA Inventory should also appear on the Interim Active Inventory.

Polymers on the TSCA Inventory but not subject to Chemical Data Reporting (CDR) rule requirements are excluded from EPA's proposed Interim Active Inventory, including polymers with a "Y" designation. Many polymers were placed on the TSCA Inventory before EPA promulgated the polymer exemption under Section 5. These low risk polymers would likely meet the standard for the polymer exemption today. The purpose of the polymer exemption was to alleviate the need for EPA to expend resources reviewing these low-risk substances under the new chemicals program. These polymers should appear on the Interim Active Inventory to help avoid unnecessary reporting and reduce the cost of compliance, which are objectives found in Section 8(a)(5)(A).

k) AFPM commends EPA for eliminating the requirements for substantiation of CBI claims when reporting to the Active Inventory, especially for substances reported during the 2016 CDR reporting cycle, because those claims were recently substantiated.

In Unit III.E. of its Federal Register notice, "TSCA Inventory Notification (Active-Inactive) Requirements" at 82 FR 4255 (January 13, 2017), Summary of the Proposed Rule, EPA does not include mandatory substantiation requirements for CBI claims for chemical identity made on Form A. Under a separate rule, to be promulgated at a future date, EPA will propose the substantiation requirements for those claims. AFPM generally supports the decision to postpone substantiation requirements for CBI claims older than five years and include them in the Review Plan, but believes substantiation for substances reported during the latest CDR cycle is unnecessary. AFPM also supports EPA's acceptance of early, voluntary substantiations with Form A submissions.

Section 8(b)(4)(B)(iii) compels EPA to require substantiation of CBI claims for chemical identities; however, Section 8(b)(4)(D)(i) excludes companies that have "substantiated the claim in a submission made to the Administrator during the 5-year period ending on the last day of the of the time period specified by the Administrator." The statute does not specify a particular type of submission for the substantiation, so AFPM interprets these provisions to apply to any CBI substantiation, including submissions under CDR.

AFPM agrees with the Agency decision to reduce the reporting burden by minimizing the information requirements, especially for CBI recently claimed and substantiated during the most

recent CDR reporting cycle. Minimizing the information requirements would also help the Agency meet its obligations under Section 8(a)(5)(A) by not requiring reporting that is "unnecessary or duplicative" and minimizing "the cost of compliance."

AFPM supports EPA's decision to honor the existing CBI claims of manufacturers and processors, even if they were not the original CBI claimants. Through this decision, EPA acknowledges that businesses are acquired, merged and even leave the marketplace. The maintenance of an existing CBI claim can provide companies with an innovation-based competitive advantage that would not otherwise be afforded.

l) EPA should regularly update the Active list to avoid multiple reporting of any one substance.

To further achieve the objectives set forth in Section 8(a)(5)(A) of "TSCA Inventory Notification (Active-Inactive) Requirements," EPA should update the Interim Active Inventory on a frequent and regular basis. This would alert others that manufacture those same substances and avoid redundant reporting, thereby reducing unnecessary reporting and the overall cost of compliance. The purpose of the Active Inventory is to create a list of chemicals currently in commerce, not a list of manufacturers that produce or import those chemicals.

II. Existing Regulations Prior to LCSA

a) EPA can reduce the burdens of substantiating CBI claims.

Congress has provided EPA with a great deal of discretion when it comes to substantiating claims of CBI. EPA requires up-front substantiation and periodic re-substantiation for all CBI claims, which has become quite burdensome over the years. AFPM views CBI as intellectual property and believes that companies should be afforded more deference when asserting a CBI claim.

40 CFR 711.30 outlines the questions companies are required to answer when asserting a CBI claim. The questions are numerous and burdensome, which provides a disincentive to companies wishing to keep their sensitive business information confidential, especially from foreign competitors that do not respect the concept of intellectual property. EPA could significantly reduce the regulatory burden by limiting the number of questions that need to be answered to substantiate a CBI claim.

b) EPA should reduce the reporting requirements of substances that are non-toxic or do not present a potential for exposure under the intended use, and use its Section 8 Preliminary Assessment and Information Rule (PAIR) authority to collect information for chemicals it intends to prioritize.

Currently, data on production, use and exposure must be reported for substances on the TSCA Inventory that are produced or imported above 25,000 pounds per year, regardless of whether those chemicals pose a risk to human health or the environment. This includes materials that are non-

toxic or for which there is no potential for exposure under their intended uses. During the last available reporting cycle, EPA collected information on 7,690 chemicals from 4,785 sites.

AFPM supports the Agency's efforts to collect information under CDR. Casting such a broad net, however, is not necessary. Most of the information collected under CDR will not be used for prioritization or risk evaluation; rather, it will just be put on a web site. Additionally, the quality of the exposure information collected under CDR is questionable, since manufacturers are unlikely to possess downstream use and exposure information.

EPA could reduce the reporting burdens under CDR by exempting or partially exempting non-toxic chemicals and those that do not present a potential for exposure under the intended uses, such as intermediates. Limiting collected information to quantities manufactured and known uses can still provide EPA with enough information to make a rough estimate of risk.

EPA has computer models and other tools that can predict ranges of toxicity and potential exposures, just by knowing the molecular structure of the chemical and its general uses. If EPA requires more precise or detailed information, it should use its authority under TSCA Section 8(a) and issue a PAIR rule that includes processors (i.e., those most likely to have downstream use and exposure information). PAIR rules are more targeted than general information collections (i.e., CDR reporting) and can include specific entities without burdening the rest of industry.

c) Chemicals that are manufactured in the U.S. for export and returned to the U.S. should not be counted as imports or subject to CDR reporting.

There are a number of reasons why a chemical could be manufactured, exported, then returned to the U.S. The only information relevant to EPA should be the original manufacture of the substance. To count returns as imports results in double-counting and distorts the actual market picture, in addition to placing an unnecessary burden on reporters.

d) Substances that are byproducts from recycling processes should be exempt or partially exempt from reporting under the CDR rule.

TSCA Section 8(b) requires EPA to create and maintain a list of chemicals in commerce, commonly known as the TSCA Inventory. For many years companies were required to report the chemicals and amounts they were manufacturing and importing under the Inventory Update Rule (IUR). In 2006, EPA changed the nature of IUR reporting, significantly increasing the burden by including information related to use and exposure. EPA stopped using the term "Inventory Update Rule" in 2011 and established the term "Chemical Data Reporting."

Included in CDR reporting are byproducts from recycling processes. AFPM believes that the burden associated with reporting byproducts under CDR is a strong disincentive for recycling. Furthermore, it results in a distortion of the marketplace because the recycling does not change the overall volume of the manufacture for that substance. Those same molecules are counted over and over, each time the material is recycled. To make matters worse, the companies required to report byproducts of recycling will be considered manufacturers and could be subject to even more costly burdens, such as toxicity testing and risk evaluations. EPA should exempt byproducts of recycling processes from CDR reporting.

e) EPA should allow for a non-punitive correction to the TSCA Inventory for Chemical Substances of Unknown or Variable Composition, Complex Reaction Products, and Biological Materials (UVCBs) to reduce the potential burden associated with the new chemical review process.

UVCB substances, also known as Class 2 substances, cannot be represented by a distinct molecular structure. They may be isomeric mixtures, complex and naturally occurring mixtures of related molecules, and other materials for which separation and purification of components is technically or economically unfeasible. Many products derived from oil, such as petroleum streams, waxes, base oils, etc., are UVCBs.

In the past several years, EPA's enforcement office has threatened action against AFPM member companies because EPA staff insisted that certain UVCB nomenclature was outdated. This marked a distinct change in nomenclature policy, but the regulated community was never afforded the opportunity to comment on the change, nor was it given any chance to comply.

EPA stated that the manufacturers of those substances were out of compliance with TSCA and demanded that certain UVCBs be renamed and treated as new chemicals subject to the burdensome new chemical review process, even though the products and processes used by manufacturers had not changed in decades, even before there was an EPA. AFPM members and petroleum-related products are not the only ones facing this sudden burden.

In addition to fines of up to $25,000 per day, the burden of reporting the substance as a new chemical would entail a sudden stoppage in manufacturing or import, disrupting supply chains that depend on the chemical. Each UVCB would have to be broken up into sub-species and a premanufacture notice would be required for each separate substance, potentially numbering in the hundreds. The potential burden under this scenario could cripple a small or medium-sized company. EPA could easily reduce the burden of UVCB nomenclature issues by instituting a non-punitive TSCA Inventory correction and allow companies to work in cooperation with the Agency to resolve long-standing nomenclature issues.

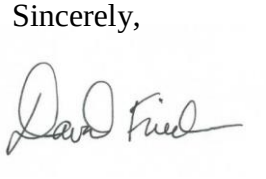
D. Conclusion

AFPM encourages the Administration to work with Congress to bring long overdue reforms to the regulatory process. Reforms to increase transparency, enhance the quality of data used in rulemaking, and increase the accountability of the Administration and Congress to the American people are important goals that will promote economic opportunities while protecting health, safety, and the environment. Significant reductions in air, water, and waste pollution have occurred over the past several decades. Further reductions generally come at an increasing cost and are smaller than prior reductions. This rising cost to benefit ratio should be strongly considered in any future statutory or regulatory changes.

AFPM looks forward to continuing our work with you and other federal agencies to create a regulatory environment that protects public health and welfare without destroying jobs, jeopardizing our nation's energy security, or eroding our domestic manufacturing capabilities. If

you have any questions about our comments or need any additional information, please contact me at (202) 552-8461 or dfriedman@afpm.org.

Sincerely,



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