NATIONAL ASSOCIATION OF Manufacturers

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Re: Evaluation of Regulations, Docket ID No. EPA-HQ-OA-2017-0190

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states, submits the following comments in response to the request by the Environmental Protection Agency (EPA) for input on regulations that may be appropriate for repeal, replacement or modification, in accordance with Executive Order 13777, "Enforcing the Regulatory Reform Agenda."

Manufacturers deeply appreciate the opportunity to assist the EPA as it reviews the regulations within its jurisdiction. These comments focus on EPA regulations of concern to manufacturers and recommend ways to improve them. These comments also identify improvements to the process by which the regulations listed were made: too often it has been inflexible, unresponsive to stakeholder input, and wedded to outcomes that seemed predetermined. For the Agency to truly reform the way it regulates, it must look not only at individual regulations but also the whole regulatory system.

Our environmental indicators are steadily improving. Since 1990—a period spanning four different presidential administrations and 14 different Environmental Protection Agency (EPA) Administrators—national pollutant concentrations have dropped dramatically. Carbon monoxide concentrations are down 77 percent; lead 99 percent; nitrogen dioxide 54 percent; ozone 22 percent; coarse particulate matter 39 percent; fine particulate matter 37 percent; and sulfur dioxide 81 percent.[1] The United States has reduced more greenhouse gases (GHGs) over the past decade than any other nation on earth. Manufacturers have done their part as well, reducing our emissions 10 percent over the past decade while increasing our value to the economy by 19 percent.

However, the incremental gains we are achieving are coming at an ever-increasing cost. Federal environmental regulations—many based on statutes that are decades old—are increasingly rigid, costly and harm our global competitiveness. Several recent regulations threaten to set new records for compliance costs, collectively strapping manufacturers with hundreds of billions of dollars in new regulatory burdens per year. We have lost the critical

[1] U.S. EPA, "Our Nation's Air: Status and Trends Through 2015," *available at* https://gispub.epa.gov/air/trendsreport/2016/.

balance in our federal environmental policies between furthering progress and limiting unnecessary economic impacts. The state of our national economy, the manufacturing sector and the environment are considerably different than they were 20, 30 or 40 years ago. However, we are still operating with policies designed to address the environmental challenges of a previous era. It is time to modernize our environmental policies to better reflect and address current issues, technologies and opportunities to ensure a more sustainable future.

Take ozone, for instance. The major improvements to ozone that have occurred over the years have largely come at the expense of two types of sources: electric utilities and manufacturers. We are now at a point in time where those two industrial categories have installed just about every cost-effective technology available to them. The only ozone left to control in many regions come from sources the Clean Air Act makes it difficult to regulate, such as small emitters. Making matters worse, in many areas the NAAQS program has been so effective that concentrations have been reduced to natural background levels. Why, then, must the EPA go back to the same well every five years—electric utilities and manufacturers—when it seeks to implement an ever-tighter ozone NAAQS? This is why EPA continues to see diminishing returns at astronomical costs every time it tightens the ozone standard.

Manufacturers will continue to lead by minimizing environmental footprints, reducing emissions, conserving critical resources, protecting biodiversity, limiting waste and providing safe products and solutions so others in the economy can do the same. However, we need better regulations. We need a regulatory process that is not opaque. We need the EPA to look to manufacturers as partners, not just as regulated entities.

Ultimately, we hope this regulatory review process yields a structure that will drive real, sustained reductions in pollution in a manner that provides more transparency, flexibility and collaboration than has been the case in the past. EPA will always be judged by its ability to keep the trend lines for each pollutant heading in a downward direction. This Administration has a unique opportunity to prove that it can accomplish this goal through an improved regulatory structure. Manufacturers look forward to working with EPA to achieve this goal.

Discussion of Individual Regulations

The NAM's Chairman of the Board directly contacted each of our 14,000 members with the request that they identify regulations that are affecting their companies. The list below is largely a compilation of the information we received in response. In accordance with EPA's instructions, we will also identify which of the EO 13777 criteria the regulation meets, and how the NAM recommends the regulation be addressed.[2]

[2] EO 13777 specifically requested EPA to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;
(ii) Are outdated, unnecessary, or ineffective;
(iii) Impose costs that exceed benefits;
(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
(v) Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility; or
(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

1. National Ambient Air Quality Standards (NAAQS)

Every five years, EPA must decide whether the National Ambient Air Quality Standards (NAAQS) are sufficiently protective of public health. As NAAQS (for particulate matter, ozone, sulfur dioxide, carbon monoxide, lead and nitrogen oxides) have dropped closer to background levels, it is becoming increasingly difficult to pass the test and get an approved permit. Similarly, new technologies needed to meet ever-stringent NAAQS are getting more expensive. Compliance costs for manufacturers are skyrocketing and regulated industries are approaching a permitting gridlock.

The NAM recommends the following actions on NAAQS regulations:

A. National Ambient Air Quality Standards (NAAQS) for Ozone. The 2015 ozone regulation could be one of the most expensive regulations ever issued by the U.S. government. The previous standard of 75 parts per billion (ppb)—the most stringent standard ever—was never even fully implemented, while emissions are as low as they have been in decades and air quality continues to improve. The EPA itself admitted that implementation of the previous standard of 75 ppb, when combined with the dozens of other regulations on the books that will reduce ozone precursor emissions from stationary and mobile sources, will drive ozone reductions below 75 ppb (and close to 70 ppb, the current standard set in 2015) by 2025. The massive costs of a stricter standard are simply not necessary.

- EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; it is ineffective and potentially unnecessary considering ozone concentrations will likely reach 70 ppb in 2025 by simple operation of other laws; and its costs could exceed its benefits.
- NAM Recommendation: The litigation over the 2015 Ozone NAAQS is being held in abeyance as EPA reviews its position on the rule. The NAM does not engage on the scientific side and leaves that decision to the experts at the Agency. However, we do recommend the EPA take whatever measures are available to ease implementation of the 2015 rule. These should include: a reevaluation of how background ozone is calculated; revocation of the 2008 standards once the 2015 standards are effective; the establishment of procedures for states to demonstrate eligibility for relief under Section 179B when emissions from outside the United States cause the state to fall into nonattainment; and changes to the recently-finalized Exceptional Events Rule[3], where EPA elected to prevent states from considering certain events and sources from exceptional events determination.

B. NAAQS Process Changes. The process of setting a new NAAQS can be frustrating for the regulated community, which lacks meaningful input on the formation of new standards before they are proposed. For instance, because new data and analysis often causes EPA to miss the five-year deadline to promulgate a new NAAQS, outside stakeholders are able to force a rushed timeline through a lawsuit or settlement agreement. Doing so creates a risk that EPA will miss key details or make mistakes it would not make if it had more time. Similarly, while the EPA relies on its

[3] 81 Federal Register 68216 (October 3, 2016)

Clean Air Science Advisory Committee (CASAC) for scientific advice on a new NAAQS, it has refused to ask CASAC to opine on economic or energy effects from a new NAAQS, even though Section 109(d) of the Clean Air Act requires it. On the implementation side, the challenges with the ever-tighter NAAQS is exacerbated by a lack of (or inappropriate) emission measurement methods, poor estimates of emissions, use of unrealistic air dispersion models, and several rigid permitting policies.

- EO 13777 Justification: Aspects of the NAAQS-setting process rely in whole or in part on data, information or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.
- NAM Recommendation: The NAM recommends the EPA perform an audit of the NAAQS process and identify improvements that can be made. Some potential changes include: require CASAC to comply with Section 109(d) of the Clean Air Act and "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 NAAQS; provide flexibility to NAAQS nonattainment areas so that offset requirements are tied to reasonable and available reduction opportunities, with consideration to reasonable cost thresholds; EPA should establish a new permitting process and adjust its modeling criteria to be more reflective of actual impacts; and, with the help of Congress, modify the NAAQS review cycle to more closely align with the pace of implementation of existing standards and consider cost and technological feasibility when conducting NAAQS policy assessments and during implementation.

2. Greenhouse Gases

Manufacturers are committed to addressing climate change through improved efficiency, greater sustainability and reductions in GHG emissions. Manufacturers are leading the way, reducing our GHG emissions by 10 percent over the past decade while increasing our value to the economy by 19 percent. Manufacturers of all shapes and sizes are setting GHG targets to 2020, 2025 and beyond—and are often beating them several years early. They are doing this by innovating, taking risks, driving efficiencies, and streamlining their processes, and relying on internal experts who know their businesses best.

The conundrum manufacturers now face is an oncoming series of GHG regulations that appear to take a piecemeal approach to different aspects of their businesses. For instance, a manufacturer may have set a target to reduce its GHG emissions by 20, 30 or even 50 percent through system improvements that are specific to that manufacturer's operations. A heavy-handed regulation that forces this same manufacturer to switch out its boiler in the name of climate change could be fundamentally at odds with that manufacturer's own internal plan (which did not include the boiler). It also could force the manufacturer to divert expenses that would otherwise be used to meet its GHG targets to comply with the new regulation, which would result in less overall GHG reductions.

As the EPA rethinks the regulatory framework to address GHG emissions, it should constructively engage the manufacturing sector to better understand what we are doing, what we have planned for the future, and what measures we have undertaken that are delivering cost-effective results. The Agency should then work with manufacturers to construct a set of flexible policies that set are reasonable and technically achievable, allow credit for early action,

promote an "all of the above" energy strategy that avoids unnecessary retirements of any fuel source that would not happen absent regular market forces, and are cost-effective, attainable and protect American jobs and the economy.

The NAM recommends taking action on the specific GHG regulations:

A. Clean Power Plan. The final Clean Power Plan would fundamentally shift how electricity is generated and consumed in this country, effectively picking winners and losers in terms of both technologies and fuels. The rule also represents an attempt to vastly expand the EPA's traditional authority to regulate specific source categories by setting reduction requirements that reach into the entire electricity supply-and-demand chain. The requirements will be substantial, potentially costing billions of dollars per year to comply. Some studies estimate that compliance with the rule would cost well over $300 billion and cause double-digit electricity price increases for ratepayers in most states. Manufacturers are concerned about these potential costs and reliability challenges as electric power fleets are overhauled in compliance with the regulations. Manufacturers are also keenly aware that the EPA is using this regulation as a model for future direct regulations on other manufacturing sectors—meaning manufacturers could potentially be hit twice by GHG regulations.

- EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; its costs could exceed its benefits; and it derives from a Presidential directive that has been rescinded and substantially modified.
- NAM Recommendation: The President and has already taken strong action to reexamine this regulation, which manufacturers welcomed. The NAM encourages the EPA to replace the Clean Power Plan with a Section 111(d) regulation that better reflects the statute's requirements. In addition, the NAM requests that the EPA delineate what constitutes "significant" endangerment for GHGs, which is a higher threshold than the "cause and contribute" endangerment determination the Agency made for mobile sources under Title II of the Clean Air Act.

B. NSPS for GHG Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units. This rule, a precursor to the Clean Power Plan, set performance standards for GHG emissions under Section 111(b). In its final rule, the EPA inappropriately concluded that carbon capture and sequestration (CCS) was "adequately demonstrated" for utility-scale applications and its utilization is the basis for the mandated standard for all new coal-fired power plants. As a matter of fact, CCS had not been adequately demonstrated at the utility scale—making a standard that requires it for all new coal plants an effective ban on those plants. Manufacturers need access to all energy sources to keep energy affordable and reliable. Even the manufacturers of CCS, who would presumably benefit from a rule like this, filed comments with EPA that CCS was not adequately demonstrated and that mandating it in the rule would chill demand for development of this technology. Finally, a regulation requiring technologies that are not commercially available would set a damaging precedent for future regulation of manufacturers' operations.

- EO 13777 Justification: This regulation could eliminate jobs or inhibit job creation; its costs could exceed its benefits; and it derives from a Presidential directive that has been rescinded and substantially modified.

- NAM Recommendation: Like the Clean Power Plan, the President and has already taken strong action to reexamine this regulation, which manufacturers greatly appreciate. The NAM recommends that EPA issue a new 111(b) rule that bases its standard on a more realistic definition of the Best System of Emissions Reduction (BSER) for GHGs that has been adequately demonstrated. One potential option could be the definition proposed by the NAM-supported Whitfield-Manchin bill in the 113th Congress, which stated that a technology can be BSER once it has been achieved over a one-year period by at least six units located at different commercial power plants in the United States.

C. Fuel Economy and GHG Emissions Standards for Light-Duty Vehicles. The EPA, National Highway Traffic Safety Administration (NHTSA) and the California Air Resources Board (CARB) manage a three-headed regulatory program of fuel economy and GHG regulations on light-duty vehicle manufacturers, using authority under the Clean Air Act, CAFE and California's Zero Emissions Vehicle (ZEV) statute. The current regulatory structure stretches to 2025. While these programs were intended to form "One National Program," in practice manufacturers are forced to comply with a patchwork of requirements. In late 2016, EPA made a highly political decision to rush a mid-term evaluation of the requirements for model year 2022-2025 vehicles, cutting short the technical review and opportunity for stakeholder input.

- EO 13777 Justification: The 2016 midterm determination was insufficiently transparent and relied on outdated data.
- NAM Recommendation: The EPA has returned the midterm review process to its original schedule, and the Administrator will decide whether the standards remain appropriate by April 1, 2018. The NAM supports the Administrator's decision to reevaluate the 2016 midterm determination and looks forward to working with the Agency on this issue. The NAM also recommends that the EPA take steps within its jurisdiction to harmonize its regulations with the other agencies involved.

D. GHG Threshold Rule. The EPA proposed a rule on October 3, 2016, "Revisions to the Prevention of Significant Deterioration and Title V Greenhouse Gas Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions under the PSD Program," (RIN 2060- AS62) (81 FR 68110), more commonly known as the "GHG Threshold Rule." The GHG Threshold Rule was intended to cure defects in the GHG Tailoring Rule identified by the U.S. Supreme Court in *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014). The NAM supported the EPA's proposal to establish a significant emission rate (SER) for GHG emissions under the PSD permitting program based on the conclusion that GHG emissions below this threshold would be *de minimis*; however, we are very concerned with the EPA's decision to set the *de minimis* threshold at 75,000 tons per year (tpy). The rule also did not adequately recognize that sustainable biomass is a valued energy input for manufacturers and a vital part of an "all of the above" energy strategy. The forest products industry, among others, uses forest product manufacturing residuals for energy.

- EO 13777 Justification: This rule as originally proposed would interfere with regulatory reform initiatives and policies, and it derives from Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

- NAM Recommendation: The EPA should establish a *de minimis* GHG threshold above 75,000 tpy, and it should only rely on technologies that are truly commercially available as the basis for establishing a *de minimis* threshold. The NAM further recommends that EPA assess the potential to remove barriers for manufacturers who use sustainable biomass energy, provided it does not advantage one fuel source over another in the competitive marketplace.

3. Other Air Issues

A. New Source Review. U.S. industry and regulators continue to struggle with the complex requirements of the New Source Review (NSR) program. NSR often triggers evaluations that can last for several years when a particular facility attempts to upgrade or install technologies that lead to increased energy efficiency, thus potentially undermining the achievement of appropriate air quality and environmental policy goals. Such obstacles undercut improved air quality by delaying the installation of more efficient technology.

- EO 13777 Justification: NSR as it currently operates is ineffective, and it creates a serious inconsistency with other potential regulatory reform efforts that may be underway.
- NAM Recommendation**:** The NAM supports ways to streamline and reform NSR requirements, including the development of practical routine repair, replacement and maintenance exemption provisions.

B. Air Permitting. Several EPA policies and statutory interpretations have unnecessarily limited flexibility in permitting, making construction of new facilities exceedingly difficult. These include the treatment of emissions during startup, shutdown and malfunction (SSM) events, better and more timely guidance to states when a federal standard changes, the inappropriate aggregation of minor sources under the Clean Air Act, the "once in, always in" treatment of facilities for MACT and NSPS rules, and the overly conservative and unrealistic assumptions used in modelling by the agency for permitting decisions.

- EO 13777 Justification: Air permitting as it currently functions is partially ineffective, and creates inconsistencies with other potential regulatory reform efforts that may be underway.
- NAM Recommendation: The EPA should consider withdrawing the SSM SIP call and not act on any of the recent SIPs that have been submitted until it makes lasting changes to the treatment of SSM events. It should take a more practical view than the last Administration with respect to aggregation. It should perform a comprehensive review of its air models to remove any biases.

C. Risk Management Plan Rule Amendments (RMP Rule). Issued in late 2016, the RMP Rule imposes new disclosure requirements on more than 10,000 facilities, potentially exposing sensitive business and security data. Additionally, the rule opens the door to frivolous lawsuits and requirements that are intended to dictate manufacturers' formulas and processes. This is an unnecessary regulation—one that would not actually have prevented the fertilizer plant explosion in West, Texas that gave rise to the RMP Rule—and will cost manufacturers of all sizes and in many industries valuable time and substantial resources to comply.

- EO 13777 Justification: The RMP Rule imposes costs that exceed benefits and could inhibit job creation. It is also unnecessary and duplicative of other agencies' programs.
- NAM Recommendation: The NAM recommends the EPA undergo a new rulemaking to reconsider the RMP Rule, and make changes to protect sensitive business and security data and limit additional burdens.

D. Regional Haze. States have been working to implement the Regional Haze (RH) program under the Clean Air Act based on EPA guidance to improve visibility, especially in National Parks. The statute gives states the primary role for implementing air quality programs, including for regional haze. Recently, ENGOs have sued EPA for failing to act on state RH proposals. As a result, EPA is now second-guessing state judgments in Texas, Oklahoma and Arkansas by issuing Federal Implementation Plans (FIPs) that could result in billions of additional expenses for an imperceptible visibility improvement.

- EO 13777 Justification: Recent Regional Haze regulations impose costs that exceed benefits, eliminate jobs or inhibit job creation, and create inconsistencies or otherwise interfere with regulatory reform initiatives and policies.
- NAM Recommendation: EPA should leave states to implement the Regional Haze program (RIN 2060-AS55) unless there are egregious oversights by states. Recent EPA amendments to the program have made it even more cumbersome.

E. Boiler MACT. The U.S. Court of Appeals for the District of Columbia has directed EPA to revise certain standards of the Boiler MACT rule to account for additional "best performing" boilers while upholding the core framework and methodology of the rule. It is time for EPA to conclude this 20-year rulemaking and provide regulatory certainty to manufacturers.

- EO 13777 Justification: Failure to complete the Boiler MACT could interfere with regulatory reform initiatives and policies.
- NAM Recommendation: Within the next six months, EPA should propose revisions to the Boiler MACT emission limits that are cost-effective and meet the court obligations.

F. Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel, Tier 4. In June 2004, the EPA published its final rule on emission standards for nonroad diesel engines, with the goal of reducing emissions from these sources by more than 90 percent. In June 2013, the EPA issued a direct final rule (78 Fed. Reg. 36370) to assist in the transitioning to Tier 4 standards, but withdrew provisions of the rule due to adverse public comment. The updated final rule (79 Fed. Reg. 7077) was published in February 2014. The rule's aggressive compliance timelines have been very difficult to meet, and are causing manufacturers to divert much-needed research and development (R&D) resources toward developing compliance technologies to meet the new Tier 4 standard. In industries such as farm and construction equipment, where manufacturers must continually develop new products for ever-changing customer needs, any decrease in R&D spending is potentially very damaging. Complicating this situation is the U.S. requirement to recertify engines and vehicles each and every year, even if there is no change to the engine nor change in the standards. This is called Model Year certification. Almost every other major market in the world (EU, China, Brazil, India) requires certification once to the standard, known as Type Approval.

- EO 13777 Justification: Tier 4 is inhibiting job creation and imposing costs that exceed benefits for some manufacturers.
- NAM Recommendation: EPA should explore improvements to the Tier 4 rule and work with manufacturers to identify ways to ease the burden of compliance.

G. National Emissions Standards for Hazardous Air Pollutants. National standards establishing limits on hazardous air pollutants are important and supported by manufacturers. However, some of the standards, residual risk and technology reviews (RTRs) and other policies adopted in recent years have exceeded congressional authority and implemented requirements that provide unnecessary regulation burdens. For example, the NESHAP 6X regulations requires ongoing, indefinite, quarterly visual emissions monitoring for welding operations and for abrasive blasting operations, even after months or years of "zero visible emissions" have been recorded. For one manufacturer, this means having a dedicated employee climb on the roof of eight different manufacturing plants at the required interval (daily/weekly/monthly/quarterly) to do multiple 15-minute observations on each roof, and perform visual emissions of the on-site sandblasting booth at the required interval, only to document that zero visible emissions occurred at every observed location during every monitoring event. Since 2011, this manufacturer has made over 700 visual observations consuming over 1,000 man-hours to comply with this regulation, despite having not once observed a "visible emission" at any of the plants. Additional concerns have been raised by manufacturers with regards to the EPA's Brick MACT, Reciprocating Internal Combustion Engines (RICE) MACT and Plywood and Composite Wood Product MACT, among other industry-specific MACT regulations.

- EO 13777 Justification: Various NESHAP regulations are inhibiting job creation, imposing costs that exceed benefits, and rely on data that was not publicly available or is insufficiently transparent.
- NAM Recommendation: EPA should take immediate action to correct the NESHAP 6X, possibly limiting the number of inspections needed after a site demonstrates a consistent record of zero visible emissions. The other MACT standards will need time to untangle, and the NAM recommends EPA work with the regulated entities subject to each MACT to resolve unnecessary burdens. At a minimum, EPA must base any NESHAP regulations on sound scientific data that clearly demonstrate a need to protect public health and consideration of welfare, energy and economic impacts. The EPA's inability to meet arbitrary deadlines should not trigger automatic regulation.

H. Co-location. Manufacturers struggle with the co-location provision for determining major source status for the various source categories identified in the NESHAP program. This imposes a competitive disadvantage for area sources that happen to be located at major sources compared to the competition, which may have located their area sources as stand-alone operations, which would not have to comply with a corresponding major source rule. As currently interpreted, the Agency must expend major source compliance demonstration resources on sources emitting only area source quantities of HAPs. True area source operations do not emit HAPs at higher rates or have higher impacts because they are located at a distinctly different major source. Major source determinations should be based solely on emissions from each source category operation at a facility site, not by location or siting decisions made decades before these regulations were even put into place.

- EO 13777 Justification: This regulation is unnecessary and ineffective; it creates a serious inconsistency and otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: A potential solution is for EPA to require area sources to comply with area source MACT rules, rather than a major source rule. The EPA could also remove the co-location provision altogether.

I. Testing and Diagnostics Requirements for Heavy-Duty On Road Engines. EPA and California require manufacturers of engines for heavy duty trucks to equip their engines with complex and costly software and emissions sensor systems, and undergo a variety of emissions testing. There are several requirements that are becoming increasingly costly, while less expensive, more efficient alternatives are available.

- EO 13777 Justification: The costs of this regulation potentially exceed its benefits.
- NAM Recommendation: The EPA should initiate a process to streamline these requirements and eliminate those that are duplicative and unnecessary.

4. Water Issues

The Federal Water Pollution Control Act, as amended by the Clean Water Act (CWA), established the objective to restore and maintain the quality of the nation's waters. Through limitations on wastewater discharges, water quality in the U.S. has significantly improved. Manufacturers have made major contributions to this national effort and will continue to support this objective. Both federal and state entities should be encouraged to publicly acknowledge these significant improvements and recognize the need to more carefully consider the cost and benefit of all future efforts to improve water quality.

The principle of cooperative federalism is the foundation on which the CWA is built. Congress purposefully allocated varying levels of regulatory and enforcement responsibility to the states, in recognition of the states' historic role as the established guardians of local lands and waters and the geographic, climatic and habitat differences between states that must be taken into account in environmental regulation. The NAM supports this principle and continued federal-state partnerships as an effective means of implementing the goals of the CWA and opposes attempts to further federalize water quality regulations.

The NAM recommends the EPA take action on the following water regulations:

A. Definition of "Waters of the United States." On May 27, 2015, the EPA and Army Corps of Engineers finalized a rule to greatly expand federal jurisdiction under the CWA well beyond traditional navigable waters to cover ephemeral tributaries, flood plains, adjacent features and vaguely-defined "other waters." The rule gives federal agencies direct authority over land-use decisions that Congress had intentionally reserved to the states. Its vague definitions subjects countless ordinary commercial, industrial and even recreational and residential activities to new layers of federal requirements under the CWA. For manufacturers, the uncertainty over whether a pond, ditch or other low-lying area near their property is now subject to federal CWA permitting requirements can introduce new upfront costs, project delays and threats of litigation.

- EO 13777 Justification: This regulation is unnecessary and ineffective; it creates a serious inconsistency and otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: As directed by EO 13778, the NAM fully supports a rulemaking to rescind the old rule. Additionally, manufacturers deserve clarity and recommend EPA propose a new rule that clearly limits federal jurisdiction to the text of the statute and Constitution.

B. Best Available Technology (BAT) Economically Achievable. The CWA was designed to be implemented in a manner that protects human health and the environment while avoiding costly treatments and other restrictions on industrial discharges that result in little, if any, additional benefit to the quality of U.S. waters. EPA should clarify that BAT limitations should be required only where there is a significant toxics problem.

- EO 13777 Justification: This program creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies.
- NAM Recommendation: The NAM recommends that the EPA should clearly define "significant toxics problem" as situations where present limitations are not protecting receiving waters and where further abatement of toxics would have a measurable, positive effect on receiving waters. Situations where a pollutant is present in the effluent solely as a result of its presence in intake waters should not be considered a significant toxics problem. Additional requirements for non-conventional pollutants should not be applied unless required to meet water quality standards. EPA should promulgate guidance and rulemaking where appropriate to prevent imposing costs that exceed benefits or require non-responsible parties to shoulder an unfair burden.

C. Selenium Criteria. EPA continues to develop more stringent selenium criteria to use as the basis for state water quality standards and federal effluent limit guidelines. However, there are currently no proven treatment technologies for selenium and the ones that are being proposed are not cost effective.

- EO 13777 Justification: This regulation imposes costs that exceed benefits, and requires technologies too expensive to be effective.
- NAM Recommendation: EPA should not implement more stringent criteria for selenium independent of the development of cost effective and proven technologies. Absent the availability of commercially demonstrated technologies, the criteria are ineffective and impose costs that exceed benefits.

D. Stormwater Management. Most manufacturers operate under multi-sector general permits and must implement best management practices (BMPs) to meet stormwater benchmark concentration levels. If a benchmark level is exceeded, facilities must review their BMPs and determine if additional BMPs must be implemented of if other corrective measures are needed. However, many of the benchmark concentration levels have been set so low that it may not be possible for all operations to meet the benchmarks. In fact, many are so low that nearly all residential and commercial stormwater discharges would exceed them. As a result, many manufacturers could face unnecessary enforcement issues, even though their stormwater discharges are effectively controlled with BMPs.

- EO 13777 Justification: This regulation imposes costs that exceed benefits, creates serious inconsistencies, and is not effective.

- NAM Recommendation: The NAM recommends EPA promulgate guidance or rules as appropriate that adopt a flexible approach to establishing and enforcing permit levels based upon technology and process-specific limitations instead of abstract benchmarks. This will ensure the costs do not exceed benefits and that unnecessary burdens are not placed on manufacturers for no appreciable environmental benefit.

E. Spill Prevention, Control and Countermeasure Plans (SPCC). When lined surface impoundments are used to hold treated produced water until the water is reused for a company's subsequent operations in the immediate area, there is confusion as to whether the impoundments should be included in SPCC plans. In 2008, the Bush administration exempted produced water containers from SPCC plans. However in 2009, the Obama EPA indicated that even 1 mg/L can be harmful. EPA's guidance (in form of preamble language and guidance documents) suggests that treated produced water must be included in SPCC plans and that the capacity of the produced water container is to be treated as oil for purposes of the regulation unless there is "no oil." EPA has suggested that there is no amount of treatment that would satisfy EPA that a produced water container is not oil. This uncertainty and lack of clear guidance creates an ineffective control mechanism and often imposes costs that exceed benefits.

- EO 13777 Justification: This regulation imposes costs that exceed benefits and is ineffective.
- NAM Recommendation: The NAM recommends EPA establish an analytical method and detection limit so that if the concentration of oil is below, then the impoundment would not be subject to the SPCC plan requirements.

F. Ballast Water. The current set of state rules for ballast water creates a patchwork of standards that increase the cost and complexity of complying with the rules. Different jurisdictions have different ballast water treatment standards and different recordkeeping and reporting requirements. This system lacks transparency, consistency, and predictability in the formation and enforcement of scientific standards, thereby creating confusion, imposing additional costs and inhibiting job growth.

- EO 13777 Justification: The patchwork of state standards creates a serious inconsistency that could interfere with regulatory reform initiatives and policies.
- NAM Recommendation: The NAM recommends that EPA adopt a nationwide standard for ballast water discharges.

G. Water Quality Criteria. Manufacturers support the development of water quality criteria based on a probabilistic risk assessment approach. These criteria serve as recommendations that state and tribal governments may use directly or as guidance in developing their own water quality criteria. The EPA should comply with its existing regulations that provide states with the flexibility to depart from national criteria as long as the state criteria are scientifically sound or based on site-specific conditions, and with existing guidance that provides states discretion to establish acceptable risk levels. Its development of water quality criteria has not always been consistent.

- EO 13777 Justification: Water quality criteria regulations have been inconsistent.
- NAM Recommendation: EPA should promulgate guidance or rulemaking as appropriate to ensure the adoption of a risk-based approach to the regulation of effluent discharges. As part of the development of Total Maximum Daily Loads

(TMDLs), EPA should provide guidance that states should assess the technical feasibility and economic practicability of attaining the designated water quality standard based on the social and economic impacts of the costs of compliance. This includes use attainability analyses and the possible modification of a water's designated uses. TMDL allocations should be developed for individual pollutants only where appropriate. EPA should encourage the use of alternative approaches to achieve compliance with applicable water quality standards and reinforce that states can continue to make progress towards nutrient related water quality improvements in a way that does not have to include numeric nutrient criteria.

H. National Pollutant Discharge Elimination System (NPDES) Permits. Pipelines require a NPDES permit to discharge hydrostatic test water to waters of the U.S. after using the water to test even new pipelines. Some EPA regions have been slow to issue general NPDES permits that could authorize the discharge of hydrostatic test water following submittal of a Notice of Intent to be covered by the terms of the general NPDES permit. Yet, other EPA regions have issued such general permits. As a result, companies must undertake the time and expense of preparing an application for each location where a discharge is expected to occur and wait until EPA reviews and issues individual NPDES permits. If the location of the discharge moves beyond a short distance, the company has to file an application to amend and wait for the amended NPDES permit to be issued. Issuance typically takes a few to several months.

- EO 13777 Justification: NPDES permits have been inconsistent and ineffective.
- NAM Recommendation: The EPA should streamline this process by ensure all regions utilize general permits to the maximum extent practicable.

I. Safe Drinking Water Act Study. EPA, along with several other federal agencies and numerous state agencies, is evaluating the potential for linkages between produced water disposal and seismicity. This issue continues to draw attention and may lead to additional regulatory initiatives under the SDWA. Most action, currently, is taking place at the state regulatory level.

- EO 13777 Justification: This study could create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.
- NAM Recommendation: The EPA should work more closely with states that exercise primacy over related SDWA programs and find ways to support state efforts.

5. Waste Issues

Waste products are generated by all segments of society, including industrial facilities, commercial establishments, residences and federal, state and local government agencies. To help ensure environmental protection and public health, the NAM supports a comprehensive, efficient and effective hazardous and non-hazardous waste management regulatory system that includes an accessible and affordable infrastructure. These systems should be implemented in ways that ensure effective environmental protection, but minimize complexity and administrative burden. Manufacturers support minimizing natural resource and environmental impacts by increasing efficiencies and conservation to optimize raw material input and to reduce waste output.

The EPA has developed a comprehensive regulatory program for the management of hazardous and non-hazardous wastes pursuant to the Resource Conservation and Recovery Act (RCRA). In addition, the NAM supports significant voluntary industrial waste minimization initiatives that minimize volume, reduce toxicity and encourage recycle, reuse and reclaim processes to minimize waste. It is imperative that the distinction between hazardous and non-hazardous waste, as well as the distinction between waste and non-waste, is clarified. The NAM recommends that EPA tailor regulations to address the different types of waste appropriately. Responsible management of hazardous and non-hazardous waste demands that government, the public and industry cooperate in assessing and managing risk and ensuring regulations support various waste activities accordingly.

The NAM recognizes the primary rights and responsibilities of states regarding land use decisions. The EPA should encourage and support states in their efforts to locate private and public waste management facilities properly within their own jurisdictions. Economic development is dependent on adequate and properly safeguarded waste management facilities, including incineration, landfills and other treatment, storage, disposal facilities. Private ownership and operation of such facilities is desirable. State responsibility for providing adequate waste disposal and treatment capacity is also recognized by federal law. Sanctions requiring states to meet this duty to public health and the environment are appropriate and should be vigorously enforced.

The NAM recommends the EPA take action on the following waste regulations:

A. **Proposed CERCLA 108(b) Rule.** This proposed rule, written under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), could require billions of dollars of additional financial assurances for miners of things like gold, silver, iron and copper—critical materials for countless manufactured products. This would represent billions of dollars that cannot be used for research and development, investing in new processes and projects, or used to spur economic growth and create new jobs. According to the EPA, this will be just the first of several policies potentially tying up huge amounts of capital for chemical manufacturers, the petroleum industry and electric utilities. EPA's obligation under the consent decree spurring the 108(b) rule is to make a final determination, not to issue any specific form of final rule. It is under no obligation to finalize the rule as proposed, and a decision to finalize a no-action rule would be a logical outgrowth of the proposal.

- EO 13777 Justification: the regulation imposes costs that exceed benefits.
- NAM Recommendation: Before EPA moves forward with any 108(b) rules, the agency should undertake a rulemaking to establish a framework for identifying and classifying industry sectors based upon prospective risk-assessments based on current best practices. Financial assurance under section 108(b) should only be required where the degree and duration of the risk associated with hazardous substances at particular types of facilities justifies it, and should not be required where other financial assurance mechanisms are already in place.

B. **RCRA** Where a waste is inappropriately classified as hazardous, regulations unnecessarily discourage reuse, recycling and reclamation, and create other barriers for manufacturers. Manufacturers have found that some RCRA regulations implement duplicative requirements.

- EO 13777 Justification: Some RCRA regulations are ineffective.

- NAM Recommendation: EPA should consider reviewing several of its RCRA Subtitle C determinations to ensure that the classification is appropriate for that category of waste. Additionally, the NAM recommends EPA review existing and proposed policies that may unnecessarily implement duplicative requirements for products and wastes that are already being regulated by other agencies or statutes—there is currently a pending rule for the pharmaceuticals industry that should be reviewed, for example.

C. CERCLA/Superfund. NAM members have a substantial interest and concern regarding the requirements and operations of the Superfund program. While the NAM supports Superfund's goal of protecting human health and the environment, the Superfund program can at times require an extraordinary investment of resources to obtain limited environmental benefits. Private sector spending on superfund also uses funds that could be invested in people, plants and equipment. The current regulatory requirements under CERCLA do not allow contaminated properties to be resolved in an efficient manner. Despite completing the remediation activities, the property owners are often unable to get clearance from the regulatory agencies in a timely manner to sell or develop their properties. While legislative reform is needed, EPA can make meaningful progress under existing law to speed safe, effective remediation.

- EO 13777 Justification: Some CERCLA policies are outdated and in need of reform.
- NAM Recommendation: The EPA should interpret regulatory requirements under the Superfund program in a manner that would speed the remediation of these sites in a timely manner while reducing costs and ensuring the necessary environmental protections. The Administrator should move final remediation decisions from EPA regional offices to EPA headquarters to promote consistency as well as consistently apply cleanup criteria. Remedy selection should be based on sound science and acceptable risk based assessments. EPA should eliminate the current practice of re-allocating cleanup costs to the lone surviving company (or companies) when one or more responsible party files for bankruptcy or refuses to participate after cost allocation decisions have been made commensurate with each party's level of contribution to the site's contamination.

6. Chemical Issues

Manufacturers are committed to manufacturing safe, innovative and sustainable products that provide essential benefits to consumers while protecting human health and the environment. Since the Toxic Substances Control Act (TSCA) was first enacted in 1976, manufacturers have revolutionized the way we make and use chemicals, yet the failed to keep up with those changes. State laws enacted to fill the void resulted in a patchwork of confusing, often contradictory, regulations for manufacturers and consumers to navigate.

After years of uncertainty and nearly a decade of drawn-out work and debate in Congress, the passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA) marked a much-needed overhaul of our nation's chemical laws. Manufacturers have long advocated for these risk-based reforms. Chemicals are the building blocks for lifesaving products, the newest technologies and everyday products that make life better. By delivering clear, modernized rules, the LSCA reforms will make it easier for manufacturers to ensure the

safety of our products and deliver quality goods to our customers. EPA must rely on the best available scientific information regarding hazard and exposure, employ consistent and objective methods and models, utilize transparent procedures for evaluating data quality and be uninfluenced by policy. If done right, the regulations on chemicals will be clearer and more straightforward, meaning time and resources that would have been spent trying to navigate outdated, confusing rules can now be spent on driving innovation.

The regulation of chemicals should be administered in a manner that protects health and the environment while avoiding unnecessary adverse economic impacts. The ability to systematically and effectively identify hazards, assess risks and manage those risks is critical to successful industrial activity. Those processes include the application of scientifically sound hazard identification and prioritization, objective, credible risk assessment, benefit-cost analysis, flexible, efficient and cost-effective risk management, and adequate opportunity for meaningful public participation in the risk assessment process.

The NAM recommends the EPA take action on the following chemical regulations:

A. <u>Proposed Procedures for Prioritization of Chemicals for Risk Evaluation.</u> The NAM recommends the EPA move forward with a final rule, but recommends modifications.

- <u>EO 13777 Justification</u>: Unless the following modifications are made, the LCSA could be ineffective.
- <u>NAM Recommendation</u>: The EPA should ensure that prioritization under TSCA is based on a clearly articulated weight of evidence approach that relies on the best available science. Chemicals posing the greatest demonstrated risk should be targeted through predictable prioritization of chemicals active in commerce. Risk to sensitive subpopulations, such as children, should be considered in this process. Tiered and targeted testing should be conducted if necessary information is lacking, and a risk-based process should be used to assess if a chemical is safe for its intended uses. Regulation and prioritization should consider the degree of hazard and reasonable exposure potential associated with intended uses; provide reasonable timeframes for compliance; and ensure transparency, clarity and stakeholder participation. To this end, the agency should provide more clarity to the prioritization process by including definitions of key terms, updating related agency guidance, and ensuring that the rigorous standards required by Section 26 of LCSA are closely followed. This requires a heightened level of transparency to demonstrate compliance with the letter and spirit of the critical reforms. As EPA sorts through chemicals active in commerce, a transparent process that avoids bias, focuses on the substances demonstrating the greatest risk, and seeks to quickly expand the identification of low priority substances will ensure that the reforms are successful. Such a process should be clearly required under the final rule

B. <u>Proposed Procedures for Chemical Risk Evaluation.</u> In finalizing this rule, the Agency should provide an approach for implementing risk evaluations that goes beyond the existing EPA guidance to explain how the agency would meet the science requirements and implement the new elements outlined in LCSA. As currently written, the proposal falls short of providing meaningful insight into the process that EPA will use in the future.

- <u>EO 13777 Justification</u>: Unless the following modifications are made, the LCSA could be ineffective.

- NAM Recommendation: The EPA should provide more clarity to the risk assessment process by including definitions of key terms, updating related agency guidance, and ensuring that the rigorous scientific standards required by Section 26 of LSCA are closely followed. This requires a heightened level of transparency to demonstrate compliance with the letter and spirit of the critical reforms. Sufficient time must also be allowed to ensure an opportunity for meaningful stakeholder engagement; a minimum of 60 days must be given for comment on scoping and a minimum of 90 days for comment on draft risk evaluations. As EPA assesses priority substances active in commerce, a transparent process that avoids bias and focuses on conditions of use demonstrating the greatest risk will help EPA better steward limited resources and maximize efficiency. Risk evaluations must consider controls already in place to control or mitigate risks related to environmental and health exposures including regulations under other statutes, regulations, and industry standards. Section 2608 of LCSA requires that EPA consider whether risks can be prevented or reduced under other laws such as the Occupational Safety & Health Act, the Clean Air Act, the Clear Water Act, and the Consumer Product Safety Improvement Act before taking risk management action under LCSA. When risk-management actions are warranted, EPA must only "impose the least burdens of duplicative requirements." The EPA should also require measures in the final rule to avoid unnecessary efforts to evaluate risks of exposures that are already controlled under other statutes or regulations.

C. Proposed TSCA Inventory Notification (Active-Inactive) Requirements. In the proposal, EPA lays out two purposes: First, to refresh the TSCA Inventory to distinguish between active or inactive chemicals in commerce. This will enable EPA to focus on the chemicals that are active in commerce and can then be prioritized for risk evaluation. This reset is a critical first step, as it will help EPA better steward limited resources and maximize efficiency. Second, EPA sets out to ensure that confidential business information (CBI) claims for chemicals on the confidential portion of the Inventory are current. However, substantiation of CBI claims should remain in a separate process, as EPA proposes.

- EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
- NAM Recommendation: In finalizing the rule, EPA should not require reporting of information not needed to achieve the overall purpose of the inventory reset, which is to identify substances as either active or inactive. Requiring the regulated community to report unnecessary information is burdensome, and in some cases, redundant. Consequently, substances whose identities were claimed as confidential on the 2016 chemical data reporting (CDR) rule should be included on the interim active confidential inventory by EPA without an additional reporting burden. The NAM recommends that the language clarifying "activities for which notification is not required" should include all substances that are exempt from and all substances not currently subject to pre-manufacture notification requirements. Further, the Agency must allow for a correction process for manufacturers and importers up until the time that the active inventory is finalized.

D. Chemical Data Reporting Rule. The NAM supports chemical reporting requirements that reduce complexity and ensure that reporting occurs at the point of raw materials import in order to coordinate efforts and make global supply chains

more transparent. Under current EPA interpretation of TSCA Chemical Data Reporting (CDR) rule, most inorganic manufacturing byproducts sent for recycling are treated as new chemicals and therefore are subject to extensive reporting requirements. Inorganic byproducts present a relatively low risk of environmental harm; reporting duplicates other EPA reporting requirements under RCRA and the Toxic Release Inventory (TRI) and discourages recycling. Under LCSA passed last year, EPA is required to conduct a negotiated rulemaking and propose a regulation to reduce the reporting burden for byproducts sent for recycling.

- EO 13777 Justification: Unless the following modifications are made, the LCSA could be ineffective.
- NAM Recommendation: The NAM recommends the EPA provide ample time and resources to encourage robust stakeholder engagement in the negotiation and subsequent speedy proposal of a rule.

E. Worker Protection Rule. On November 2, 2015, EPA revised the Worker Protection Rule (WPS) to implement stronger protections for agricultural workers, handlers and their families. The previous WPS regulations were sufficient and the new rules only add extra burdens and costs to businesses. For example, the new WPS rules require that there be a 100-ft zone around pesticide application equipment in which no one but the applicator can be present. This is a *de facto* "buffer zone" which directly conflicts with existing pesticide labels, in which there are already these protective zones, newly implemented, and are workable for crop growers. When fully implemented, the new WPS could reduce a grower's ability to effectively treat all of the grower's crop production land; i.e., in some areas, a significant portion of the available land will not be able to receive pest control practices and these areas will be less productive and less able to compete with foreign crop producers who are not held the old WPS, let alone the new WPS rules.

- EO 13777 Justification: The 2015 WPS is partially ineffective and must be corrected.
- NAM Recommendation: The NAM recommends EPA eliminate the duplicative and confusing WPS and a return to the previous WPS that were in effect prior to November 2015.

F. Perchlorate. For several years, numerous stakeholders representing manufacturers, water interests, agriculture interests, and members of Congress have engaged in good faith efforts through a variety of public and regulatory venues to work with EPA on this matter, and ensure regulations are based on the best available science. Regrettably, despite these repeated efforts, the EPA's actions have continued to heighten rather than alleviate concerns about the agency's scientific approach to perchlorate. In particular, the agency is relying on outdated occurrence data, its models were highly criticized by peer reviewers, and the decision-making process has lacked transparency throughout.

- EO 13777 Justification: Among other things, the perchlorate regulatory structure relies on data, information and methods that are not publicly available and are insufficiently transparent to meet the standard of reproducibility.
- NAM Recommendation: The EPA must do a better job of subjecting the scientific and occurrence data underlying its perchlorate decisions to peer review, and must be more transparent, adhere to reasonable timelines, and be based on the best available science.

G. **Lead Repair, Renovation and Painting Rule.** EPA issued new requirements on firms performing renovation, repair and painting projects in homes built before 1978. In doing so, the EPA ignored many of industry's concerns and rushed to finalize a rule before a reliable lead testing apparatus was available, among other problems. NAM members are complying with this rule but continue to struggle with it.
   - EO 13777 Justification: This regulation created inconsistencies that have not entirely been corrected.
   - NAM Recommendation: Manufacturers strongly support lead paint protections and recommend only that the EPA perform a retrospective review of the rule and, if justified, make changes to make the rule more effective and ensure costs imposed do not exceed benefits.

H. **Pre-Manufacturing Notifications (PMNs).** EPA policy shifted without notice, requiring PMNs for any new chemical substance that is persistent, bioaccumulative and toxic (PBT). Many manufacturers may have a substance used as a precursor to a product that is used in very small volume and reacted to become the new product, which is not a PBT. However, EPA is now requiring the filing of a PMN. This is a change in policy without any formal public hearing and goes far above and beyond what other countries require for low volume raw materials. Some manufacturers could consider moving to Canada or Europe, where limited notifications are required for low volumes (<1000 kg), particularly raw materials.
   - EO 13777 Justification: EPA's PMN policy creates serious inconsistencies and otherwise interferes with regulatory reform initiatives and policies.
   - NAM Recommendation: The NAM recommends EPA reverse this change in policy until it undertakes a transparent rulemaking process with adequate stakeholder engagement.

I. **Vapor Intrusion Guidance.** EPA Region 9 issued guidance on Vapor Intrusion as applied to federal Superfund sites in the states and territories covered by that regional office. Although the Guidance was not promulgated as a regulation through notice-and-comment procedures, it is being implemented similarly to a regulation. The NAM's California affiliate, the California Manufacturers & Technology Association, estimate the costs of remediation at commercial buildings just at Silicon Valley Superfund sites are expected to increase by $48 million and the costs of remediation at residential buildings are expected to increase by over $100 million. CMTA further estimates that if the Vapor Intrusion Guidance were implemented nationwide, the aggregate additional costs could be upwards of 100 times greater than the costs at the nine Silicon Valley Superfund sites. In addition, the key study used by EPA Region 9 to justify the Vapor Intrusion Guidance may not be reproducible.
   - EO 13777 Justification: The Vapor Intrusion Guidance imposes costs significantly in excess of benefits and is based on data that is not reproducible.
   - NAM Recommendation: EPA should withdraw the Region 9 Vapor Intrusion Guidance (and that of any other regions) and should consider instead referring the matter to the National Academy of Sciences for further guidance.

7. General Regulatory Issues

In addition to the following general issues, the NAM recommends revising the terms and conditions in the U.S. EPA's standard Administrative Orders which would provide for fair dispute

resolution opportunities, more flexible and efficient settlement and remediation options, and improved, science based methodologies for determining environmental harm and associated penalties.

A. **Consent Decree Termination.** The EPA has not prioritized the termination of consent decrees by processing the termination paperwork. EPA cannot demonstrate an effective enforcement division without showing that consent decrees terminate once companies show substantial compliance.
   - EO 13777 Justification: Current practice is ineffective.
   - NAM Recommendation: EPA should prioritize the process for consent decree terminations so companies do not have to conduct unnecessary monitoring and reporting requirements.

B. **The Process of Evaluating Science.** A common complaint among manufacturers in recent years has been a process at the EPA for evaluating science that is not transparent and minimizes third-party stakeholder input. We routinely hear complaints of this nature across the spectrum of EPA programs, from air and water to chemicals and pesticides.
   - EO 13777 Justification: EPA's process often relies on data, information and methods that are not publicly available and are insufficiently transparent to meet the standard of reproducibility.
   - NAM Recommendation: The NAM recommends the EPA take a hard, honest look at how the agency evaluates science and propose reforms to improve transparency and better involve the public.

Thank you for the opportunity to provide these comments in support of the EPA's Regulatory Reform Agenda. Please do not hesitate to contact me if the NAM can be of further assistance.

Sincerely,

Ross Eisenberg
Vice President
Energy and Resources Policy