CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

WILLIAM L. KOVACS
SENIOR VICE PRESIDENT
ENVIRONMENT, TECHNOLOGY &
REGULATORY AFFAIRS

1615 H STREET, NW
WASHINGTON, DC 20062
(202) 463-5457

May 9, 2017

VIA ELECTRONIC FILING

The Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code 1803A
Washington, DC 20460

Re: Response to EPA's April 13, 2017, Request for Comments on Evaluation of Existing Regulations (Docket ID No. EPA-HQ-OA-2017-0190)

The U.S. Chamber of Commerce (Chamber), the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, offers these comments in response to Environmental Protection Agency's (EPA's) April 13, 2017, request to identify regulations that eliminate jobs or inhibit job creation, are outdated, impose costs exceeding benefits, create serious inconsistencies, or rely on data not publicly available or insufficiently transparent to meet the standard of reproducibility. Below are the comments of the Chamber that address your inquiry.

The Chamber has identified many such regulations in responses to the recent Request for Information (RFI) from the Department of Commerce.[1] The RFI stemmed from the January 24, 2017, Executive Memorandum regarding impacts of federal regulations on domestic manufacturing. Below is a link to the Chamber's comments to the Department of Commerce.

Perhaps as important as identifying bad regulations that should be modified or repealed is identifying bad regulatory policy that is embedded in agency programs. Once established, bad regulatory policy continues to affect future rulemakings and stacks the deck against the possibility of producing a good regulation by undermining open, transparent, careful, and well-informed regulatory processes. From the failure to conduct statutorily mandated §321(a) jobs analyses, to over-reliance on fine particulate matter co-benefits to justify virtually all of its rules, EPA over the years has embedded bad regulatory policy into the agency's programs. The

[1] Those comments can be found at https://www.regulations.gov/docket?D=DOC-2017-0001, with U.S. Chamber comments specifically found at https://www.regulations.gov/document?D=DOC-2017-0001-0107.

Chamber has reiterated the importance of fixing these programmatic deficiencies and continues to believe that correcting them will go a long way to improving EPA rulemaking outcomes.

1. EPA Has for Decades Failed to Implement Congressional Mandates to Evaluate the Impact of Its Regulations on Jobs

Since 2011 the Chamber has repeatedly requested that EPA implement §321(a) of the Clean Air Act (CAA), which requires EPA to continuously evaluate potential losses or shifts of employment resulting from administration or enforcement of the CAA.[2] Moreover, during that time period and up to April 7, 2017, members of Congress have written to EPA asking it to implement §321(a) of the CAA.[3] Finally, EPA, in responses to Freedom of Information Act requests submitted by the Chamber, admitted it could not find any documents establishing any activity to implement §321(a) of the CAA.[4] Without implementation of this provision neither EPA nor Congress will have relevant information about the impact of CAA regulations on jobs. Congress mandated that EPA provide this information on the impact of regulation on jobs and EPA should provide it.

On March 24, 2014, Murray Energy Corp. (Murray), in an attempt to have EPA implement §321(a) of the CAA, sued EPA for failing to comply with §321(a).[5] Murray argued that EPA has not evaluated the job losses and job shifts within the coal industry that have resulted from CAA rules. On October 17, 2016, the court granted summary judgment to Murray and entered a Memorandum Order requiring EPA to provide a plan and schedule for compliance with §321(a) within two weeks.

EPA responded to the court's order on October 31, 2016, stating that the agency would comply with §321(a) of the CAA only because of the court's order, but that the time frames ordered are too short and it will take EPA about two years to develop a methodology to use to comply.

The court issued a Final Order on January 11, 2017, that sharply rebuked the agency and ordered that specific actions be completed by court-ordered deadlines. The court noted that EPA's October 31, 2016, response "evidences the continued hostility on the part of the EPA to acceptance of the mission established by Congress."[6]

---

[2] Testimony before the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, Regulation Chaos: Finding Legislative Solutions to Benefit Jobs and the Economy, https://www.uschamber.com/testimony/testimony-regulating-chaos-finding-legislative-solutions-benefit-jobs-and-economy.

[3] Letter from Senators Vitter, Risch, Johanns, Inhofe, Ensign, and Hatch to EPA Administrator Lisa Jackson, October 13, 2009; Letter from Senator Fischer and Representative John Ratfliffe (cosigned with 52 additional members of Congress) to U.S. Attorney General Jeff Sessions and EPA Administrator Scott Priutt, April 7, 2017.

[4] Letter from Jim DeMocker, Acting Director, EPA Office of Policy Analysis and Review to William L. Kovacs, U.S. Chamber of Commerce, Freedom of Information Request No. EPA-HQ-2012-001352 (June 14, 2013).

[5] 42 U.S.C. §7621(a).

[6] Final Order at 2.

The court demonstrated through legislative history that "Congress unmistakably intended to track and monitor the effects of the Clean Air Act and its implementing regulations on employment in order to improve the legislative and regulatory processes."[7] For example, the court cites the House Committee Report accompanying the 1977 CAA amendments as clarifying that §321(a) was added to address concerns about "the extent to which the Clean Air Act or other factors are responsible for plant shutdowns, decisions not to build new plants, and consequent losses of employment opportunities."[8] EPA has never complied with the statutory mandate.

Considering the practical impact of §321(a), the court observed that EPA must both track and monitor the effects of the Clean Air Act and its implementing regulations on employment, and evaluate the **cause of specific** job dislocations.[9]

The court noted that evidence had been introduced that EPA itself had developed an evaluation tool called the Economic Dislocation Early Warning System (EDEWS), which the agency used beginning in 1972 to identify at-risk workers, track actual worker dislocations and potential community impacts, and identify root causes.[10] Through the EDEWS program, EPA was able to identify threatened, actual, and avoided worker dislocations. The program was intended to bring into play any government program available to provide financial assistance, which would **prevent plant closings or production curtailments**.[11] In the first 10 years, the EDEWS program identified actual closures or curtailments at 155 plants and the dislocation of 32,899 workers resulting from environmental requirements.[12]

The court next stated that "EPA cannot redefine statutes to avoid complying with them. The record in this case demonstrates hostility on the part of the EPA to doing what is ordered by §321(a)."[13]

The court ordered EPA to (a) prepare and submit to the Court a §321(a) evaluation of the coal industry and other entities affected by **the rules and regulations affecting the coal mining and power generating industries** as expeditiously as possible and by **no later than July 1, 2017**; (b) identify facilities at risk of closure or loss of employment because of regulations; (c) evaluate the impacts of plant closures or loss of employment on communities and families; (d) evaluate coal mines and coal-fired power plants that have closed or reduced employment since January 2009, and evaluate whether CAA requirements caused the impacts; and (e) identify impacts on subpopulations such as minority groups.[14]

EPA is further ordered to show by December 31, 2017, that it has adopted measures to comply with §321(a) in the future.

---

[7] *Id*. at 3.
[8] H.R. Rep. 95-294, at 316, 1977 U.S.C.C.A.N. 1077,1395.
[9] Final Order at 9.
[10] *Id*.
[11] *Id*. at 11.
[12] *Id*.
[13] *Id*. at 21.
[14] *Id*. at 26–27.

On February 3, 2017, EPA appealed the court's order to the Fourth Circuit Court of Appeals. The agency requested that the appeals court set an expedited schedule for the case. EPA seeks an expedited schedule based on its assertion that the order imposes a "significant" burden. EPA specifically cites the difficulty in obtaining the data for a §321(a) analysis and complying with Office of Management and Budget's "OMB" information collection requirements and the Information Quality Act by July 1, 2017. Oral argument is to be held on May 9, 2017.

The Importance of the *Murray Energy* Decision

In 1977 Congress was clearly concerned that major environmental regulations were having major economic effects on key industries (steel, mining, autos, energy, etc.). Section 321 of the CAA, and equivalent sections of other statutes, were incorporated into environmental statutes to help manage the balance between economic growth and environmental protection. By getting essentially real-time data on prospective and retrospective employment effects of regulations, Congress and the public would access critical information about the desired stringency and timing of major new requirements. Major new requirements for a specific industry could be phased in and/or sequenced with contemporaneous rules to avoid overwhelming that industry. Workers in an industry likely to be hard hit by environmental rules could get early warning of difficult times ahead. And EPA would have a better sense of the economic tradeoffs anticipated as a result of new environmental restrictions.

The importance of §321(a) of the CAA is not merely theoretical. An April 17, 2017, report by the Institute for Energy, Economics, and Financial Analysis identifies a total of 24 coal-fired units at 14 plants set to be retired in 2017 and 22 more units at 11 plants in 2018.[15]

Recommended Action

EPA and the Department of Justice have the option to withdraw the appeal of the ***Murray Energy*** case. This would mean that EPA will agree to comply with the district court's January 11, 2017, order and conduct the continuous evaluation of the impact on jobs of its regulations.

2. The Actual Cost of EPA Regulations Is Even Greater Than the Agency Estimates

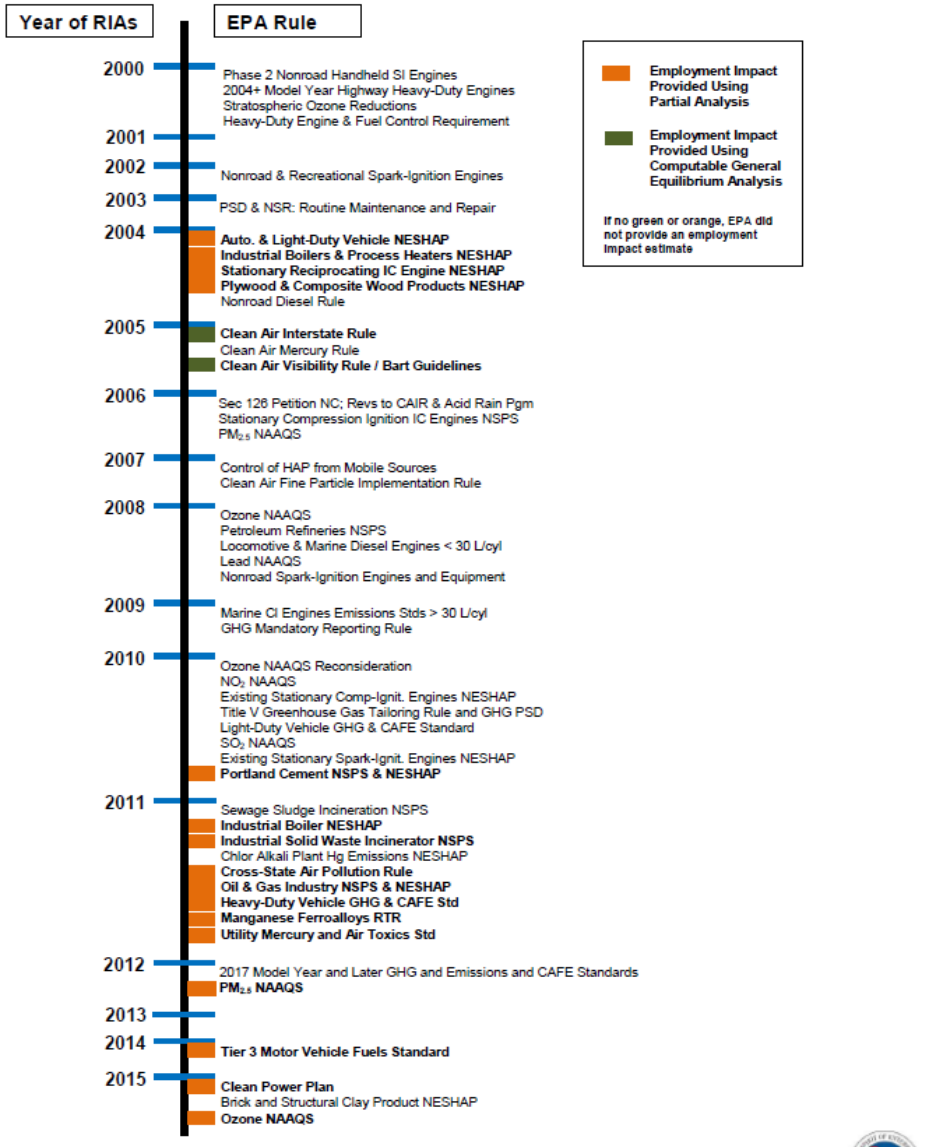
Although EPA has never conducted a proper §321(a) evaluation of job losses from its regulations, in recent years it has routinely claimed that its regulations actually create new jobs. EPA accomplishes this sleight of hand "jobs analysis" by focusing on only one specific portion of the analysis while ignoring most of the impacts. Specifically, EPA consistently conducts only a partial equilibrium economic analysis so that it can assert that each regulation creates more jobs than it eliminates. A result of this partial equilibrium economic analysis is that EPA estimates only the jobs created to ensure compliance while completely ignoring the economy-wide impact of its regulations on jobs and the economy. In many cases this methodology even

[15] Link to report: http://ieefa.org/wp-content/uploads/2017/04/Research-Brief-U.S.-Coal-Phase-Out-Blow-by-Blow_April-2017.pdf.

allows EPA to claim that jobs within the regulated industry will not be lost, because it simply assumes that regulated firms can and will pay the costs of the regulation without changing how they conduct business. For instance, in the report *Impacts of Regulations on Employment: Examining EPA's Oft-Repeated Claims that Regulations Create Jobs*, NERA Economic Consulting modeled the economy-wide impacts of EPA's Mercury and Air Toxic Standards "MATS" rule on electric utility emissions. While EPA claimed that the rule would create a modest number of jobs from regulatory compliance and oversight activities, NERA found that the broader impacts of the rule would be massive economic costs from higher electricity prices, leading to the loss of as many as 215,000 jobs over initial years of compliance.

The chart below illustrates that out of 56 rules for which EPA prepared a Regulatory Impact Analysis from 2000 through 2015, EPA employed the whole economy or economy-wide model only twice.

Timeline of Air Regulatory Impact Analyses Found to Contain Employment Impact Estimates



3. Use of Economy-Wide Modeling Could Improve EPA's Consideration of Employment Impacts in Clean Air Act Rulemakings

In March 2015 EPA requested that the Science Advisory Board (SAB) form a panel to examine the use of economy-wide modeling in examining the costs and benefits of EPA air regulations. The SAB panel has held several meetings and teleconferences in the past year and a half.

The business community has supported and advocated for the use of economy-wide modeling in examining the costs and benefits of Clean Air Act regulations in order to more fully and accurately portray the effects of these regulations. Specifically, as noted previously, economy-wide modeling of CAA regulations could be used to fulfill EPA's congressionally mandated duties under §321(a). Economy-wide modeling could fulfill at least the statutory requirement to conduct prospective job loss and displacement analysis.

The SAB panel is scheduled to meet on May 24, 2017, to discuss the draft responses from EPA's National Center for Environmental Economics and the Office of Air and Radiation on economic analysis for air regulations.

Recommendation Action

It will be imperative that the new administration participate in the May 24, 2017, hearing and closely review any recommendations made by the panel. EPA should determine whether the SAB panel's recommendations will improve the agency's cost-benefit methodologies, particularly the accounting for employment impacts and the adequate consideration of both the benefits and the costs of any proposed air regulations.

4. Reforming EPA's Excessive Regulatory Overreach Will Result in Major Regulatory Reform

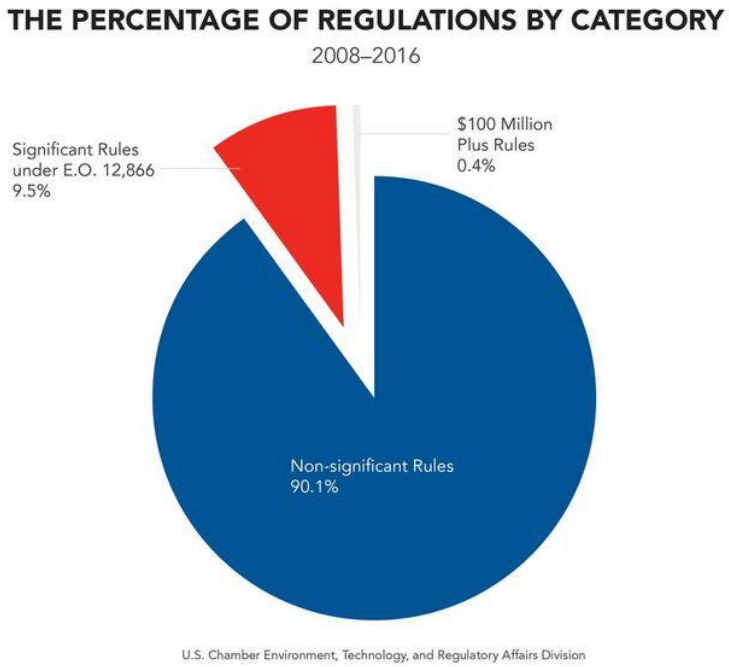
In April 2017 the Chamber released its report *Taming the Administrative State: Identifying Regulations that Impact Jobs and the Economy.*[16] The study analyzed the number and type of regulations that impose the greatest cost on the business community, consumers, and ultimately the U.S. economy. The analysis examined federal rules finalized from 2008 to 2016 and found that only 140 regulations out of more than 32,000 had costs exceeding $100 million annually. Also, it found that in the same time period only 28 regulations had a cost of more than $1 billion annually.

The report identifies the most costly and transformative regulations so that Congress and federal agencies are better able to develop a process that will ensure future regulations achieve congressional intent and avoid agency overreach. Additionally, the report identified each of the 140 regulations and the cost of those regulations, as estimated by the promulgating agency.

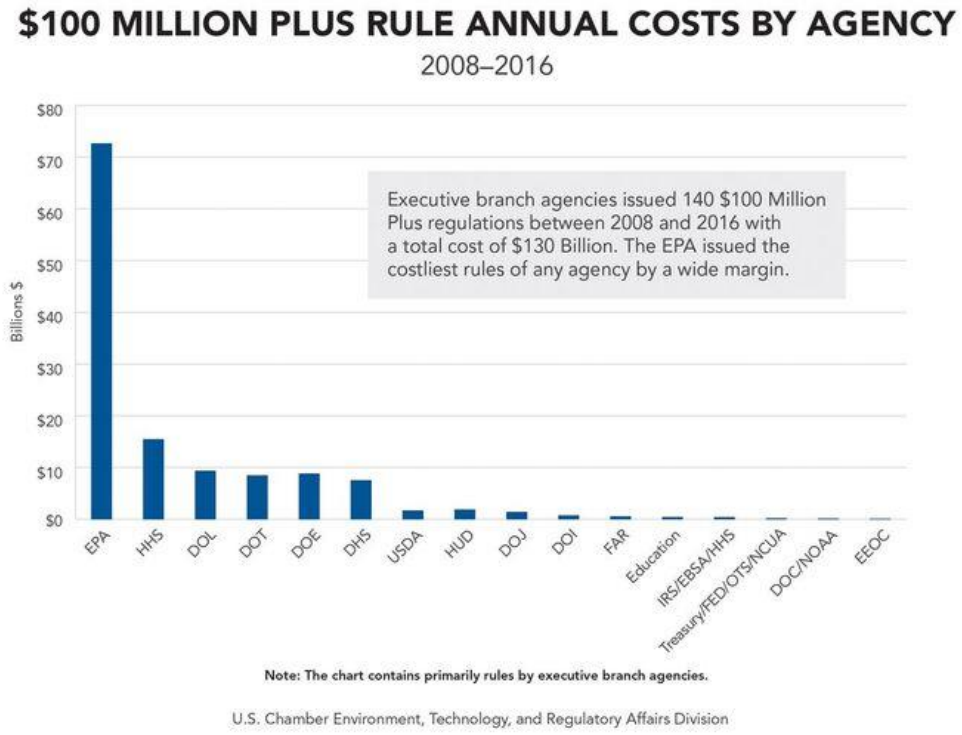
[16] Link to report:
https://www.uschamber.com/sites/default/files/taming_the_administrative_state_report_march_2017.pdf.

Findings: Taming EPA Is the Most Critical Step in Taming the Administrative State

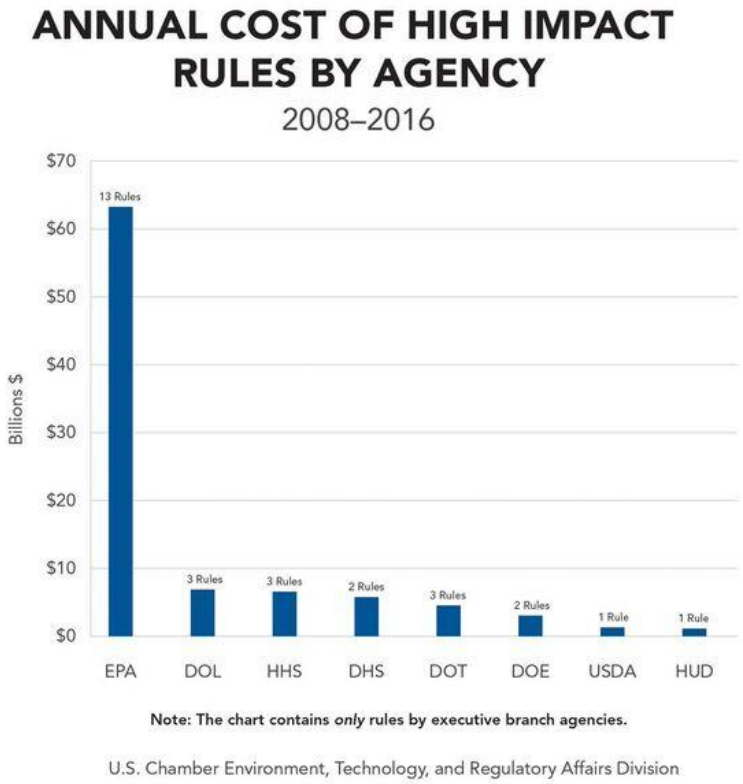
From 2008 through 2016, regulatory agencies issued 32,882 new rules. Of those, about 1 in 10 (3,261 total) were considered "significant" and subjected to greater scrutiny because they are more likely to impose compliance burdens. However, virtually all of the actual regulatory burden, as measured by the estimated annual cost of each rule, is borne by just 140 regulations over the nine-year study period. Thus, a very small percentage of rules, just 0.4% of the total, is responsible for most of the regulatory burden. The pie chart below illustrates just how few regulations are responsible for most of the regulatory costs.



The burden imposed by the 140 $100 million plus rules over the period 2008 through 2016 is $130 billion in annual cost. However, that cost is not evenly spread across all 140 rules, or across all of the issuing regulatory agencies. ***EPA produced the greatest number of costly rules, resulting in EPA being responsible for $73 billion in cost each year, or 56% of the total cost imposed***. The next chart illustrates that EPA exceeds all federal agencies in the issuance of costly regulations.



The final category of rules, high-impact rules, are those that impose more than $1 billion in annual costs and are responsible for the majority of all regulatory burdens despite the fact that there are very few of them. From 2008 to 2016, executive branch agencies produced just 28 of these high-impact rules, with ***EPA once again leading the way with 13 rules that cost $63 billion annually.*** Nearly half of the known regulatory costs imposed between 2008 and 2016 are from just 13 high-impact EPA regulations. The below chart illustrates this point.



Recommendation Action

In Appendix C of the April 2017 report the Chamber identifies by agency and cost the 140 most costly rules issued between 2008 and 2016. For its regulatory review and reform efforts, **EPA should give priority attention to the 13 rules imposing over $1 billion in annual costs**.

5. EPA Should Apply the Risk Assessment Principles Required by Section 26 of the Frank Lautenberg Chemical Safety Act for the 21st Century Beyond the Revision of the Toxic Substances Control Act (TSCA)

Section 26 of the Frank Lautenberg Chemical Safety for the 21st Century Act requires the EPA administrator to make all decisions under Title I of the act based on "scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science," and consider the following:

- The extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;
- The extent to which the information is relevant for the administrator's use in making a decision about a chemical substance or mixture;

- The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;
- The extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and
- The extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models.

Moreover, §26 also requires that those decisions be based on the weight of the scientific evidence.

Recommended Action

Because these risk analysis procedures are likely to produce more unbiased risk assessments, it is worthwhile to apply these procedures beyond TSCA. President Trump should issue an Executive Order requiring EPA and other federal agencies conducting chemical risk analyses to apply these procedures unless otherwise prohibited by statute.

6. PM 2.5 Incidental Benefits (Change of Circular A-4 to Require Benefits Only from Pollutant)

In 2003, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget produced Circular A-4 to provide federal regulatory agencies with guidance on how to conduct appropriate cost-benefit analysis to support their regulations as required by Executive Order 12866. On page 26, Circular A-4 discusses "ancillary benefits" of regulations, defined as "a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking." In recent years EPA has used ancillary benefits, which it terms co-benefits, as the primary justification for rules, designing the rules to maximize these co-benefits rather than to achieve the statutory purpose of the rulemaking. The best example is the 2012 Mercury and Air Toxics Standard, in which 99.4% of the benefits were ancillary benefits.

Recommended Action

The EPA administrator should ask President Trump to direct OIRA to amend Circular A-4 to clarify how both direct and ancillary benefits should be counted. Specifically, agencies could be required to craft regulations to address the statutory purpose of the rulemaking based only on the direct costs and benefits of such action. Only then, after choosing a justifiable standard based on analysis of direct impacts, could the ancillary benefits be counted. This requirement would prevent agencies like EPA from using a stated statutory purpose to justify a rulemaking that is actually designed to achieve often unrelated purposes, thereby increasing transparency and accountability in the regulatory process.

7. CASAC – A Look at Economic Impacts

The Clean Air Act directs the EPA administrator to convene a science advisory committee, the Clean Air Science Advisory Committee (CASAC), to advise the administrator on important technical issues relevant to setting an appropriate standard under the act. Section 109(d)(2)(C)(iv) further directs the advisory committee to "advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards." In other words, the statute directs the advisory committee to analyze and inform the administrator of foreseeable adverse effects of setting the standards at the levels under assessment. However, EPA has failed to include questions related to this section of the statute when making a charge to the science advisory committee, arguing instead that because the courts have ruled that using economic costs to set the standard is forbidden, the advisory committee cannot consider any factors other than public health.

Recommended Action

EPA should craft the charge for any upcoming CASAC directing the committee to provide an assessment of adverse public health, welfare, social, economic, or energy effects of the various standards under review. Doing so would require the agency to include appropriate experts on the committee to address these subjects. While EPA would remain bound by statute to setting a standard that is protective of human health and welfare without consideration of costs, the additional information provided by considering economic impacts, or even negative, countervailing health impacts, could be used in determining an appropriate standard level when the scientific evidence alone does not recommend a definitive standard level.

8. Specific Regulations in Need of Reform

The following comments will not address all of the many regulations that shall be examined, since they have been addressed in comments to the Department of Commerce and as part of rulemakings over the years. However, the comments will focus on regulations that are very important to the business community but which may not be addressed by individual sectors.

a. Methane Regulations

The previous administration worked on regulations for methane emissions from the oil and gas sector. On May 12, 2016, EPA finalized a regulation under the Clean Air Act for reducing methane emissions from new oil and natural gas sources. The regulation was published in the *Federal Register* on June 3, 2016. Industry groups filed a lawsuit challenging that regulation. On April 18, 2017, EPA (under the new Trump administration) announced that it would be reconsidering portions of this rule. According to EPA, the reconsideration is based on the inclusion of certain provisions in the final rule that were not available for public comment during the proposal process, that is, the fugitive emissions monitoring requirements and the inclusion of low-production wells. Additionally, EPA issued a 90-day stay of the compliance date for the fugitive emissions monitoring requirements in the rule.

In March 2016 the administration announced that it would begin working on a rulemaking for regulating methane emissions from existing oil and natural gas sources. As the first step in that process, EPA issued a proposed Information Collection Request (ICR), which would seek information from the oil and gas industry on how best to reduce methane emissions from their existing sources. On November 10, 2016, EPA finalized the ICR. On March 2, 2017, EPA issued a notice withdrawing the ICR, stating that it would be reassessing the need for the information.

Recommended Action

Discontinue the defense of the EPA methane regulations from new oil and gas sources in pending litigation.[17] Proceed with the reconsideration of those regulations per the April 18, 2017, announcement.

Proceed with the reassessment of the ICR for the potential methane emissions rule for existing oil and natural gas sources.

b. Ozone Implementation

In October 2015 EPA finalized a new National Ambient Air Quality Standard (NAAQS) for ozone, tightening the standard from 75 ppb to 70 ppb.

Pursuant to an October 1, 2016, deadline, states submitted their recommendations for areas that would not be able to attain the 2015 ozone standard (nonattainment). Under the Clean Air Act, EPA has one year—until October 1, 2017—to finalize those nonattainment designations.

The 2015 ozone standard is being litigated right now; EPA, industry groups, and environmental groups are all parties to the lawsuit. Oral argument in the D.C. Circuit had been scheduled for February 16, 2017, but was recently postponed after EPA filed a motion seeking a delay of the hearing.

In the 114th Congress, the Ozone Standards Implementation Act of 2016 (H.R. 4475/S. 2882) passed the House and had a legislative hearing in the Senate Environment & Public Works Committee. The ozone implementation provisions in that legislation would harmonize the implementation deadlines for the 2008 ozone standard (75 ppb) and the 2015 ozone standard (70 ppb) by delaying the 2015 ozone deadlines for eight years.

In addition to addressing ozone implementation issues, the Ozone Standards Implementation Act of 2016 would, among other things, (1) change the review for an NAAQS from 5 to 10 years; (2) provide that when establishing or revising an NAAQS, the EPA administrator may consider technological feasibility as a secondary consideration; (3) require the

[17] *State of North Dakota v. United States Environmental Protection Agency*, Case No. 16-1242, in the U.S. Court of Appeals for the D.C. Circuit

EPA administrator to publish concurrently implementing guidance and regulations when establishing or revising an NAAQS in order to assist states, permitting authorities, and permitting applicants; and (4) require the EPA administrator to request advice on the adverse public health, welfare, social, economic, or energy effects from the Clean Air Science Advisory Committee before establishing or revising an NAAQS.

Recommended Action

Support immediate passage of H.R. 4475/S. 2882, the Ozone Standards Implementation Act, to provide regulatory relief to states, communities, and businesses affected by the 2015 ozone standard, and to make initial targeted, but impactful, reforms to the Clean Air Act.

c. CERCLA §108(b) Financial Assurance Program

EPA has recently proposed a new financial assurance requirement for several industries—beginning with hard rock mining, chemical manufacturing, and oil production. The new regulatory requirements are likely to require companies to set aside billions of dollars to deal with potential Superfund cleanup liabilities that are highly speculative and may never occur.

Per a court order from the D.C. Circuit Court of Appeals, EPA proposed the rule on December 1, 2016, and it was published in the *Federal Register* on January 11, 2017, with a 60-day comment period ending on March 24, 2017.

The comment period was extended 120 days to July 11, 2017, and the same court order requires that EPA publish the final rule by December 1, 2017.

Recommended Action

If the extended comment period for the proposed rule raises doubts about the technical feasibility of the standard due to the increased time for review and study of the impacts, EPA should petition the court for an extension of the December 1, 2017, deadline to issue a final rule. This would allow EPA to fully reconsider the rule and how to proceed by taking all available evidence into consideration.

d. EPA's Risk Management Program Rule

In following the directives of Executive Order 13650, EPA proposed in March 2016 certain amendments to its Risk Management Plan (RMP) regulations under the General Duty Clause of the Clean Air Act. Business and industry opposed or expressed serious concerns with these proposed amendments, including (1) the overlapping and conflicting regulatory burdens with regulations under the Occupational Safety and Health Administration; (2) the inadequacies of the "inherently safer technology" analysis; (3) the required disclosure of sensitive business and security data; (4) the infeasibility of requisite third-party audits; (5) the lack of an

appropriate cost-benefit analysis; and (6) the failure to comply with the Small Business Regulatory Enforcement Fairness Act.

The proposed RMP regulations were finalized on January 13, 2017. On March 13, 2017, EPA issued a 90-day stay of the regulations. More recently, EPA has proposed delaying the effective date of the RMP regulations until February 9, 2019. The agency held a public hearing on that proposal on April 19, 2017, and it is taking comments on the proposal until May 15, 2017.

Recommended Action

EPA should proceed with the stay of the regulations and the proposal to delay the effective date of the RMP regulations until February 9, 2019. This will enable EPA to review and reconsider the final RMP regulations, and potentially address the concerns raised by the regulated stakeholders.

e. New Source Review

EPA's New Source Review (NSR) permitting program is intended to ensure that construction and expansion of factories and power plants does not negatively impact air quality. However, it has long been recognized that the program and its implementation processes often impose unnecessary costs, uncertainties and delays on stakeholders that result in project cancellations. This has even created perverse incentives wherein some affected entities are inclined to continue operating older, less efficient facilities instead of investing in pollution-reducing upgrades and expansions that improve reliability, efficiency, and safety. These challenges have exacerbated in recent years as EPA's ratcheting down of National Ambient Air Quality (NAAQS) standards have made it increasingly difficult or even impossible to obtain permits for new or expanded operations. Ultimately, these obstacles serve to impede utility sector flexibility, inhibit growth and modernization of the U.S. industrial sector, and might actually undermine, rather than facilitate, the adoption of emissions-reducing technologies.

Recommended Action

Undertake a comprehensive analysis of administrative and legislative options to reduce unnecessary and ineffective New Source Review-related permitting obstacles while still maintaining the program's environmental benefits. Such a review should consider instituting improved definitions of NSR program triggers, such as what constitutes an emissions increase or facility modification.

f. Effluent Limitation Guidelines (ELGs) for Electric Power Plants

In late 2015, EPA finalized new rules setting strict federal limits on waterborne discharges from steam electric power plants. This rulemaking was plagued by inaccurate assumptions and a nontransparent public comment process that contributed to highly burdensome and potentially infeasible standards applicable to many affected entities. For example, because many facilities are unable to meet the rule's requirements with technologies

identified by EPA as sufficient for compliance, the agency significantly underestimated the actual costs of the regulation. As a result, the rule threatens to inappropriately force plant closures and drive significant job losses.

Responding to a petition submitted by industry stakeholders, the EPA announced on April 12, 2017 that it will institute an administrative stay of this regulation while it reconsiders the rule.

Recommended Action

We support EPA's decision to reconsider the rulemaking and urge the agency to pursue revisions that, consistent with the President's regulatory reform agenda, protect water quality through technologically and economically feasible means.

g. Effluent Limitations Guidelines (ELG) and Pretreatment Standards for the Oil and Gas Extraction Point Source Category

In June 2016, EPA finalized new regulations related to pretreatment standards for unconventional oil and gas (UOG) extraction waste water sent to publicly owned treatment works (POTWs). The rulemaking established a zero discharge standard prohibiting the treatment of hydraulic fracturing waste water by municipal sewage treatment facilities. EPA based this prohibition on a finding that alternative disposal options (underground injection and reuse) are currently widely available. However, this finding overstates the capacity of these alternative options and does not sufficiently consider their potential to be further limited in the future. Moreover, the Clean Water Act directs EPA to base any such restrictions not on the existence of alternative disposal options, but on a Best Available Technology Economically Achievable (BATEA) analysis of actual POTW waste water management technologies. EPA failed to undertake a thorough analysis to determine BATEA pretreatment potential, and in doing so based its zero discharge determination on inappropriate and insufficient information.

Recommendation

Undertake a thorough review of hydraulic fracturing-related waste water management technologies to determine if economically achievable pretreatment options are available, and consider revisions to the ELG rulemaking as appropriate based on this review.

The Chamber appreciates your consideration of these comments. If you have any questions, please contact me at 202-463-5533 or wkovacs@uschamber.com.

Sincerely,

William L. Kovacs