



September 22, 2023

Via www.regulations.gov

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency
Washington, DC 20460

Re: Proposed Rule, Environmental Protection Agency; National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review (88 Fed. Reg. 47,415-47,437, July 24, 2023)

Dear Administrator Regan:

The U.S. Chamber of Commerce (“the Chamber”) appreciates the opportunity to provide comments on the Environmental Protection Agency’s (“EPA”) supplemental notice of proposed rulemaking for the “National Emission Standards for Hazardous Air Pollutants (NESHAP): Primary Copper Smelters.”¹ In addition to these comments, the Chamber also filed comments as part of the Air Advocacy Coalition on the January 11, 2022, proposed rulemaking² that are also relevant and should be considered by EPA.³

The Chamber’s members include those that own or operate important manufacturing operations, including copper smelters that are the subject of the supplemental proposed rulemaking and would be affected by the legal, regulatory, and policy precedents that would be established by the proposed rule if it is finalized as proposed.

Copper is one of the most important commodities for the economy due to its wide use across so many sectors. It is becoming increasingly important for economic and national security reasons but is even more critical for the economy as a key ingredient needed for the clean energy transition. In July, the U.S. Department of Energy released the 2023 critical materials assessment to evaluate supply chain security for clean energy technologies, providing a detailed outlook for copper in addition to dozens of other critical minerals.⁴ While copper was only recently listed as a critical mineral, it has long been essential to our national defense and

¹ National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting, supplemental notice of proposed rulemaking, 88 Fed. Reg. 47415 (July 24, 2023).

² National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review proposed rule, 87 Fed. Reg. 1616 (January 11, 2022).

³ Air Advocacy Coalition Comments, May 4, 2022, <https://www.regulations.gov/comment/EPA-HQ-OAR-2020-0430-0138>.

⁴ U.S. Department of Energy Releases 2023 Critical Materials Assessment to Evaluate Supply Chain Security for Clean Energy Technologies, July 31, 2023, <https://www.energy.gov/eere/articles/us-department-energy-releases-2023-critical-materials-assessment-evaluate-supply>.

economic security. As a versatile metal, copper serves as the foundation of modern electrical infrastructure, making it vital for power generation, transmission, and distribution systems. Additionally, copper is an integral component in the production of electric vehicles and in renewable energy technologies like solar panels and wind turbines. The strategic significance of copper lies not only in its pivotal role in our nation's critical infrastructure and energy transition, but also in its potential to drive economic growth and innovation in key sectors.

While the economy and demand for important commodities have grown over the last decade, America's air quality has been steadily improving. Thanks to innovation and investment, as well as concerted efforts of businesses and EPA and its state partners, emissions continue to go down. These reductions have occurred due to investments in new emissions control technologies and solutions such as cleaner energy sources and improved industrial processes.

The supplemental proposal would impose significantly high incremental costs to control additional emissions but would yield no consequential changes in the risk assessment relating to the proposed regulatory action. The costly filterable particulate matter (fPM) emissions control options that EPA considered included either (1) the installation of a wet electrostatic precipitator or (2) the installation of a baghouse on the Freeport-McMoRan Miami Inc. (FMMI) Smelter. If either of these additional emissions control technologies would be required by the agency, their operation would not result in any meaningful reduction in risk as the maximum individual lifetime cancer risk (MIR) would remain the same at 20-in-1 million. Moreover, while the non-cancer hazard quotient (HQ) will decrease from only 2 to 1, as FMMI demonstrated in their comments, this hazard quotient is based on a flawed underlying study and is well below a hazard quotient EPA deemed acceptable in the past.⁵ This lack of improvement in the health risk, even after considering the estimated additional fPM emission reductions that EPA estimates would be attributable due to the proposed emissions controls retrofits, does not justify installing these controls. Considering the Clean Air Act's requirement that an "ample margin of safety" provide a meaningful risk improvement, EPA's risk analysis fails to meet this mandate.

Both emissions control technology options considered in the proposal also fail to meet applicable cost effectiveness thresholds. EPA has in prior NESHAP regulations considered imposing controls up to \$1.3 million/ton metal hazardous air pollutant (HAP) threshold. However, the supplemental proposal would raise this cost effectiveness threshold to \$4.0 million/ton metal HAP. As detailed further in FMMI's comments, EPA underestimated the cost of the emissions control retrofits and overestimated the potential emissions reductions from those controls. EPA's proposal would not just exceed the prior cost effectiveness threshold but would drive the costs several times higher. Under these circumstances, it would be arbitrary and capricious to raise the cost effectiveness threshold, as EPA has not persuasively explained why it should do so here.

In summary, the Chamber urges EPA to reconsider its proposal to aggressively tighten these standards due to the lack of cost effectiveness of the proposed emissions controls and the

⁵ Primary Aluminum Reduction Plants NESHAP, 80 Fed. Reg. 62,390, 62,398 (Oct. 15, 2015) (HQ of 10 acceptable).

lack of meaningful reductions in risk. Thank you for the opportunity to comment on this proposal.

Sincerely,

Chad Whiteman

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