COMMENTS ON EPA'S PROPOSED REVISIONS TO THE AIR EMISSIONS REPORTING REQUIREMENTS (AERR)

88 Fed. Reg. 54118

(August 9, 2023)

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TABLE OF CONTENTS

1. INTRODUCTION

The Alliance for Chemical Distribution (ACD), the Aluminum Association, American Chemistry Council (ACC), American Coke and Coal Chemicals Institute (ACCCI), American Composites Manufacturers Association (ACMA), American Forest & Paper Association (AF&PA), American Fuel & Petrochemical Manufacturers (AFPM), American Petroleum Institute (API), American Public Power Association (APPA), American Road & Transportation Builders Association (ARTBA), American Wood Council (AWC), Corn Refiners Association (CRA), Essential Minerals Association (EMA), The Fertilizer Institute (TFI), International Liquid Terminals Association (ILTA), Interstate Natural Gas Association of America (INGAA), National Asphalt Pavement Association (NAPA), National Lime Association (NLA), National Mining Association (NMA), National Oilseed Processors Association (NOPA), National Stone, Sand, & Gravel Association (NSSGA), the Petroleum Alliance of Oklahoma (PAO), Portland Cement Association (PCA), PRINTING United Alliance, U.S. Chamber of Commerce (Chamber), and The Vinyl Institute (VI) (collectively the Associations) submit these comments on the proposed revisions to the Air Emissions Reporting Requirements (AERR) (88 Fed. Reg. 54118, August 9, 2023). Each association and its members are directly impacted by the proposed revisions.

ACD supports and champions the chemical distribution experts the world depends on to safely, reliably, responsibly, and sustainably move the chemical products essential to our daily lives. As leaders in the $27 billion chemical distribution industry, ACD member companies commit to the highest standards in quality, safety, sustainability, and performance through ACD Responsible Distribution™. They provide critical chemical products used in medicine and health care, food and agriculture, clean water and sanitation, energy production, electronics, communication, and more to over 750,000 end users. ACD member companies have extensive expertise, commitment to safety and sustainability, and access to a deep well of resources needed to ensure chemicals are moved safely and responsibly when and where they are needed.

The Aluminum Association is the voice of the aluminum industry in the United States, representing aluminum producing companies and their employees that span the entire aluminum value chain from primary production to value-added products to recycling, as well as suppliers to the industry. The Association is charged with developing global standards, business intelligence, sustainability research, policy positions, and industry expertise for its member companies, policymakers, and

the public. Altogether, Association member companies produce over 70 percent of the aluminum and aluminum products shipped in North America. The U.S. aluminum industry across the value chain directly employs more than 164,000 union and non-union workers and indirectly supports an additional 470,000 workers. Through its activity, the economic impact of the U.S. aluminum industry adds $176 billion to the economy annually.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing.

ACCCI was formed in 1944 by companies interested in establishing a forum to discuss and act upon issues of common concern to the metallurgical coke and coal chemicals industry. Today, ACCCI members represent over 95% of the metallurgical coke produced in the U.S. and Canada, including both merchant coke producers and integrated steel companies with coke production capacity, and 100% of companies producing coal chemicals in the U.S. and Canada.

ACMA represents companies using fiber reinforcement and polymers to produce light weight, high strength, and corrosion resistant products such as wind turbine blades, recreational boats, structural components for highway bridges, utility poles, automotive and aircraft components, and tanks, pipe and scrubbers for food, fuel and chemical storage and processing. ACMA also represents the suppliers of raw materials and intermediates to this industry. Composites manufacturers are typically smaller companies, many family-owned, but are often one of the largest employers in the small communities in which they operate. In 2014, composites were identified by President Obama’s Council of Advisors on Science and Technology as a critical manufacturing technology.

AF&PA serves to advance U.S. paper and wood product manufacturers through fact-based public policy and marketplace advocacy. The forest products industry is circular by nature. AF&PA member companies make essential products from renewable and recyclable resources, generate renewable bioenergy, and are committed to continuous improvement through the industry’s sustainability initiative — Better Practices, Better Planet 2030: Sustainable Products for a Sustainable Future. The forest products industry accounts for approximately 5% of the total U.S. manufacturing GDP, manufactures about $350 billion in products annually, and employs about

925,000 people. The industry meets a payroll of about $65 billion annually and is among the top 10 manufacturing sector employers in 43 states.

AFPM is a national trade association representing nearly all U.S. refining and petrochemical capacity, as well as midstream industries. In addition to actively pursuing emissions reductions from their operations, our industry is committed to sustainably manufacturing and delivering affordable and reliable fuels powering our transportation needs and chemical building blocks integral to millions of products that make modern life possible.

API is the national trade association representing America's oil and natural gas industry. Our industry supports more than 11 million U.S. jobs and accounts for nearly 8 percent of U.S. Gross Domestic Product. API's approximately 600 members, from fully integrated oil and natural gas companies to independent companies, comprise all segments of the industry. API's members are producers, refiners, suppliers, retailers, pipeline operators, and marine transporters, as well as service and supply companies, providing much of our nation's energy. API was formed in 1919 as a standards-setting organization and is the global leader in convening subject matter experts across the industry to establish, maintain, and distribute consensus standards for the oil and natural gas industry. API has developed more than 800 standards to enhance operational safety, environmental protection, and sustainability in the industry.

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 96,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

ARTBA represents approximately 8,000 members in all sectors of the transportation construction industry. ARTBA members include public and private sector firms and organizations that plan, design, build and maintain the nation's transportation infrastructure across all modes. Our members include contractors, state and local transportation agencies, planning and design firms, materials suppliers and other practitioners. All are committed to balancing responsible environmental stewardship with the need to deliver safe and efficient transportation infrastructure.

AWC is the voice of North American wood products manufacturing, representing over 80 percent of an industry that provides approximately 400,000 men and women in the United States with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC also advocates for balanced government policies that affect wood products working with other wood product trade groups.

CRA is the national trade association representing the corn refining industry of the United States. CRA and its predecessors have served this important segment of American agribusiness since 1913. Corn refiners manufacture sweeteners, starch, advanced bioproducts, corn oil, and feed products from corn components such as starch, oil, protein, and fiber.

EMA represents the interests of over 70 companies that mine or process minerals that are critical to manufacturing, energy, agriculture, infrastructure, transportation, and technology industries. EMA works to expand opportunities for essential minerals and their end-use products through advocacy, education, research, and partnerships. According to the most recent figures from the United States Geological Survey, the metal/nonmetal industry generates approximately $98 billion in production with an estimated 1.3 million direct and indirect jobs, of which EMA's members are significant contributors. This production contributes significant tax revenues to the nation's local, state, and federal governments.

TFI represents the nation's fertilizer industry, and its members are engaged in all aspects of the fertilizer supply chain. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

Founded in 1974, ILTA represents nearly 75 terminal companies providing critical infrastructure, storage, and transportation logistics for 1.2 billion barrels of bulk liquid products annually at over 2,000 facilities in locations across all 50 states. Our members form a crucial link in supply chains for a wide range of liquid commodities central to the U.S. economy, including farm, food, and fuel products, such as fertilizers, olive oil, crude oil, gasoline, diesel, jet fuel, ethanol, and industrial chemicals. ILTA advocates on behalf of the liquid terminal industry in Congress and at federal agencies.

INGAA is the trade association that represents the interstate natural gas pipeline industry. INGAA member companies transport more than 95 percent of the nation's natural gas through approximately 200,000 miles of interstate natural gas pipelines. In 46 of the 48 contiguous United States, INGAA member companies operate over 5,400 natural gas compressors at over 1,300 compressor stations and storage facilities along the pipelines to transport natural gas to local gas distribution companies, industrials, gas marketers, and gas-fired electric generators.

NAPA (AsphaltPavement.org) is the only trade association exclusively representing asphalt pavement material producers and contractors on the national level with Congress, government agencies, and other national trade and business organizations. Asphalt pavements are the surface of choice for 94% of the nation's roadways and are recycled at a higher rate than any other product. Because of the critical role asphalt pavements play in keeping America moving, NAPA supports an active research program designed to improve the quality, sustainability, and application of asphalt pavements.

NLA is the trade association for manufacturers of high calcium quicklime, dolomitic quicklime, dead-burned dolomitic lime, and hydrated lime, collectively referred to as "lime." Lime provides cost-effective solutions to many of society's manufacturing and environmental needs. Lime is a chemical without substitute, providing solutions to many of society's environmental problems. Lime is an important ingredient in many other manufacturing processes and industries. It is used in the steel manufacturing process, road building, and the creation of other building products like mortar and plaster. Lime is also a critical component in environmental compliance for many industries, as it is used to purify water and scrub air pollutants from stack emissions.

NMA is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary, and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources. The NMA has a membership of more than 280 companies and organizations involved in every aspect of mining in the United States. The NMA works to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, national security, and economic security, all delivered under world-leading environmental, safety and labor standards.

Organized in 1930, NOPA represents the U.S. oilseed processing industry's interests in the areas of federal legislative and regulatory policies, as well as international trade policies impacting the

global flow of oilseeds and oilseed products. NOPA's membership includes 13 companies that operate a total of five softseed and 61 soybean solvent extraction plants across 21 states. Member facilities produce meal and oil from soybean, canola, flaxseed, safflower seed, and sunflower seeds, which are further utilized in the manufacture of food, animal feed, and renewable fuels, as well as in industrial applications. NOPA also publishes model Trading Rules for the purchase and sale of soybean meal and oil. Additionally, the association reports monthly NOPA members' aggregated crush data to the marketplace.

NSSGA is the leading advocate for the aggregates industry, which produces the stone, sand, and gravel (known as aggregates) needed for infrastructure and environmental improvements such as the purification of air and water. There are over 9,000 aggregates operations in the US; aggregate operations need to be local to reduce transportation emissions. Over 90% of NSSGA members are small businesses. This proposal will be very burdensome to aggregate operations, who are area sources and not familiar with Hazardous Air Pollutant data reporting and would face an especially steep learning curve of what equipment will be included, as well as learning new databases and calculations, and possibly even testing just to determine if reporting is required.

The PAO represents more than 1,400 individual and member companies and their tens of thousands of employees in upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations. Our members produce, process, refine and transport the bulk of Oklahoma's crude and natural gas.

PCA is the premier policy, research, education, and market intelligence organization serving America's cement manufacturers. PCA members represent the majority of U.S. cement production capacity. The association promotes safety, sustainability, and innovation in all aspects of construction and fosters continuous improvement in cement manufacturing and distribution. Cement and concrete product manufacturing, directly and indirectly, employs over 600,000 people in the United States.

PRINTING United Alliance represents the interests of facilities engaged in producing a wide variety of products through screen printing, digital imaging, flexographic, and lithographic print processes. The print industry is comprised primarily of small businesses, with approximately 95 percent of the printing industry falling under the definition of a small business as described by the Small Business Administration.

The U.S. Chamber of Commerce of the United States is the world's largest business organization. Our members range from the small businesses and chambers of commerce across the country that support their communities, to the leading industry associations and global corporations that innovate and solve for the world's challenges, to the emerging and fast-growing industries that are shaping the future. For all of the people across the businesses we represent, the U.S. Chamber of Commerce is a trusted advocate, partner, and network, helping them improve society and people's lives.

VI, established in 1982, is a U.S. trade organization representing the leading manufacturers of vinyl resins and monomer, compounds, and compound ingredients. The VI serves as the collective voice for the PVC/vinyl industry. The U.S. vinyl industry encompasses nearly 3,000 vinyl manufacturing facilities, supporting more than 350,000 employees. More information can be found at www.vinylinfo.org.

2. EXECUTIVE SUMMARY

Since the 1990 Clean Air Act (CAA) amendments, EPA has issued more than 100 regulations limiting emissions of hazardous air pollutants (HAPs) from over 200 types of major and area industrial sources.[1] EPA projected that full implementation of those standards would reduce annual air toxics emissions by 1.7 million tons.[2] EPA has completed its Risk and Technology Reviews (RTRs) for the majority of these rules and, for the most part, has not determined that remaining risk warrants substantive changes to HAP emissions standards. However, this broad proposal suggests that HAP emissions pose a widespread and substantial threat requiring a permanent, nationally applicable reporting program for more than 130,000 facilities (the majority of which are not major sources of HAPs) to provide EPA with information to prepare cumulative risk analyses and determine if additional regulations are warranted. EPA has not demonstrated that such broad cumulative risk analyses across 130,000 facilities nationwide are necessary. Indeed, the authority provided to EPA under CAA Section 114 should be used for specific and reasonable purposes; its use is not justified here. That is particularly true given that there is no express authorization in the CAA for EPA to establish such a broad program.

[1] https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-8.
[2] https://www.epa.gov/haps/reducing-emissions-hazardous-air-pollutants.

EPA proposed a very burdensome set of requirements as an expansion to the AERR Rule. We believe that EPA has not only underestimated the number of facilities that will be impacted if these changes are finalized but has also significantly underestimated the cost of the proposed changes. EPA has used a list of North American Industrial Classification System (NAICS) codes, the 2017 National Emissions Inventory (NEI), and its proposed HAP reporting thresholds to estimate that approximately 130,000 facilities will have to report their HAP emissions under a revised AERR Rule.

A revised AERR Rule with low HAP reporting thresholds and an expansive set of requirements under the proposed AERR Rule will apply to many facilities that are currently not required to obtain an air quality permit or to report emissions to any agency. Facilities within each NAICS code in proposed Table 1C will be obligated to develop HAP emissions inventories from scratch just to determine whether they are required to report under a revised AERR Rule. EPA has also underestimated the burden of its proposed requirements on both major and area sources because it is proposing to require reporting of "all HAPs" with no threshold for *de minimis*/insignificant/trivial emissions or activities; emissions reporting from sources facilities are not currently required to track; and reporting by individual release point. The proposed rule would have a significant impact on small businesses and on facilities with HAP emissions much lower than major source levels, with no quantified benefits.

The Associations believe that the proposed expansion of the AERR Rule is not supported and should be withdrawn. EPA should have conducted a review of the information it requires and identified specific data gaps, rather than propose a massive, expensive reporting rule based on amorphous data "needs." If EPA requires certain additional HAP emissions data that it does not already collect, EPA should either utilize Toxics Release Inventory (TRI) data to screen for HAPs of concern that may warrant additional monitoring or work with states (48 of 50 states already report HAPs under voluntary programs) to adjust the amount of data they collect and provide directly to EPA as part of their emissions inventory process. EPA should not finalize an overarching regulation that will require collection of emissions-related information on non-permitted sources and duplicative emissions reporting by industry.

At a minimum, EPA should strive to reduce the burden of any final AERR Rule revisions. HAP emissions reporting should only apply to major sources; the rule should allow for grouping of certain emissions points for reporting; it should include thresholds for insignificant or *de minimis* emissions that are not required to be reported; and it should exclude mobile and portable sources. EPA should also make it clear that any final AERR Rule revisions do not require sources to

conduct additional stack testing and should only require submittal of representative stack tests once per year.

Lastly, if EPA finalizes the addition of HAP emissions reporting to the AERR Rule, it should extend the proposed timeline for reporting of HAP emissions to allow for state, local, and tribal (SLT) agencies to harmonize their systems with EPA's to avoid duplicative reporting and to allow facilities to review the EPA-promised emissions calculation tools for small entities. We also note that without the aforementioned emissions calculation tools, and with no knowledge of whether the data to build such tools exists and who would collect it, it is difficult for either industry or EPA to assess the actual burden that will be borne to quantify and report HAP emissions (especially by small businesses). The proposed revisions offer multiple reporting options, potentially creating confusion and inconsistency. If promulgated, any revisions should balance the need for consistency with the ability of states to implement their programs. EPA should not require annual emissions reporting earlier than July 1. The timelines proposed by EPA are not workable. The AERR Rule should not apply to any facility until the facility's SLT agency has accepted reporting responsibility, to avoid facilities being subject to disparate emissions inventory reporting requirements and unnecessary duplicative reporting of emissions information.

3. THE PROPOSED CHANGES TO THE AERR RULE SHOULD BE WITHDRAWN

The Associations have always been supportive of efforts to protect our employees, communities, and the environment. Member entities operate facilities across the country in compliance with existing SLT and federal statutory requirements. Many of our facilities are required by SLT and federal regulations and permits to report air emissions to state and federal regulators. Many of our participating entities also have longstanding commitments to transparently interact with community residents about processes and products through the use of important tools like Community Advisory Panels, which help facilities build relationships with members of their communities, share information about operations, identify any community concerns, and work with community stakeholders to try to resolve community concerns.

However, EPA's Proposed Rule represents a significant and precedential effort that would dramatically overhaul air emissions reporting requirements, adding unnecessary burden, duplication, and complexity that outweigh the environmental benefits that might be associated with the Proposed Rule (although *none* have been quantified by EPA). In addition, EPA is essentially proposing to subject area sources of HAP emissions to the same burdensome

requirements as major sources, which is inconsistent with how area sources are otherwise regulated *(i.e*., because their emissions levels are lower, area sources are currently subject to less frequent and less onerous reporting requirements, are subject to federal emission standards that are for the most part based on generally available control technology [GACT] instead of maximum achievable control technology [MACT], and are generally subject to permit requirements that are more tailored in scope and size than major sources, as set out by SLT agencies [if they are permitted at all]). The Proposed Rule should be withdrawn.

3.1 CAA SECTIONS 301 AND 114 DO NOT AUTHORIZE EPA TO IMPOSE THE PROPOSED HAP REPORTING PROGRAM ON OWNERS AND OPERATORS OF AFFECTED FACILITIES.

EPA asserts that "Sections 114(a)(1) and 301(a) of the CAA provide the authority for the HAP reporting requirements contained in this proposed action."[3] EPA does not elaborate as to how CAA § 301(a) confers authority for the Proposed Rule. That lack of any explanation prevents the Associations from assessing or formulating comments on the Agency's unsupported, novel claim that CAA § 301(a) somehow authorizes the proposal.[4] In any event, it is well established that the general rulemaking authority provided by CAA § 301(a) is highly prescribed. *See, e.g., Citizens to Save Spencer Co. v. EPA,* 600 F. 2d 844, 873 (D.C. Cir. 1979) (CAA § 301(a) "does not provide the Administrator with *carte blanche* authority to promulgate any rules, on any matter relating to the Clean Air Act, in any manner that the Administrator wishes."). Here, Section 301(a) cannot be construed as conferring more or different information gathering authority than is specifically provided by CAA § 114. Accordingly, our comments focus on CAA § 114.

CAA § 114 is the general information gathering provision of the CAA. It authorizes EPA to collect specified types of information in specified ways for specified purposes. As relevant here, EPA may collect information "[f]or the purpose: (i) of developing or assisting in the development of … any emission standard under [CAA § 112] …, (ii) of determining whether any person is in violation of any such standard …, or (iii) carrying out any provision of this chapter."[5] For these purposes, EPA "may require any person who owns or operates any emission source … on a one-time,

[3] 88 Fed. Reg. 54118, 54122 (Aug. 9, 2023).

[4] We note that EPA has determined that the Proposed Rule "is subject to the requirements of section 307(d). 88 Fed. Reg. at 54200. The lack of explanation as to how CAA § 301(a) authorizes the Proposed Rule violates the Agency's obligation to explain the "major legal interpretations" supporting the rule. CAA § 307(d)(3)(C).

[5] CAA § 114(a).

periodic or continuous basis to … make such reports … [and] provide such other information as [EPA] ***may reasonably require***."[6] (emphasis added). Notably, EPA's authority is expressly limited to gathering information that the Agency "may reasonably require" – *i.e*., a rule of reason must be applied when EPA invokes CAA § 114, and a cost-benefit analysis—demonstrating the benefits exceed the costs—is an essential component of reasonable requirements. Cf. Michigan v. EPA, 567 U.S. 743 (2015).

As an initial matter, EPA asserts that "[t]he scope of the persons potentially subject to a section 114(a)(1) information request (*e.g.,* a person ''who the Administrator believes may have information necessary for the purposes set forth in'' section 114(a)) and the reach of the phrase "carrying out any provision'' of the Act are quite broad."[7] But, however broad that authority may be for collecting information for the three statutory purposes listed above, it is insufficient to authorize the broadly applicable, costly, and permanent source-specific HAP emissions reporting program that would be established by the Proposed Rule, particularly given that the only purported benefits offered by EPA to justify the rule are hypothetical, nonspecific future uses of the data that at some unspecified date in the future it may be of service to EPA. Put simply, section 114 does not authorize fishing expeditions.

By EPA's own estimate, the Proposed Rule would apply to about 130,000 individual facilities.[8] Countless more would be saddled with the additional burden of demonstrating that the rule does not apply. According to EPA, the Rule at full implementation would cost the directly affected facilities alone about $450 million per year.[9] The net present value of those compliance costs would be over $3 billion.[10] Additionally, the Proposed Rule would establish an annual reporting obligation that would continue indefinitely into the future.[11] In other words, the Proposed Rule would be a substantial and impactful new regulatory program. EPA's estimate of the number of facilities that would be impacted by the rule is low, if only because every facility in the list of primary NAICS codes in Table 1C to Appendix A of the rule will need to develop a HAP emissions inventory to determine if they are required to report. Furthermore, EPA's cost estimate is unrealistically low, even if only 130,000 facilities are impacted. We know - even under EPA's

[6] *Id*. at § 114(a)(1).
[7] 88 Fed. Reg. at 54122.
[8] *Id*. at 54194.
[9] *Id*.
[10] *Id*.
[11] *Id*. at 54159.

conservative cost estimates - that an expanded version of the AERR will impose a $450 million annual expense on U.S. businesses. Yet, EPA is unable to quantify the benefits of such a cost. This appears to be the exact abuse of section 114 that Congress was guarding against when it limited EPA's authority to collect information under section 114 as EPA "may reasonably require." It is unreasonable for EPA to impose such clear financial burdens without articulating and quantifying corresponding benefits, if any.

While EPA has estimated the costs associated with the Proposed Rule, the Agency did not assess the magnitude of those costs in light of the asserted benefits of promulgating the rule. That failure is particularly notable here, where the Proposed Rule would apply to hundreds of thousands of sources and impose hundreds of millions of dollars in costs. Also, assuming arguendo that the Proposed Rule is lawful (which it is not), it is highly relevant that the Proposed Rule is a discretionary action by EPA and not one that is directed or required by the CAA. It is arbitrary and capricious for EPA to propose such a broadly applicable rule with correspondingly substantial costs without providing some explanation as to why such costs are justified by the asserted benefits.

There is no express obligation or authorization in the CAA for EPA to establish such a program. As EPA notes in the Proposed Rule, the existing AERR Rule was established to satisfy various statutory and regulatory emissions reporting requirements, "including those of CAA section 182(a)(3)(A) for ozone nonattainment areas and section 187(a)(5) for CO nonattainment areas, those under the Nitrogen Oxides (NO_X) State Implementation Plan (SIP) Call (40 CFR 51.122), and the annual reporting requirements of the CERR."[12] This emissions information is either expressly required by the CAA to be gathered by EPA, or indirectly required by virtue of substantive emissions control programs implemented to satisfy particular CAA provisions (*e.g.*, the NO_X SIP Call was implemented to satisfy the CAA § 110 interstate transport provision).

In contrast, the proposed source-specific HAP reporting requirements are not expressly required or authorized by the CAA, nor are they directly required or authorized to ensure proper implementation of a substantive CAA-based emissions standard or emissions control program. Presumably, if Congress believed that there was a need for such an emissions reporting program, it would have included it as a component of CAA § 112 (as it did, for example, in CAA Title I

[12] *Id*. at 54122.

Subpart D to assist in implementation of the ozone nonattainment program). The highly prescriptive nature of Section 112—one of the longest and most detailed sections in the entire CAA—suggests that Congress would have expressly directed EPA to establish a broad-based reporting program if that is truly what it intended. Yet, no such requirement or authorization was included in CAA § 112 or, more generally, anywhere else in the CAA.[13] Similarly, each existing National Emission Standard for Hazardous Air Pollutants (NESHAP) that EPA issued under CAA § 112 contains its own monitoring, recordkeeping, and reporting requirements. To the extent that EPA has needed additional information to develop and implement such standards, it has regularly (and with minimal industry objection) issued targeted CAA § 114 information requests to obtain the needed information.

In this context, it simply is not "reasonable" to construe the general information gathering authority of CAA § 114 as authorizing the creation and implementation of such a massive, costly, and permanent HAP emissions reporting program. While EPA sets out a number of particular reasons that it believes such a program is justified under CAA § 114 (which we address below), EPA has an obligation to explain in the first instance how a new, stand-alone emissions reporting program of such proportions can be grounded in CAA § 114 absent some other indication from Congress that such a program is authorized under the CAA.

We note that the only other similar exercise of such authority that EPA has previously attempted is the Greenhouse Gas Reporting Program (GHGRP), where EPA asserted CAA § 114 as the primary authority for that program. While commenters have repeatedly asserted that CAA § 114 does not provide adequate authority for that program, EPA's claim of authority has not been tested in court. The absence here of such law or expression of Congressional intent supporting the proposed new HAP emissions reporting program belies EPA's claim of authority under CAA § 114.

[13] Another obvious place Congress could have – but did not – impose an express emissions quantification and reporting requirement is CAA § 129(c), which prescribes monitoring requirements for solid waste combustion units regulated under CAA § 129. Section 129(c) requires EPA to include requirements to "monitor emissions from the unit at the point at which such emissions are emitted into the ambient air" and "to report the results of such monitoring" in CAA § 129 emissions standards. EPA has correctly interpreted these provisions as not requiring emissions standards to limit the total mass of emissions from affected sources and not requiring monitoring and reporting of mass emissions. The lack of express direction from Congress in § 129(c) to quantify and report mass emissions is a clear indication that EPA lacks the authority to impose such requirements under the more generally applicable CAA § 114.

Also highly relevant is the fact that EPA already is subject to separate express statutory requirements to collect some of the information that it proposes to collect here. Section 313 of the 1986 Emergency Planning and Community Right to Know Act includes the TRI program for source-specific reporting of toxics releases to the environment (including air emissions). The TRI program specifies, among other things, the chemicals to be reported, provisions for threshold reporting levels, criteria to identify affected facilities, and other relevant program elements.[14] Congress has several times amended this program to add additional specific limitations and requirements.[15] Similarly, the CAA Title V operating permit program prescribes a detailed and elaborate permitting program that has the primary purposes of requiring the identification of CAA requirements applicable to each affected facility and issuing publicly available permits that allow for all interested parties to have access to this information.[16] It would be unreasonable (and, indeed, impermissible) to interpret the general authority conferred by CAA § 114 as requiring or authorizing EPA to effectively amend and augment overlapping statutory programs such as the TRI and the Title V operating permit programs.[17]

Lastly, if the Agency does not withdraw the proposal despite the numerous substantial concerns identified here and relies on the deference afforded by *Chevron v. NRDC*, 467 U.S. 837 (1984) to support its interpretation, the Associations offer suggested revisions in the detailed comments below that would enable the collection of targeted information needed to advance the purposes set forth in CAA Section 114(a).

3.2 EPA'S RATIONALE FOR THE PROPOSED HAP EMISSIONS REPORTING PROGRAM IS INADEQUATE.

EPA asserts that "[t]he EPA's need for HAP emissions data stems from CAA requirements that the EPA is expected to meet."[18] EPA identifies five particular information needs that it contends provide authority for imposing the HAP emissions reporting program under CAA § 114. Yet, EPA's justification for all five bases is limited to a single column of the Federal Register notice. Keeping

[14] 42 U.S.C. § 11023.
[15] https://www.epa.gov/toxics-release-inventory-tri-program/tri-laws-and-regulatory-activities
[16] 42 U.S.C. § 7661-7661f.
[17] We also note that, contrary to EPA's contention that the TRI program is insufficient for purposes of this Proposed Rule, the scope and size of industries covered by the TRI program is sufficiently comprehensive to capture the majority of large- and medium-sized sources that could be impactful. Indeed, EPA could use TRI data to screen for the need to institute HAP monitoring.
[18] 88 Fed. Reg. at 54122.

in mind that EPA acknowledged the burdens that accompany an expanded AERR rule, we would have expected a more robust justification demonstrating EPA's need for information generated as a result of the proposed rule. EPA must do more to show that the proposed AERR revisions are "reasonably require[d]." EPA's cursory attempt to justify the rule demonstrates how EPA is struggling to find a basis for the rule revision. For example, in its first point, EPA says it needs the additional data to complete risk reviews under section 112(f)(2). However, almost all those reviews are already complete and, therefore, EPA cannot rely on that as a justification to impose a massive expansion of the AERR. As explained below, none of the five bases for this rule justify invoking CAA § 114 here.

3.2.1 Air Toxics Regulatory Development

EPA asserts it "has many authorities and obligations for air toxic regulatory development under the many provisions of CAA section 112, including technology reviews pursuant to CAA section 112(d)(6), and risk reviews under CAA section 112(f)(2)."[19] The current version of CAA § 112 was enacted as part of the 1990 CAA Amendments. EPA has been implementing the program for almost 35 years and has issued dozens of rules under this program during that time. Indeed, the Agency has demonstrated that, where it needs information to develop or assess a particular rule, a targeted CAA § 114 information request is an efficient and effective way to obtain the needed information. Yet, EPA has not explained in the Proposed Rule why, now that the air toxics program is at a very mature stage, there suddenly is a compelling need to revise this successful implementation strategy and replace it with a permanent, source-specific, economy-wide HAP emissions reporting scheme. EPA essentially proposes to replace a targeted reporting program with one that casts a wide net across many sources that are unlikely to have significant emissions. Such a massive and non-specific program is not reasonably needed for the continued implementation of the air toxics program. Additionally, at this point, almost all risk reviews authorized and required under CAA § 112(f) have been completed. Thus, the need to conduct additional risk reviews provides no basis whatsoever for the proposed HAP emissions reporting program.[20]

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[19] *Id*.

[20] We understand that EPA has asserted the authority to conduct additional risk reviews at its discretion. Yet, as explained in detail in comments submitted by the American Chemistry Council and others on the ethylene oxide sterilizers NESHAP and the Hazardous Organics NESHAP, this claim of authority is dubious at best (see EPA-HQ-OAR-2019-0178-0633 and EPA-HQ-OAR-2022-0730-0168). And, even if EPA had such authority, it has indicated that reconsideration is appropriate when there are changed circumstances, which do not justify the broad claim for information made here.

In addition, EPA does not need broad-based and permanent HAP emissions reporting to complete future technology reviews. More targeted information requests for particular affected source categories can provide needed information, as demonstrated by EPA's successful use of that approach over the 30+ year history of implementing CAA Section 112.

3.2.2 Environmental Justice

Next, EPA asserts that implementation of the air toxics program "is additionally informed by federal policy on environmental justice, including Executive Order (EO) 12898, which overlays environmental justice considerations for the EPA to assess as part of such work."[21] In other words, EPA asserts that the need to consider environmental justice in implementing CAA § 112 partly justifies the Proposed Rule. The Associations acknowledge the focus on environmental justice and recognize the current administration and EPA prioritize addressing these issues and their associated impacts across all work. However, we believe that any Administration effort to address environmental justice must be conducted consistent with existing statutory authority to achieve outcomes that are efficient, streamlined, and avoid duplicative requirements or policies. Unfortunately, EPA's rationale on this point and reference to its interpretation of EO 12898 fall short of these important goals for several reasons.

First, there is no provision in CAA § 112 that requires or authorizes consideration of environmental justice in implementing the air toxics program. Moreover, an EO, such as EO 12898, is a tool used by the President to manage the affairs of the executive branch. EOs only carry the force of law, beyond the management of the affairs of the executive branch, if issued pursuant to a Presidential source of power set forth in Article II of the Constitution or a delegated power from Congress. EO 12898 is not such an order. In the context of the CAA, information on environmental justice is not needed in "developing or assisting in the development of … any emission standard under [CAA § 112]" or for "carrying out any provision" of the CAA.[22] Thus, the collection of such information for environmental justice purposes is not within the scope of EPA's authority under CAA § 114.

[21] 88 Fed. Reg. at 54194.
[22] CAA § 114(a).

3.2.3 VOC Speciation

Additionally, EPA claims that "HAP emissions data also would be useful in further refining chemical speciation to better meet the Agency's responsibilities under CAA Part D that require air quality modeling using emissions data to support the national ambient air quality standards (NAAQS) implementation."[23] However, volatile HAP emissions data would be of only limited value to EPA for this purpose because countless other significant volatile organic compounds (VOC) constituents are not HAPs. Thus, HAP emissions data would only give EPA an incomplete picture of the broader VOC emissions inventory. Moreover, Congress made clear that authorities for regulation of HAPs and regulation of criteria pollutants are distinct and that the CAA § 112 program is not directed towards regulation of the latter. Indeed, Congress specifically provided that a pollutant could not be listed based only on its status as a criteria pollutant. CAA § 112(b)(2) ("No air pollutant which is listed under [the criteria pollutant program] may be added to the list under this section, except" if it independently meets the 112 listing criteria). Accordingly, CAA § 112 does not justify collection of information related to potential criteria pollutant impacts. For these reasons, the proposed HAP emissions reporting program is not reasonably grounded in CAA § 114.

3.2.4 Risk Assessment

EPA further asserts that it "is additionally authorized (and in some cases, obligated) to assess the risks of pollutants, which requires an understanding of both toxicity and exposure."[24] EPA explains that it "prioritizes chemicals to nominate for toxicity assessment under EPA's Integrated Risk Information System (IRIS) program in part based on their potential for exposure and hazard. HAP emissions data are used to support these prioritization efforts."[25] But, as noted above, EPA has completed virtually all risk assessments required under CAA § 112(f). A permanent, economy-wide HAP emissions reporting program is not needed to support the few remaining residual risk reviews. As for the IRIS program, to the degree that EPA needs exposure information to identify pollutants to review under the IRIS program, it could easily and efficiently obtain that information through a more targeted information collection request. It is not reasonable to impose a permanent, nationally applicable HAP emissions reporting program on the chance that information gathered under that program might one day be useful under the IRIS program.

[23] 88 Fed. Reg. at 54122.
[24] *Id*.
[25] *Id.*

Moreover, EPA has not explained why more precise information, beyond that provided in other EPA databases, is insufficient for identification of HAPs for review. For example, EPA has not explained why information collected under TRI or used for Air Toxic Screening Assessment (AirToxScreen) is insufficient for this purpose. In short, supporting the IRIS program is not a permissible purpose for invoking CAA § 114 authority.

3.2.5 Enforcement

Finally, EPA explains that it "implements compliance and enforcement programs per CAA sections 113 and 114(a), (b), and (d), and HAP emissions data would support prioritization of those compliance and enforcement efforts."[26] But, as noted above, each CAA § 112 emissions standard includes a tailored set of compliance assurance provisions, typically including monitoring, notification, recordkeeping, and reporting requirements. EPA has not explained why those existing provisions are inadequate and how the additional information that would be gathered under the proposed HAP emissions reporting program is reasonably needed to supplement those existing provisions. Moreover, "prioritization" is an amorphous concept. To invoke CAA § 114 authority, EPA needs to explain what it means by "prioritization;" what information the Agency lacks to adequately prioritize its efforts; and why a permanent, universally applicable, and onerous HAP emissions reporting program is necessary. EPA has not demonstrated that it is reasonably necessary under CAA § 114.

3.2.6 Paperwork Reduction Act

As part of its obligations under the Paperwork Reduction Act, EPA is required to certify, among other things, that the proposed information collection that would occur under this rule "[i]s necessary for the proper performance of the functions of the agency;" "[i]s not unnecessarily duplicative of information otherwise reasonably accessible to the agency;" "[r]educes to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency;" and "[i]s to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond."[27] EPA's certification on each of these points is not supportable in light of the scope and nature of the Proposed Rule.

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[26] *Id*.
[27] 5 U.S.C. § 1320.9.

First, the information that EPA proposes to collect is not "necessary" for the "proper performance" of EPA because, as explained above, none of the five specific purposes asserted by EPA as justification for the Proposed Rule are necessary to satisfy EPA's obligations under the CAA. EPA may desire having the additional information, but the proposed information collection certainly is not legally "necessary."

Second, the Proposed Rule plainly would require information to be submitted that is "unnecessarily duplicative" of information already available to the Agency. As noted in Section 3.3 below, the Proposed Rule would significantly overlap with the TRI program, yet EPA makes no effort in the Proposed Rule to reconcile the two programs to prevent the submission of "duplicative" information. Similarly, CAA applicable requirements would have to be reported under the Proposed Rule, yet that information already is available through the Title V operating permit program for the most significant emitters that would be covered by the Proposed Rule. There are obvious opportunities under the Proposed Rule to avoid such "unnecessarily duplicative" reporting requirements.

Third, a rule that would require over 100,000 entities to submit information indefinitely on an annual basis and require tens of thousands more entities to make annual determinations that they are not covered by the rule cannot be said to "reduce to the extent practicable" the burden on affected entities. In fact, it is hard to imagine that ***any*** emissions source in the country would not incur indefinite annual burdens under the Proposed Rule. As explained above, more targeted information requests can be devised to obtain information for the purposes identified in the Proposed Rule. Thus, EPA has obvious "practicable" opportunities to significantly narrow the proposed information request.

Fourth, for the same reasons, the Proposed Rule clearly is not "consistent and compatible" with existing reporting and recordkeeping practices.

In sum, the proposed information collection fails on all fronts under the Paperwork Reduction Act. Accordingly, the Proposed Rule cannot lawfully be certified by EPA or determined by the Office of Information and Regulatory Affairs to be a permissible information request.

3.3 THE PROPOSED RULE IS DUPLICATIVE.

If EPA finalizes the AERR revisions as proposed, many facilities will likely be required to report different sets of emissions information to both their SLTs and to EPA in different systems, with different and potentially conflicting objectives, instructions, assumptions, formats, technical details, statistical treatments, process boundaries, state emissions or reporting exemptions, etc. This duplicative reporting is of major concern to our members. Many SLTs already require reporting of HAP emissions on some frequency for certain sizes of facilities, although they likely have reporting exemptions for insignificant sources or *de minimis* reporting thresholds, as opposed to EPA's proposed "all HAP" requirement, which could require extensive research project for a complex facility, new requirements for small sources that never have considered estimating "all HAPs," and constant updates as a facility uses new products. Reasonable and proper constraints must be applied to this key term to prevent perverse outcomes for sources of various sizes, small to large, minor to major. For example, North Carolina's emissions inventory instructions[28] include *de minimis* reporting thresholds and a list of exempt sources. There are many other similar examples that EPA could work with states to replicate in a revised AERR Rule.

Certain facilities are also required to evaluate and report certain releases to EPA online using TRI-MEweb and greenhouse gas (GHG) emissions to EPA online using e-GGRT. Some types of facilities also report fenceline monitoring data or coal ash-related information online. Having to report HAP emissions by release point into the Combined Air Emissions Reporting System (CAERS) will be yet another annual exercise for a facility and another system a facility has to learn.

Although it is unclear whether SLTs will accept HAP reporting responsibilities, EPA's proposed timeline for the first required HAP report will prevent most from doing so, at least initially. It will be difficult for companies that operate in multiple states to navigate whether their facilities must report to the SLT, EPA, or both. It will also mean a duplicative review process for corporate personnel that provide assistance to individual facilities if they must review an SLT report and an EPA report with different (and, potentially, conflicting) requirements. Having two emissions reports to review increases the risk of error. We support an approach under which EPA continues to collect data from SLTs, not an approach where EPA imposes another regulation that companies and facilities

[28] https://www.deq.nc.gov/energy-mineral-and-land-resources/oil-and-gas-program/forms/eminv-instruct/download.

will have to interpret and implement, that will be inconsistent with current SLT reporting requirements, and a system into which more than 130,000 facilities will be required to enter detailed information.

EPA should instead allow SLTs to develop and implement their own emissions reporting requirements in the manner and timeframe most suited to their current emissions inventory requirements. This approach is more efficient, as facilities could submit one air emissions report to SLTs, not separate and, potentially, disparate reports to multiple agencies in different systems. Based on a review of several SLT comments already submitted to the docket, this approach seems to be favored by several SLTs.

Additionally, EPA is proposing to gather some information from facilities that is already available in the Agency's own files and SLT permitting agency databases: certain release point information, Title V permit number, applicable regulations, etc. EPA has completed almost all of its risk reviews for Maximum Achievable Control Technology (MACT) standards and many technology reviews. Major source facilities have already provided virtually all of the information EPA says it needs as part of information collection requests (ICRs), or as part of comments on or industry data gathering exercises during Risk and Technology Review (RTR) rulemakings. In fact, RTRs involve modeling, which means that EPA obtains more information than emissions data as part of the RTR process. EPA should use the vast amount of data already available to it in the Agency's own files and SLT permitting agency databases before unnecessarily expanding the AERR and asking facilities to submit the same information again.

Moreover, SLTs, which have information on facilities' emissions and other operating parameters from air permits and other submittals, are familiar with the facilities they permit, and are well-suited to identify whether there are localized air toxics issues that must be addressed, outside of the federal residual risk process. Members of the Associations value their good working relationships with SLT regulators. Facilities can more easily collaborate with and access their state agency personnel to raise questions and concerns or provide input on emissions data, estimation methods, and reporting platforms. EPA should collaborate with SLTs to collect only the information that is necessary, in the manner and timeframe that works for each SLT, not require industry to report emissions inventory data to both their SLTs and to EPA on multiple platforms with different requirements and identifiers.

If there are specific chemicals of concern to EPA, EPA could undertake separate, targeted sets of rulemakings that specifically identify the chemicals or industries where additional data are needed to evaluate risk, and require those industries to report releases to the TRI.

3.4 THE PROPOSED RULE IS UNDULY BURDENSOME

3.4.1 EPA has not properly accounted for the entire burden of the rule.

EPA estimates that the 2027 cost of the rule for facilities is $450.1 million, spread over 129,490 facilities, which equates to an average of about $3,476 per facility, or 22 hours per facility. EPA woefully underestimates the cost of this Proposed Rule.[29] Based on our review of the Regulatory Impact Analysis[30] and the Supporting Statement,[31] it appears that the burden estimates were prepared assuming that all facilities already prepare an annual emissions inventory; that no time is needed to gather new data or implement new emissions estimation tools; that minor sources have only a few release points; that minor sources will not have any stack tests to report; that no consulting support is necessary; and, that it will take little effort to report annual emissions and associated release point information to the Agency. None of these assumptions are correct.

Our affiliates that work at and with both major and minor stationary sources know well the time, resource needs, and costs of preparing emissions estimates, compiling accompanying documentation and data validation, performing quality assurance activities, developing reports, and submitting data electronically as part of the cumulative regulatory burden of the proposed AERR rule. Overall burden and cost estimates can be grossly underestimated by those who have not had to conduct such tasks for a facility. Based on Title V work completed in the mid-1990s, and current use of consulting support for emissions inventories, air dispersion modeling, stack testing, and permit applications, EPA has grossly underestimated costs. Per the Small Business Advocacy Review Panel report, one industry estimated it would take their facilities $30,000 to comply with a revised AERR Rule in the first year.[32] Depending on the facility, emission units, and

[29] To put this cost estimate in perspective, it requires more than $3,500 in time just to read the proposal, explain it to management, and develop stakeholder positions. EPA must do a better job explaining of the actual costs it is imposing on the economy.
[30] EPA-HQ-OAR-2004-0489-0107.
[31] EPA-HQ-OAR-2004-0489-0103.
[32] EPA-HQ-OAR-2004-0489-0096.

portable and mobile sources located on the site, members of the Associations estimate the first report could take anywhere from 8 to 43 person ***days*** per facility.

First, EPA assessed a one-time burden of only 12.6 ***hours*** per minor-source facility to develop release point information. This is grossly inadequate. First, 12 hours would not be sufficient for a complex facility to develop and review release point information for all of its HAP sources. If a facility has not performed air dispersion modeling for its sources, it would need to develop this information from scratch and determine the best way to characterize fugitive sources, including sources inside a building with emissions that exhaust through vents and not through an individual stack. Developing release point information for a facility could range from 16 to 40 hours, depending on the complexity of the facility, and would likely require hiring outside consulting resources to efficiently perform the work. The cost of this singular activity dwarfs EPA's entire cost estimate and is only one example of how EPA's cost analysis misses the mark.

Second, the assumption that major-source facilities would not need to revise release point information to meet the requirements of the Proposed Rule is not valid. Many major-source facilities that currently perform annual air emissions inventories report certain emissions sources as groups (*e.g.*, the emissions from an area of a facility or from a group of similar sources), if allowed by their SLT emissions inventory requirements and if there are no federally enforceable requirements that apply to the sources on an individual basis. In addition, the emissions from one emissions unit might be reported as a single value instead of separated into individual stacks or vents. EPA has ignored these costs.

Finally, facilities often make modifications to their operations in pursuit of improved efficiency, safety, or environmental objectives, which can result in emissions sources - especially fugitive emissions sources - being created, eliminated, or moved. Major-source facilities that do not currently report air emissions by individual release point would have to spend time determining the best way to represent grouped sources. Major-source facilities that have not performed extensive air dispersion modeling or submitted information as part of an RTR would also need to review how their release points are characterized, in the event the information is used to perform risk analyses. Facilities may have conservatively characterized releases in the past, such that dispersion characteristics could be inappropriate for risk modeling purposes. At a minimum, major-source facilities would need to review previously developed release point information to confirm it is accurate and appropriate for use in risk modeling. Reviewing and updating a major-

source facility's release point information could take between eight and 40 hours (or substantially more for a very large facility), which again may require hiring outside resources to perform the work.

Additionally, EPA has not included any hours for facilities to develop or refine their air emissions inventories. EPA seems to have assumed that all 129,490 facilities currently have complete air emissions inventories. This is not a valid assumption. There are many small facilities that are not required to report HAP emissions and do not trigger TRI reporting. Significantly more than the 129,490 facilities that EPA estimates will trigger AERR Rule HAP reporting thresholds will have to develop initial HAP emissions inventories just to determine whether they are required to report. An initial emissions inventory for a small facility that has not been previously required to report HAP emissions could take 40 hours to develop. Even a major source that currently reports HAP emissions will need to perform a comprehensive review of its emissions inventory if EPA is to use reported emissions as inputs to cumulative risk models. This review could take 200 hours, depending on the complexity of the facility and number of HAPs emitted.

Some facilities are only required to report emissions from significant sources, and would have to develop emissions estimates for exempt or insignificant activities and sources. This would take several days per facility, perhaps 40 hours or more for a large facility with many insignificant activities. Small facilities are also more likely to employ consultants to prepare emissions inventories and reports, as they typically do not have the expertise in house to interpret and comply with complex EPA regulations.

EPA also assumes that only 16 to 24 hours per facility would be needed on an annual basis for an engineer to report HAP emissions. While this might represent the amount of time necessary for an engineer to enter emissions information into an online system for a facility, more than 24 hours is typically necessary to update a facility's annual air emissions inventory (except for the simplest of sources). And, more than one hour of manager time assumed by EPA is needed to review and verify an emissions inventory, as the responsible official must certify its accuracy and completeness. Moreover, a facility or its consultant(s) would have to review emissions factors and determine whether updates are necessary based on new site-specific data or newly published emissions factors; gather and update utilization, throughputs, and fuel usage information; add any new emissions units or fuels; account for any excess emissions events; review the inventory for opportunities to improve emissions estimation approaches; and perform quality checks. Even a

minor-source facility that may only need to enter HAPs that are over the Rule's thresholds and incidental CAPs would need to update its facility-wide emissions inventory annually to determine what HAPs and CAPs require reporting. For a complex facility, this would not be a trivial task. If there are minimal updates required, 20 to 80 hours per year would be required to prepare the emissions inventory. If several updates are required and the facility is large and complex, an emissions inventory may take 200 hours or more to prepare and report. EPA must not ignore the real-world costs associated with this aspect of the proposal.

EPA promised to develop emissions estimation tools as part of its effort to minimize burden on small businesses. Yet, EPA included no time in its burden estimate for facilities or industry groups to work with EPA on those tools, to review the draft tools, or to learn how to use the final tools. This item could take 24 hours or more per facility, depending on the level of participation and the complexity of the tools developed. While use of emissions factors reduce some burden, there are no emissions factors for the wide swath of sectors that will be swept into this reporting regime. Moreover, it can take *decades* to develop representative emissions factors. As discussed elsewhere in these comments, should the Agency move forward with revising the AERR, then the effective date must be pushed forward to ensure the tools have been developed and the electronic reporting system pressure tested to reduce burden and ensure operation.

EPA has also not included any time to develop emissions estimates for mobile sources that it is proposing must be reported. Facilities do not currently report mobile source emissions as part of their emissions inventory submittals and likely do not have any monitoring or recordkeeping procedures in place to assess activity and emissions from all mobile sources "operating primarily within the facility site boundaries" [§52.5(b)]. Depending on the number of mobile sources at a facility, developing a mobile source inventory, activity data, and emissions estimates could take 40 to 80 hours initially and 16 to 24 hours annually.

EPA includes only four hours per test report for the electronic reporting tool (ERT) entry and assumes that only major sources would have to enter stack test reports three times per year. Based on the experience of our members and their consultants, this is not enough time to budget for entering and quality assuring an electronic reporting tool (ERT) submittal. The simplest test report is likely to require eight hours of time to enter and review, and a report with multiple pollutants and sources could take up to 40 hours. In addition, as EPA is requiring the use of "best

available" emissions calculation methods,[33] the rule could result in both major and minor sources conducting additional stack tests to refine emissions estimates based on engineering judgement or generic emissions factors (*e.g.*, if the Agency does not agree with a facility's approach, if the Agency thinks a HAP is being emitted from a facility because a similar facility emits it, or if a screening risk assessment shows an elevated risk from the facility's estimated emissions). A more accurate burden estimate is that likely half the sources would enter three tests a year at 16 hours per test report.

Adding the items above and adjusting EPA's burden estimate to more reasonably allocate hours to tasks would result in a conservative annual cost estimate of over $3 billion for point sources (accounting for both one-time activities spread over three years for all facilities and an annual reporting burden for all facilities), the bulk of which would be borne by minor sources due to the sheer number of them that EPA estimates would have to report. This revised estimated annual cost is much higher than EPA's $450 million estimate, and could be even higher if EPA has underestimated the number of facilities that must report. It would also be higher if outside consulting support were utilized.

In addition to the direct burden the Proposed Rule would cause, if finalized, we anticipate there could also be other burdens this Rule could impose on a facility as a result of data collected for a facility and other adjacent facilities. As an initial matter, even facilities that ultimately determine the new reporting rules will not apply to them will still be required to expend many of the same resources to make that determination. As a result, the number of facilities incurring the costs identified above will likely be multiplied many times—we estimate by a factor of 2 to 4 times.

EPA's subsequent use of the data that it collects would also portend additional costs. EPA proposes to use the data collected under this Rule to continue to feed AirToxScreen. If facilities must report HAP emissions that are based on published emissions factors and use overly conservative release point characteristics, EPA's risk screening analysis could result in unrealistically high-risk results for a group of adjacent sites that could necessitate a facility having to spend hundreds of thousands of dollars to refine its emissions and release-point data to prove to EPA and the community that its risks are acceptable. Some facilities have experienced this under the Cleaner Air Oregon air toxics program, where they spent $100,000 in some cases to

[33] 88 Fed. Reg. at 54169.

prepare a refined risk modeling analysis to demonstrate that no additional emissions controls were needed. Facilities should be allowed to work collaboratively with EPA and SLTs to refine any risk model inputs if the Agency's screening analysis shows an elevated risk level, before such an analysis is released to the public and potentially causes unwarranted concerns. For example, before EPA releases a version of AirToxScreen based on AERR data, it should consult with facilities in areas showing high risk to verify the information it is using is accurate.

3.4.2 EPA's proposal increases the burdens on small entities.

The "Panel Report of the Small Business Advocacy Review Panel"[34] regarding the proposal lists a number of the challenges and burdens the proposed rule will place on small entities:

- Many small businesses do not have experience complying with EPA regulations.
- Many small businesses will be impacted by the exceptionally low thresholds being proposed.
- Small businesses do not have the workforce to comply with the Proposed Rule.
- Much of the information EPA is requesting is not available to small businesses.
- Many small businesses do not have the experience needed to quantify all HAP emissions.[35]
- Source testing is difficult and expensive. (The Associations note that cost estimates for source testing, if it is even feasible, can range between $20,000 and $50,000 per source.)
- EPA online data collection tools are hard to use.
- Compliance with the proposed rule will require the use of consultants and result in costs much higher than those EPA has estimated (one participant estimated $30,000 per facility for the first year).

In addition, small business panel members were concerned that reporting their emissions could lead to additional regulatory requirements from SLT regulatory agencies, or pressure from their communities to reduce emissions below their reporting thresholds (the community could equate emissions above the thresholds to unacceptable risk). EPA should not subject any small entities

[34] EPA-HQ-OAR-2004-0489-0096.

[35] The Association believe the lack of experience may be due to the fact that the state in which they operate excludes *de minimis* emissions and/or insignificant activities.

to this rule that are area sources, not subject to a Part 63 standard, and not currently required to quantify and report annual or triennial HAP emissions and release point information. Indeed, a small entity that is not currently required to report annual or triennial HAP emissions is likely a small emitter of HAPs and should not be the focus of such an expansive rule. EPA should allow SLT agencies to continue to determine whether any scrutiny should be placed on area-source small entities, based on local air quality conditions and concerns (as they currently do according to individual SIP rules, which can include air toxics standards, and minor NSR rules). EPA acknowledges in the preamble that SLTs may have requirements different than the AERR to address any risk concerns.[36]

Also, EPA's proposed reduced reporting criteria for small entities may be difficult for small entities to understand or implement. A small entity may not even know whether it meets EPA's definition of "small entity." If there has been staff turnover at the entity, it may not know whether it has ever been notified that EPA has modeled it as having a cancer risk greater than 20 in 1 million. To avoid putting small entities in this situation, EPA should apply a 100-in-1million cancer risk threshold, because that is EPA's presumptively acceptable level of risk and because CAA § 112(f)(5) does not require risk reviews for area source standards based on generally available control technology (GACT). Additionally, a small entity would have to compare the rule requirements to any emissions inventory requirements of its SLT agency.

Expanding the AERR rule to include 34,000 small entities, regardless of major-source status, is not justified. We believe that the number of small entities that would be impacted by this rule is actually much higher than EPA estimates, if only because of the large number of small entities in the listed NAICS codes that would need to develop new comprehensive HAP emissions inventories to determine whether they must report under a revised AERR rule – *i.e.*, those additional facilities that must complete applicability and threshold determinations under the rule. Small entities may not have the information available to develop HAP emissions inventories, especially ahead of EPA's promised emissions estimation tools. If a facility is not subject to a Part 63 rule, EPA does not need to gather data to inform any technology review. If EPA needs information to inform a technology review for a Part 63 rule, it should continue to utilize the methods that have served the Agency well in past reviews: issuing targeted ICRs, publishing a request for information, searching the reasonably available control technology/best available

[36] 88 Fed. Reg. at 54143.

control technology/lowest achievable emissions rate (RACT/BACT/LAER) Clearinghouse, reaching out to SLTs and industry for information, or some combination of these.

Finally, the Agency should finalize more-streamlined processes for determining the applicability of the requirements in any expanded AERR rule and focus on major sources of HAP. Small entities that are not currently required by their SLTs to report HAP emissions should not be subject to reporting under the revised AERR rule. Rather, EPA should utilize TRI data or continuous release information already reported by these facilities, instead of imposing the burden of additional reporting on them under the AERR rule. Indeed, the Emergency Planning and Community Right to Know Act (EPCRA) rules are much better suited for communicating facility emissions and other releases to the community. And EPA should exempt all small businesses that are area sources or do not already report HAPs under any program. This costly expansion of the AERR is not justified.

3.4.3 The Costs and Benefits Do Not Justify a Dramatic Expansion of the AERR.

EPA fails to quantify any benefits from its proposed revisions to the AERR Rule but estimates that the cost to industry in 2027 is about $450 million. As discussed above, we believe this cost estimate is low, and that it could be more than $3 billion in 2027 (higher if facilities use consultants). EPA states that the benefits of the proposal "include but are not limited to greater disclosure of HAP emissions to the public, more extensive data for use in rulemakings by the EPA and state, local, and tribal authorities, and more data for use by investors in making decisions on investments. There are no monetized benefits estimates for this proposal since there are no changes in emissions or environmental effects that can be determined."

EPA should not finalize these proposed, costly revisions for all the reasons set forth in these comments. As already discussed, the proposed source-specific HAP reporting requirements are not expressly required or authorized by the CAA and are directly required to ensure proper implementation of a substantive CAA-based emissions standard or emission control program. Informational benefits are inherently low in value, so any explicit or implicit determination that the benefits from hypothetical, nonspecific future uses of the data at some unspecified date in the

future outweigh the costs is inherently arbitrary. In other words, no rational decision-maker could conclude that these benefits outweigh the significant costs.

EPA should work with SLTs to determine if there are facilities or areas where cumulative risk from HAP emissions is of concern and address those areas in a targeted fashion. There is approximately $170 million in funding for air monitoring programs in the Inflation Reduction Act.[37] EPA should consider using the funding to deploy monitors in areas where SLT agencies have concerns about HAP emissions and cumulative risk in order to determine whether a more comprehensive study of a specific site is warranted. Using real data collected by ambient monitors to identify areas of concern would be more efficient and accurate than a paper exercise using published emissions factors in a screening model to produce an exaggerated estimate of HAP emissions impacts based on the precautionary principle and the fear of severe penalties for non-compliance. A system-wide, permanent annual reporting rule to gather information from more than 100,000 sources should not be promulgated, when the Agency has already performed most of its MACT residual risk reviews and addressed any source categories of concern. Under the currently existing approach, EPA continues to make significant strides to reduce HAP risks as demonstrated through completed RTR analyses and risk modeling. This current EPA approach is working, and SLTs are already adequately equipped to address local areas of concern.

4. IF EPA MOVES FORWARD, WE PROPOSE THE FOLLOWING MODIFICATIONS TO REDUCE THE BURDEN OF THE RULE.

4.1 EPA MUST REDUCE THE BURDEN OF THE PROPOSED RULE.

There are several ways that EPA could reduce the burden of the Proposed Rule. EPA has already stated that it intends to develop emissions estimation tools. While this is a great idea, we are unsure that EPA has the resources or the information to develop such tools, given that it claims it needs this Rule to provide data to inform many of its activities and that it has not updated the majority of the sections of AP-42 in decades. Certainly, the Agency cannot require reporting until the tool is ready. Some industry- or source-specific emissions estimation approaches or emissions factors may be available only to paying members of technical associations and not available to all members of a particular industry or for inclusion in a publicly available tool. EPA could alleviate the need to develop tools for small businesses and small facilities that currently do

[37] https://www.epa.gov/inflation-reduction-act/delivering-cleaner-air.

not have robust HAP calculation approaches by changing the rule's applicability thresholds to include only major sources of HAPs. At a minimum, EPA should delay including area sources in this Rule until emissions estimation tools are developed.

Another way to limit the applicability of the Rule would be for EPA to work with SLTs to reduce the list of non-major source NAICS codes, and focus instead on types of facilities where EPA believes HAP emissions could be of concern, rather than applying the Rule to a broad set of non-major facilities like warehouses and laboratories. With respect to NAICS codes, if EPA does apply the revised AERR Rule to some subset of non-major sources, we also request that EPA update the list in Table 1C to Appendix A of the Rule by basing it on the 2022 NAICS list, not the 2017 NAICS list. One of our members is in NAICS 488999, which is a new 2022 NAICS entry for Liquefied Natural Gas (LNG) Terminals, for example: this NAICS is not listed in Table 1C. Given the broad applicability of this Rule, however, we request EPA clarify whether LNG Terminals are included.

Additionally, EPA should eliminate the proposed requirement to collect and report fuel consumption data separately for point sources. If the goal is to collect emissions information by release point,[38] there is no need to require facilities to report summed fuel use across combustion sources separately. EPA's justification for requiring this information is not clear to us and could lead to double counting of emissions.

EPA should continue to allow reporting of certain sources as emissions groups, instead of by release point. If an SLT currently does not require reporting of all emissions by release point and allows certain sources to be grouped, EPA should allow this practice to continue. At a minimum, fugitive sources that originate from within a building and are not subject to any HAP emissions standards should be allowed to be reported as a group and not by each individual roof vent. Likewise, fugitive sources like equipment leaks should also be allowed to be reported as a group, not by each individual valve, connector, or pump. It would be disproportionately burdensome (high cost with fewer available resources for information-gathering, report preparation and oversight, data QA/QC, training on tools and methods, knowledge and skills, etc.) for a minor source facility to develop release-point source information for its emissions units, especially if the facility is complex, or has various fugitive emissions sources that do not have their own discrete stacks but

[38] 88 Fed. Reg. at 54124.

emit through various building openings, or both of these. Many facilities currently are not required to report emissions by release point and have not been required to perform air dispersion modeling of HAP emissions, so they do not have this information.

Also, EPA should pre-load already available information into CAERS to minimize the need for re-entry by facilities of information that has already been provided/is available to agencies. For example, a facility's location, Title V permit number, NAICS code, the federal regulations applicable to each source, the permitted capacity of each emissions unit, and control devices installed on each emissions unit are already known and in SLT databases. Many sources already provide release-point information to SLTs. Any information provided to EPA as a result of a prior RTR rulemaking should also be pre-populated. Many facilities that are subject to a rule that has undergone an RTR have provided updated HAP emissions point data to EPA as part of the risk analysis, and EPA could use that information to calculate incidental CAP. Although facilities will need to review the pre-loaded information initially, it would still reduce the burden to eliminate the need to enter all information in the first reporting year.

EPA should eliminate the requirement for point sources to quantify and report emissions from mobile sources operating within their boundaries. Onsite mobile source emissions information is not necessary for any future MACT standard reviews, would be burdensome to collect and report, and would serve no regulatory purpose as part of a stationary source air regulatory scheme.

EPA should eliminate the requirement to submit performance evaluations in the Compliance and Emissions Data Reporting Interface (CEDRI) and should limit the requirement to submit source test data in CEDRI to data that are representative and could reasonably be used to develop HAP emissions factors. Source test data not otherwise reported in the ERT should be submitted on the same schedule as the emissions inventory, not each time a test is conducted. We also request that EPA confirm that facilities are required to only report stack tests conducted during the reporting year. Legacy stack tests may rely on outdated test methods that may not be available in the CEDRI reporting program.

The requirement to report federal regulations that apply to a facility (by unit) is redundant and unduly burdensome. Many of these regulated facilities have Title V Permits and Installation Permits that describe federal applicability. The purpose of the Title V program was to consolidate all applicable air requirements in one permit; this information should not have to be submitted

again in another form. Many SLTs have air toxics programs that require facilities with emissions of certain toxic air pollutants over certain rates to perform air dispersion modeling and demonstrate that concentrations at the facility's fenceline, property line, or locations where people are present are below acceptable ambient levels. These levels are typically based on the level of risk posed by each toxin. EPA should exempt sources that are subject to a SLT's air toxics program from reporting under this rule.

4.1.1 EPA should clarify to what extent an affected point source facility would be required to identify, quantify, and report HAPs under the AERR rule.

EPA uses the term "all HAP" within the regulatory language proposed under § 51.12(b)(1), §51.1(d)(1)(i)(C), and throughout the preamble to the Proposed Rule. EPA also uses the term "reported HAP" within the regulatory language proposed under § 51.12(b)(1) and § 51.12(b)(2). We are unsure what the term "all HAP" actually means within the quantification and reporting concepts proposed: "For CAP [criteria air pollutants and precursors] and HAP major sources, the EPA proposes a requirement to report **all HAP,** which is defined by pollutants listed in CAA 112(b)(1), 42 U.S.C. 7412(b)(1) and 40 CFR 63.64(a)" (emphasis added). We are concerned that EPA has not proposed any *de minimis* reporting thresholds or categorized any types of sources or activities as trivial or insignificant. The requirement to report "all HAP" could mean an extensive research project for a complex facility, or new requirements for small sources that never have considered estimating "all HAPs." Reasonable and proper constraints must be applied to this key term to prevent perverse outcomes for sources of various sizes, small to large, minor to major. For example, North Carolina's emissions inventory instructions[39] include *de minimis* reporting thresholds and a list of exempt sources. There are many other similar examples that EPA could work with states to replicate in a revised AERR Rule.

Many facilities rely on information supplied by providers of raw materials and other materials used in manufacturing, production, and finishing processes, to demonstrate compliance with applicable air quality requirements, including NESHAPs promulgated under 40 CFR Part 63 under which they must determine the HAP content of materials used in their processes. Industries may refer to product technical and formulation related information provided by suppliers in the form of safety data sheets (SDS); technical data sheets; related product documentation such as for surface

[39] https://www.deq.nc.gov/energy-mineral-and-land-resources/oil-and-gas-program/forms/eminv-instruct/download.

coatings, printing inks, and resins used to manufacture composites; or some combination of these.

Applicable NESHAPs may include several compliance options for affected facilities to use when determining the HAP content of materials used in their processes. Such rules typically regulate total organic HAPs, and not individual HAP species. For example, 40 CFR §63.3360(c), which applies to paper and other web coating facilities, allows affected facilities three options to establish the "as-purchased" HAP content of the coatings used. The first option under 40 CFR §63.3360(c)(1) allows the use of EPA Method 311 to test coating materials and specifies that the content of each carcinogenic HAP and other HAPs present at greater than 0.1 and 1.0 mass percent be determined, respectively, at values truncated to four decimal places. The "all HAP" concept crafted into this Proposed Rule is clearly inconsistent with 40 CFR §63.3360(c)(1), because HAPs present in surface coatings at less than the established 0.1 and 1.0 mass percent thresholds are excluded from the HAP content of the material and in associated emissions calculations. The second option, under 40 CFR §63.3360(c)(2), allows facilities to use EPA Method 24 to determine the volatile organic content as a mass fraction of nonaqueous volatile matter and use it as a substitute for organic HAP content. This option does not differentiate between specific volatile HAP species and is, therefore, inconsistent with 40 CFR §63.3360(c)(3), which allows facilities to use formulation data of a coating material provided to the facility by the coating manufacturer. Consistent with 40 CFR §63.3360(c)(1), the content of each carcinogenic HAP and other HAPs present at greater than 0.1 and 1.0 mass percent must be reflected in the formulation data. The "all HAP" requirement is infeasible because HAPs present in formulation data for surface coatings at less than the established 0.1 and 1.0 mass percent thresholds are clearly excluded from the HAP content of the material and associated emissions calculations. Furthermore, the availability of "all HAP" content from manufacturers can be limited and difficult to obtain because of proprietary and confidential business information (CBI), leaving sources that are subject to the reporting rule and those that are potentially subject to it with significant (under or over) reporting liability risk.

Because many applicable NESHAPs regulate emissions of total organic HAPs instead of individual HAPs, affected facilities would be required to account for "all HAPs" associated with their surface coating and related operations based on information provided by their suppliers. There would be additional costs associated with implementing the required revisions as well as additional costs associated with determining the "all HAP" contents of surface coatings and

related materials. And the “all HAP” concept does not provide for any “end point” for the quantification and reporting of HAP emissions from affected facilities, which could affect HAPs reported in SDS and HAPs measured during source tests. The Associations question the cost effectiveness of the additional analyses that would be needed to determine emissions of “all HAPs” associated with industries and applicable NESHAPs that regulate emissions of total volatile HAPs in lieu of individual organic HAP species. EPA should acknowledge there are *de minimis* levels below which suppliers do not have to provide information about HAP constituents in products and also include a *de minimis* level below which reporting individual HAP compound emissions would not be required. Otherwise, EPA would be adding burden on facilities and essentially bypassing the process the Agency would have to use to add requirements to NESHAPs to quantify all individual HAPs, a process that would consider technology and cost.

In addition, several regulations promulgated under 40 CFR Part 63 use emissions of criteria pollutants as surrogates for emissions of individual HAP species. Criteria pollutants used as surrogate pollutants include but are not limited to filterable particulate matter (PM) as a surrogate for metal HAP; VOCs as a surrogate for organic HAPs; carbon monoxide (CO) as a surrogate for certain organic HAPs associated with incomplete combustion; and sulfur dioxide as a surrogate for inorganic acid gas HAPs. These pollutants are used as surrogates because their control leads to control of the individual HAPs; moreover, use of surrogates for compliance does not require complex and expensive measurements of individual HAPs. Because most NESHAP regulations do not regulate all HAP compounds individually, affected facilities would be required to significantly alter their existing systems to account for “all HAP” associated with their operations.

4.1.2 EPA must define and list insignificant activities that are exempt from reporting.

SLTs have lists of exempt, trivial, or insignificant activities, or some combination of these, that are not permitted or included in the air emissions inventory. EPA’s requirement to report “all HAPs” could be read to be all-encompassing, and to include the smallest of sources that SLTs do not permit. It is not reasonable for EPA to require facilities to quantify and report HAP emissions from trivial items such as maintenance and janitorial activities, bench scale laboratory activities, the on-site cafeteria, and other categorically insignificant activities and exemptions that are codified in state Title V and various other permitting programs. Requiring facilities to report minute emissions from activities that SLTs do not permit or require to be reported would add a significant burden that is not reasonable and unlikely to lead to emissions reductions that benefit local air

quality. Nor does EPA state how it has authority to require reporting of such *de minimis* emissions. EPA must include boundaries on what activities should be reported (*e.g.*, an insignificant activity threshold in pounds of HAPs and a list of categorically exempt activities based on input from SLTs).

For example, our members' air permits have lists of insignificant activities that include small heaters, engines, cooling towers, fuel tanks, inorganic liquid storage tanks, wastewater treatment, landfills, etc. Oklahoma's air pollution control regulations[40] define insignificant activities as either those listed in Appendix I of the rules or those whose emissions are less than 2 tons per year (tpy) of any HAP or 5 tpy of aggregate HAPs. Appendix I list includes equipment such as engines, small combustion equipment, certain types of tanks, laboratory activities, and other activities. Trivial activities are listed in Appendix J of the regulations. The list includes activities such as agricultural, laboratory analysis, cooling towers, cleaning, and others. North Carolina's air quality regulations list activities exempted from permitting requirements for non-Title V facilities at 15A NCAC 02Q .0102 and .0900 and include the same types of sources mentioned above plus mobile sources, engines regulated under Title II of the CAA, temporary crushers, and others. The Texas Commission on Environmental Quality also established a list[41] of *de minimis* facilities and sources for which preconstruction authorizations are not required and a list of insignificant activities for operating permits.[42] The Louisiana air regulations[43] likewise include a long list of insignificant activities based on various criteria, including units emitting less than established minimum emission rates for air toxics at LAC 33:III.5112, Table 51.1 (we note that the minimum emission rate for formaldehyde is 260 lb/yr, which is greater than the reporting threshold proposed by EPA in Table 1B).

EPA's Title V program specifically instructs SLTs to develop lists of categorically exempt activities and to practically exempt such activities from reporting based on either an explicit and full exemption or an exemption based on a threshold calculation. To not offer such an exemption in the Proposed Rule would conflict with the direction of the Title V program. If EPA retains the expansive applicability criteria and a lack of any "exemptions" list, many more than

[40] https://www.deq.ok.gov/wp-content/uploads/deqmainresources/100.pdf.
[41] https://www.tceq.texas.gov/assets/public/permitting/air/NewSourceReview/de_minimis/deminimis-facilities.pdf.
[42] https://www.tceq.texas.gov/downloads/permitting/air/guidance/title-v/tceq-site-operating-permit-revisions-and-notifications.
[43] https://www.deq.louisiana.gov/assets/docs/Air/Asbestos/AsbestosRegulations.pdf.

130,000 facilities will need to develop a HAP emissions inventory solely to determine whether the rule applies to them.

EPA has defined insignificant activities and emissions levels at 40 CFR Part 71.5(c)(11) and a similar definition should be incorporated into any revised AERR Rule to limit the number of sources for which HAP emissions must be quantified and reported. EPA must review the various definitions and exemptions adopted by states and include similar definitions and lists in any revised AERR Rule to minimize burden on facilities.

4.1.3 The "Malfunction Option"[44] should be excluded from the final rule.

EPA has proposed the possible inclusion of a requirement for facilities to report emissions associated with malfunctions as separate values from other emissions. Requiring facilities to calculate and report emissions associated with malfunctions would unnecessarily add complexity to a proposal that is already expansive and burdensome. By their nature, malfunctions are short-term in duration, are not common occurrences, and, with proper screening, would not be expected to adversely impact the use of emissions data for modeling or other purposes. Malfunction emissions associated with sources that are not equipped with continuous emissions monitoring systems (CEMS) most often reflect engineering estimates, because emissions factors are generally not available for malfunction events. Requiring facilities to report emissions associated with short-term episodic malfunctions is not consistent with the requirement under proposed §51.25(a) to report "actual annual emissions." In addition, facilities that have episodic releases of hazardous substances at or above a reportable quantity already report those events to agencies under EPCRA or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) rules, such as the Continuous Release Reporting Rule in §302.8 for emissions that are stable in rate and quantity but not otherwise federally permitted. Many MACT rules also require reporting an estimate of any excess emissions to EPA. We suggest EPA exclude from the final rule the "Malfunction Option" as described in the proposal.

[44] 88 Fed. Reg. at 54206.

4.1.4 EPA should revise or replace the definition of "actual emissions"[45] proposed under §51.50.

The definition of "actual emissions" proposed by EPA under §51.50 is overly complex and should be revised or replaced with a simpler definition. Most facilities understand the concept of reporting actual emissions and have been reporting actual emissions under various periodic emissions reporting programs for decades. We suggest that EPA adopt a simpler definition of "actual emissions" similar to that in §51.491:

> *"Actual emissions means the emissions of a pollutant from an affected source determined by taking into account actual emission rates associated with normal source operation and actual or representative production rates (i.e., capacity utilization and hours of operation). To the extent that they are reasonably quantifiable, actual emissions should include emissions associated with startups, shutdowns, and malfunctions."*

This definition is consistent with current reporting practices. Anything beyond this definition is unreasonable and overly burdensome.

4.1.5 EPA should only require "listed" sources to count fugitive emissions in determining whether they constitute a "point source"[46] under proposed §51.50.

EPA should revise the proposed definition of "point source" to maintain consistency with how EPA addressed fugitive emissions in defining "major sources." Under the current version of the AERR, applicability of reporting requirements is tied to Title V applicability;[47] under the current Title V program, EPA has made clear that fugitive emissions should not be counted in determining "major source" status, unless the source belongs to one of a specific list of source categories.[48] Therefore, under the current reporting program, fugitive emissions are not counted in determining applicability of reporting requirements unless the source is in a source category that is "listed." However, EPA's Proposed Rule would apparently require all sources, listed or not, to count

[45] *Id*. at 54209.
[46] *Id*. at 54211.
[47] See 40 CFR 51.50 (defining a "point source" as "a facility that is a major source under 40 CFR part 70 for one or more of the pollutants for which reporting is required by § 51.15 (a)(1)").
[48] 40 CFR 70.2 (defining "major source" as facilities as those with the potential to emit more than 100 tons per year (tpy), but making clear that "[t]he fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source: [listing 27 source categories])."

fugitive emissions in determining threshold applicability of the program.[49] This requirement differs substantially from the current rule, which does not expressly address "fugitive" emissions at all, but EPA makes no mention of this important policy shift in the preamble to its proposal.[50]

Under Title V, which determines reporting applicability under the current AERR, EPA has only required certain categories of sources to count fugitive emissions for good reason—they are the only source categories for which EPA has formally determined that sufficiently reliable information is available for use in applying the relevant applicability threshold. This source category-by-source category approach for determining when to consider fugitive emissions in determining applicability is grounded in both the CAA[51] and D.C. Circuit precedent.[52] Although EPA recently proposed to reconsider how it requires sources to count fugitive emissions for modifications under the Prevention of Significant Deterioration (PSD) permitting program, even that proposal continues to maintain EPA's long-standing approach of requiring only listed source categories to count fugitive emissions toward applicability thresholds.[53]

EPA provided no explanation in its proposal for why unlisted sources should count fugitive emissions in determining the applicability of EPA's proposed new reporting program when those same emissions do not count in the threshold applicability question for Title V major source status. EPA cannot adopt such a substantial policy change without explaining the justification for such a change and accepting comment on that justification, particularly in light of the significant challenges associated with measuring, estimating, and modeling fugitive emissions.[54]

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[49] 40 CFR 51.10 (proposed) ("What criteria determine when facilities must be reported as point sources? (a) For point sources (as defined by § 51.50 of this subpart), when determining whether emissions data from a facility must be reported as a point source, States and owners/operators must: (1) Include total annual actual emissions from all stack and fugitive release points at the facility;").

[50] Indeed, the text of the existing version of the AERR does not contain the word "fugitive." *See* 40 CFR Part 51, Subpart A.

[51] 42 U.S.C. 7602(j) ("'major stationary source' and 'major emitting facility' mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)." (emphasis added).

[52] *Alabama Power v. Costle*, 636 F.2d 323, 369 (D.C. Cir. 1979) ("[S]ection 302(j) specifically attaches a rulemaking requirement for the inclusion of fugitive emissions in the threshold calculation").

[53] 87 Fed. Reg. 62322, 62325 (Oct. 14, 2022) ("[F]ugitive emissions from sources not belonging to a listed category are generally not included in determining whether a source is a major stationary source. The treatment of fugitive emissions in determining whether a new or existing source is a major source is well-established and is not impacted by this proposed action.").

[54] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position. An agency may not, for example, … simply disregard rules that are still on the

EPA originally adopted the list of source categories that must count fugitives under Title V because the Agency recognized that fugitive emissions differ significantly from stack emissions in several important ways. Whereas stack emissions from different industries share many common characteristics and can be relatively easily compared, fugitive emissions vary far more significantly across different industries due to the wider range of processes that may release such emissions. Examples include evaporation emissions from open vessels, decomposition of biologic matter, fermentation, mechanical processes like crushing and loading of friable material, vehicles driving on paved or dirt roads, reactions in open air from external processes like blasting, and many more. EPA recognized long ago that it cannot adopt a one-size-fits-all rule to estimate or regulate fugitive emissions due to the wide variation in types of industries and the extensive impacts that EPA's proposal would have across those industries. Fugitive emissions cannot be reasonably collected or captured and discharged through a stack, chimney, vent, or other equivalent opening, so quantifying them is difficult because they cannot be directly measured via a typical EPA method performance test. Furthermore, fugitive emissions often result from diffuse activities with varying emissions rates that can be significantly affected by a variety of factors, including activity level, control measure effectiveness, wind speed, soil character, precipitation, and moisture content.

As a result, the regulated community and regulators have typically estimated fugitive emissions via the use of emissions factors, primarily from EPA's AP-42 Compilation of Air Pollutant Emissions Factors or the Emissions Inventory Improvement Program documents, which are derived from now outdated empirical studies conducted for a narrow subset of industry sources and activities that are inadequate to support the scope of this proposal. As recognized by EPA, emissions factors essentially represent an average of a range of estimates and can vary in reliability or robustness. Accordingly, such emissions factors may be appropriate for certain regulatory purposes, such as the development of area-wide inventories, but not for others (assessing actual risk beyond the fenceline from a particular site's emissions). Unfortunately, methodologies for estimating fugitive emissions that would provide more-precise and more-representative source-specific estimates are largely unavailable to facilities. And, attempting to

books."); *see also Am. While Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017) ("A central principle of administrative law is that, when an agency decides to depart from decades-long past practices and official policies, they agency must at a minimum acknowledge the change and offer a reasoned explanation for it.").

evaluate the HAP content of fugitive emissions would be even more difficult, given that even less information is typically available on HAP content of fugitive emissions than stack emissions.

While the use of emissions factors to estimate fugitive emissions may be sufficient for purposes such as emissions inventories, this level of accuracy is not appropriate for determining applicability of reporting or other regulatory requirements for individual sources. For example, some AP-42 emissions factors typically used to estimate emissions from mining activities, most of which are fugitive in nature, have ratings of "C" (average), "D" (below average), or "E" (poor), indicating the factors may not adequately represent a random sample of the industry or variability within the source population. While other AP-42 emissions factors used to estimate fugitive dust emissions have better ratings (*e.g.,* AP-42 Section 13.2.2 Unpaved Roads), the accuracy of such estimates is dependent on a variety of source parameters, including vehicle weights and speeds, traffic volume, road silt and moisture content, rainfall and other precipitation, and types and levels of controls; and, the use of default values or assumptions can potentially introduce considerable error. Furthermore, the AP-42 emissions factors for fugitive dust sources are largely based on data from the 1970s and 1980s that do not reflect current control practices, and only a few have been updated to address PM_{10} and $PM_{2.5}$ rather than total suspended particulate (TSP).

Due to difficulties in accurately estimating fugitive emissions, any subsequent modeling of these emissions would be inherently problematic. Modeling of fugitive emissions also presents distinct issues and challenges. For example, fugitive dust emissions are not confined plumes that emanate from a distinct stack at a specific location; instead, they are a series of emissions producing activities with varying locations, operating schedules, and emissions rates. Modeling of fugitive dust emissions is further complicated by factors like source and receptor terrain elevations, meteorological data and surface characteristics, the coarseness of individual dust particles, and particle depositional velocity.

In addition to these complexities, EPA's current preferred emissions model, AERMOD, is best suited for modeling steady-state emissions from traditional stacks and does not adequately perform in predicting impacts of fugitive emissions from non-stack and intermittent sources. As EPA is aware, AERMOD overpredicts transportability and the resultant impacts from fugitive emission sources. When fugitive emissions are characterized for inclusion in AERMOD, they are assigned parameters for non-buoyant plumes, often with relatively low release heights (less than 10 meters). Overprediction of impacts from non-buoyant sources with low release heights by

AERMOD has previously been acknowledged by EPA. Unrealistic overpredictions are also known to occur when modeling low release-height sources under low windspeed and stable conditions (*e.g.*, nighttime).

Because of the significant challenges associated with modeling fugitive emissions, such evaluations should not be conducted by EPA based on emissions reported under the AERR rule; instead, they would need to be conducted on a case-by-case basis to account for site-specific considerations and the level of information available on the type, amount, and nature of the fugitive emissions in question. Therefore, EPA should not attempt to prescribe generic modeling techniques at all, much less in a general reporting rule, as it has proposed here. The Associations ask EPA to abandon its discussion of modeling for fugitive emissions found in section IV.I.10 of the preamble, particularly because the rule revisions it has proposed do not require modeling and are not where anyone would expect to find requirements on how to do so.

Even more important than the technical challenges presented by fugitive emissions is the fact that EPA has long recognized that the risk of health impacts from fugitive emissions can be much lower than from stack emissions in many circumstances. Fugitive dust from mines is perhaps the best example, as it was the first type of fugitive emissions that EPA evaluated as it began implementing the CAA. In deciding to exempt fugitive dust from regulation, EPA recognized many reasons why those emissions are less concerning—"a large majority of the associated particulate matter is nonrespirable," "mining activity occurs in areas with limited population," "the particulate matter arises at ground level and falls out within very short distances," and "visibility is not affected because the light scattering which hinders visibility is caused by smaller particles."[55] A decade later, EPA reevaluated whether to add surface coal mines to the list of source categories that must count fugitives in determining major source status and decided not to do so because such emissions are already minimized by common practices regulated at the state level and via other legal authority; and, hence, further efforts to reduce those emissions would not produce any benefits.[56] If there is no benefit to any attempts at further reducing certain emissions, the benefit of onerous and complicated reporting requirements for these emissions is equally non-existent, rendering the AERR's proposed expansion to include fugitive emissions unreasonable and inconsistent with the dictate of section 114(a).

[55] 43 Fed. Reg. 26388, 26395 (June 18, 1978).
[56] 54 Fed. Reg. 48870, 48880 (Nov. 28, 1980).

For all of these reasons, EPA should reconsider its decision to require unlisted source categories to count fugitives in determining applicability of the reporting requirements it has proposed. Not only is that approach contrary to longstanding precedent, but it would also multiply the burden of determining applicability of the AERR requirements many times for dozens of source types. In fact, the Associations have identified the following "unlisted" source categories that would likely be required to estimate fugitives for applicability purposes for the first time ever under EPA's proposal: Aggregate Processing, Ceramic/glass manufacturing, Coal Mining, Commercial Printing, Construction Materials (asphalt, wallboard, etc.), Ethyl Alcohol Processing, Fabric and Textiles, Food Processing (drying, roasting, etc.) Metal and Nonmetal Mining, Metals Manufacturing, Oils and Grease, Paper Mills, Plastic and Rubber Manufacturing, Spray Booths, Vehicle Manufacturing, and Wood Products.

Before EPA decides to impose requirements on these industries to estimate fugitive emissions for purposes of triggering onerous reporting requirements, it should carefully evaluate each source category independently, just as it is has done for decades, and decide whether sufficiently reliable information is available to make the necessary calculations.[57] If EPA does not do this, its requirement to count fugitives in determining applicability of reporting requirements and then require reporting of those calculations would simply return data of extremely limited value, if any, and at very high burden and cost on the regulated community (or manufacturing industries).

4.1.6 EPA should exclude cogeneration units and small portable electric generators at major stationary sources from the definition of "small generating unit."

EPA states it is proposing "… new point source reporting requirements for States and owners/operators of facilities within Indian country to report daily activity data … for certain small generating units operated to help meet electricity needs on high electricity demand days (HEDDs)."[58] Under proposed §51.50, EPA defines "small generating unit" as "… any boiler, turbine, internal combustion engine or other unit that combusts fuel on an occasional basis to generate electricity for the electricity grid or for on-site use by a facility other than for emergency use."[59] Yet, the proposed definition of "small generating unit" is broad enough to potentially include

[57] At a bare minimum, EPA must acknowledge the change in the AERR's treatment of fugitive emissions and provide an explanation of why it is changing how fugitive emissions are treated under the rule.
[58] 88 Fed. Reg. at 54124.
[59] *Id*. at 54212.

units that meet the definition of a "cogeneration unit" under 40 CFR 51.123(cc) and portable consumer and commercial non-emergency engine-driven electric generators.

Major sources and other sources meeting the reporting requirements of the rule use cogeneration units to efficiently produce steam for on-site use and power for on-site and (sometimes) off-site use. We do not believe that such cogeneration units and portable generators should be covered under the proposed definition of "small generating unit" because such units are likely already included in required AERR reports for sources where these units are located.

Small, portable commercial non-emergency engine-driven electric generators are those units used at road construction projects, building construction sites, and related operations to provide electrical power where grid power is not available. Some remote facilities do not have access to offsite power sources and utilize small engines that SLT permitting authorities have exempted from permitting and reporting based on size. Small consumer portable non-emergency engine-driven electric generators are used by consumers to provide electrical power where electrical power is not available (*e.g.,* cabins, cottages, motor homes, etc.). Such units are portable, discretionary-use units. They do not help meet electricity needs on HEDDs as described in the proposal.[60] Because these units are not emergency units and are internal combustion engine driven, they could fall under the definition of "small generating unit" as proposed. We do not believe it is EPA's intent, nor would it be reasonable or useful, to require emissions reporting for the national population of small non-emergency engine-driven electric generators, primarily because of the sheer number of such units in operation and the logistics associated with tracking emissions from such units on a daily or per use basis.

We propose EPA revise the proposed definition of "small generating unit" as:

> *"any boiler, turbine, internal combustion engine or other unit that combusts fuel on an occasional basis to generate electricity for the electricity grid or for on-site use by a facility other than for emergency use, excluding the following:*
> *(a) cogeneration units as defined under 40 CFR 51.123(cc) located at major stationary sources or otherwise located at sources meeting the reporting requirements under § 51.12(a);*

[60] *Id.* at 54124.

(b) portable, consumer and commercial non-emergency engine-driven electric generators with actual or potential emissions less than 10 tpy of any HAP;

(c) portable non-emergency generators with actual or potential emissions less than 10 tpy of any HAP that are in use at a remote facility that does not have access to the electrical grid; and

(d) portable pumps, generators, welders, light towers, pressure washers, and air compressors used for facility outages and maintenance activities.

4.1.7 EPA should adjust its proposed HAP reporting thresholds.

EPA proposes to include Table 1B in the revised AERR rule, which lays out HAP emissions reporting thresholds in tons per year (tpy). Many of these thresholds are unnecessarily low, as discussed below. In many cases, they are even lower than SLT permitting, modeling, or reporting thresholds for the same HAPs. And, because the proposed thresholds are so low for multiple HAPs, we believe EPA has grossly underestimated the number of sources that would need to develop HAP emissions inventories. For example, the thresholds for HAPs such as naphthalene, formaldehyde, benzene, and acetaldehyde are so low that many small facilities, including many small businesses and area sources with multiple small combustion units (which no agency has ever identified as health risks), would fall under this burdensome proposal. The rule would be much easier to understand and implement (and much less burdensome) if it simply required reporting of any HAP with actual emissions of 10 tpy or more. This simplification would also focus attention on the largest sources of HAPs.

The approach EPA has taken to set these thresholds is much too conservative. EPA used a threshold of one-in-one million cancer risk in the hypothetical screening modeling it utilized to establish the thresholds. This level of risk is just one percent of the threshold typically used in risk assessment to identify a level of risk that is acceptable.[61] HAPs emitted at a concentration that would only contribute 1 percent of an acceptable level of risk cannot be considered to contribute

[61] EPA adopted the approach used for the Benzene NESHAP, 54 Fed. Reg. 38045, September 14, 1989, in its CAA § 112(f) residual risk reviews. "EPA will generally presume that if the risk to [the maximum exposed] individual is no higher than approximately one in 10 thousand, that risk level is considered acceptable." The United States Court of Appeals for the District of Columbia Circuit upheld EPA's interpretation that CAA § 112(f)(2) incorporates the approach established in the Benzene NESHAP. *See NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008).

significantly to the overall cancer risk from a facility, or even to the cumulative risk when nearby facilities are taken into account.

Beyond this, EPA routinely typically applies overly conservative assumptions in its risk analyses, such as the assumption that the entire population at the fenceline of a facility continuously breathes outdoor air with a constant HAP concentration at a fixed receptor for a standard 70-year lifetime. Also, EPA assumes a hypothetical fenceline of just 100 meters. While that might be appropriate for some types of facilities, it is highly inappropriate for others. Mines, for instance, often have fencelines that are miles from any actual emission points. Moreover, EPA's focus on fencelines is misguided because members of the public are rarely located right at a fenceline, and even less likely for the lifetime duration assumed in risk assessments. And, even with facilities that have fencelines that are relatively close to emission points, actual receptors in the general public are still far more likely to be located much further away. EPA should recognize exceptions to its highly conservative thresholds for facilities with dramatically different physical characteristics than those assumed in the overly conservative hypothetical modeling used to set the HAP applicability thresholds. The inherent conservatism in EPA's analysis further supports use of higher thresholds than EPA has proposed.

Low reporting thresholds will place a particular burden on small facilities. For example, with the use of an unnecessarily low threshold of one-in-one million cancer incidence (considering the exceedingly small amounts of some HAPs that may generate this level of risk), many small facilities with area source permits or even simple registrations would be forced to understand and implement the requirements of the revised AERR, when they have never had to do so before. Although we do not agree with the approach EPA has taken to set the proposed HAP emissions thresholds, a higher risk threshold (*e.g.*, at least the 20-in-1 million threshold EPA considered for small entities) could greatly reduce the reporting burden on small facilities, while having little or no impact on the overall risk presented by a facility or group of facilities. Having these low thresholds may also cause the public to think a facility that emits over one of the thresholds is causing an unacceptable risk, which is likely completely unfounded in most cases.

In addition to setting an unreasonably low reporting threshold of one-in-one million cancer risk, EPA's establishing the threshold using the 10th percentile of the emissions distribution adds compounded conservatism and subjects facilities with emissions resulting in significantly less than one-in-one million cancer risk to an overly broad and permanent reporting program. By definition,

using the 10th percentile to set these thresholds means that 90 percent of the facilities modeled, if they emitted at the established reporting threshold, would not contribute a one-in-one million cancer risk from that HAP. EPA should reevaluate its proposed thresholds, such that HAP emissions reporting is not required from over 130,000 facilities for little or no benefit.

Finally, requiring major sources to report emissions of all HAPs emitted, rather than allowing the use of the same thresholds for individual HAPs as for area sources, is overly burdensome and unnecessary. EPA should only require reporting of HAPs that exceed the major source thresholds, not all HAPs.

If the various low thresholds are maintained in the final rule (rather than making them all 10 tpy), EPA should clarify why "chromium" has a threshold of 1.2E-04 tpy but "chromium (III)" has a threshold of 10 tpy. It is not clear whether EPA is assuming that if facilities report chromium emissions on an elemental chromium basis instead of reporting speciated chromium emissions, it could all be chromium (VI), which has a threshold of 1.2E-04 tpy. EPA should also re-evaluate the thresholds for individual dioxin/furans. For most of the HAPs listed in Table 1B, the magnitude of the threshold considers the possible health risk. However, with respect to dioxin/furans, the cumulative threshold for the 17 dioxin/furan congeners does not consider the well-recognized differences in toxicity of the tetra- and penta- substituted congeners and the much lower toxicity of the hepta- and octa-substituted congeners. For example, a source could exceed the threshold of emissions for octa-dibenzofuran, but not exceed the threshold if the facility emitted the same quantity of 2,3,7,8-dibenzofuran, which is believed to be 1,000 times more toxic. Individual dioxin/furan thresholds that consider the toxic equivalency factors should be included in Table 1B.

4.1.8 EPA should not require area sources to report incidental CAPs.

To prevent the potential inconsistency of reporting a HAP that is part of a criteria air pollutant (CAP), the proposed revised AERR rule would require area sources emitting a HAP in an amount exceeding its reporting threshold that is a subset of a CAP, to report "incidental CAP." This would create an unnecessary additional burden for no reason. The additional incidental CAP amount would in most cases be very small, such that the unreported amount of several other HAPs that individually would not trigger reporting might in fact contribute more incidental CAP than from one small amount from a HAP that triggered reporting. The resulting CAP data would neither be accurate nor meaningful and, therefore, should not be required. At most, EPA's reporting system

could be programmed to automatically add incidental CAPs so that the facilities or SLTs would not have to deal with the additional burden of trying to apply the additional requirement.

4.1.9 EPA should not require specific location data for all emission points.

The Proposed Rule would also require reporting sources to provide specific location data for all point and fugitive sources (not just those point sources that release any HAPs in amounts above the applicable thresholds). EPA claims these data are necessary for accurate air dispersion modeling of a source, suggesting that the common practice of placing all emissions at a central point in cumulative risk modeling for RTRs or other exercises may understate impacts.[62] Yet, the requirement to specify the release points of all emission sources, both point and fugitive, will certainly be extremely burdensome for facilities, some of which may have hundreds or thousands of release points, for several reasons.

First, fugitive emissions release points may be difficult to characterize accurately and may vary depending on what operations are occurring at the facility at a given time and ongoing efforts to reduce fugitive emissions. Second, specific refined source locations in modeling are only part of what is required for accurate modeling; other information including building locations and configurations and the ambient air boundary are also critical. In short, EPA should recognize that release points can be difficult to determine and must be evaluated on a case-by-case basis. Therefore, EPA should not attempt to prescriptively define release points through a generic emissions reporting rule. EPA should also recognize, as it has in the past, that using the central location of a facility for an initial screening of a facility is sufficient to identify an approximate level of risk that could be evaluated further as needed. In addition, the data collected from these efforts would likely be redundant to modeling that has already been performed by or approved by many SLT agencies as part of state air toxics programs. Finally, there are significant security concerns with notifying the public about the precise location of where certain products are stored or activities take place. The TRI currently contains general facility location information, but does not specify, for example, where an acid building is located within a facility or where certain tanks are located.

[62] 88 Fed. Reg. at 54142.

4.1.10 The proposed "wide net" applicability of the AERR requirements is contrary to historical SLT and federal permitting and regulatory applicability precedents, would result in unnecessary burdens, and would provide little or no environmental benefits.

According to EPA's data, EPA's proposed HAP emissions threshold-based applicability approach to the AERR reporting rule under §51.12 would result in significant regulatory and compliance burdens on up to 34,000 affected small entities, which are small businesses with emissions below certain thresholds. These small sources are predominantly non-major facilities that are also area HAP sources, and likely meet "insignificant source" criteria used by many SLT permitting authorities. Small, historically insignificant, *de minimis*, or exempt sources have not been subject to such certain permitting or regulatory requirements and, therefore, have not been required to calculate, track, and report emissions of CAPs or HAPs. Yet, under the proposed risk-based HAP reporting applicability criteria that are reliant on Tables 1B and 1C, a small facility would qualify as a point source under §51.12 because actual emissions of a HAP exceed a relatively low applicability threshold (*e.g.*, formaldehyde emissions of 166 pounds per year) and would be required to report for that HAP *and for any associated CAP* [*i.e.*, volatile organic compounds (VOC)]. Under the "all HAP" concept, that same facility, which has never been subject to such permitting, monitoring, and tracking emissions requirements, would now be required to calculate and report emissions of HAPs and associated CAPs. And, because there are no associated criteria in the Proposed Rule for excluding insignificant emissions units from the inventory, the facility would need to evaluate *all* possible "sources" of the subject HAP and associated CAP, which presumably includes targeted HAPs and associated CAPs associated with maintenance activities (*e.g.*, lawn care), use of consumer products (*e.g.*, cleaning products, office supplies, maintenance products, personal care products, etc.), comfort heating, fuel use in an onsite cafeteria, and other trivial activities. Thus, the Proposed Rule disproportionately impacts small businesses.

We do not believe it is EPA's intent to require affected facilities under any of the proposed §51.12 applicability criteria to quantify, track, and report HAP emissions associated with insignificant or trivial activities called out under SLT or federal permitting requirements. We strongly urge EPA to exempt HAP and CAP reporting for insignificant and trivial activities in accordance with SLT and federal permitting requirements and from the use of consumer and personal care products that are already regulated (*e.g.*, 40 CFR Part 59 – National Volatile Organic Compound Emission Standards for Consumer and Commercial Products, Subparts A through F). Because EPA is

unlikely to use emissions information from insignificant activities to develop a standard or to determine that a source is in violation of a standard, EPA cannot justify under CAA § 114(a) why it needs this information.

4.1.11 The AERR Rule should not apply to portable facilities.

EPA briefly discusses portable facilities and mobile sources in the proposal[63] and states "[t]he current AERR does not address these types of sources specifically…" and concludes that "[t]o improve data quality related to such sources, the EPA proposes to include portable facilities in the AERR-specific definition of point sources that are subject to emissions reporting." The term "portable facility" is currently undefined under 40 CFR Part 51 or 52; however, the term is used in Appendix S to 40 CFR Part 51 at IV.B(ii)(3), which states "[t]emporary emissions sources, such as pilot plants, portable facilities which will be relocated outside of the nonattainment area after a short period of time, and emissions resulting from the construction phase of a new source, are exempt from Conditions 3 and 4 of this section." For reference, Condition 3 pertains to emissions offsets from existing sources in a nonattainment area and Condition 4 pertains to the requirement for emissions offsets to provide a positive net air quality benefit in the nonattainment area. The undefined term "portable stationary source" is used under 40 CFR §51.166(i)(1)(iii), 40 CFR 52.21(i)(1)(viii), and 40 CFR 52.28(c)(4)(iii) to identify an exemption under the prevention of significant deterioration (PSD) rules for relocated portable stationary sources with temporary emissions. The Associations also note that the term "portable stationary source" is a misnomer because a source that is stationary, at face value, is not portable. The existing regulatory references to portable facilities or portable stationary sources relate to operations that are typically temporary and with associated emissions conditionally exempt from certain permitting and other regulatory requirements. EPA has not fully evaluated the potential complications associated with including a new, arbitrary definition of portable facility in the proposed AERR, and the anticipated complications associated with identifying and reporting emissions from portable facilities and how portable facility emissions are addressed under other air regulatory programs (*e.g.*, the new source review [NSR] regulations).

EPA proposes to arbitrarily add a new definition of "portable facility" under 40 CFR §51.50 as "… a facility that does not have a fixed location such as an asphalt plant or portable drilling rig, mobile

[63] *Id*. at 54124.

offshore drilling units (MODUs), and offshore installation vessels." Excluding the examples included in the definition (*i.e.*, asphalt plant or portable drilling rig, mobile offshore drilling units (MODUs), and offshore installation vessels), the definition defaults to "…a facility that does not have a fixed location." This proposed definition is so broad that it may become difficult to distinguish between portable facilities and mobile sources (including nonroad vehicles, nonroad engines, and other mobile equipment used at construction projects), which are regulated by the EPA through the development of tailpipe emissions standards and fuel standards under 40 CFR Parts 79, 80, 85, 86, 600, 1036, 1037, 1039, 1042, 1048, 1054, 1065, and 1066, as applicable.

Given that portable facilities are currently undefined (and are not easily defined), include (as proposed) mobile sources, and are managed inconsistently across SLTs, the Associations request that emissions from portable facilities be specifically exempt from AERR reporting requirements (*e.g.*, as insignificant sources), consistent with the current AERR. Should EPA decide to include a requirement for certain portable facilities to report emissions under a final revised AERR Rule, the Associations offer additional comments below for consideration.

4.1.12 The Associations do not support the "Portable Definition Option" being considered by EPA.

We agree with EPA's statement under the "base alternative" approach for portable facility reporting that the additional complexity associated with reporting a portable facility's emissions at multiple locations, or for multiple time periods, or both, is not warranted. Given that EPA has stated that reporting a portable facility's emissions at multiple locations or for multiple time periods, or both, is not warranted, we question EPA's consideration of the "Portable Definition Option" under which portable facilities would be characterized as, and be required to report emissions as, a stationary source if AERR emissions thresholds are exceeded and if the portable facility was in a single location (*i.e.*, within a one kilometer radius) for more than 30 days.

Classifying truly portable facilities as point sources based on an arbitrary 30-day "same site" threshold would be overly burdensome, more complex, and provide redundant data for affected facilities. A single annual report for an affected portable facility would provide the same basic information on an annual versus multiple 30-day bases. Based on the nature of many portable sources, they may be present at a given site for more than 30 days; however, operation may not occur every day and emissions may occur for only a limited number of hours per day. And, that

same portable facility may move to a different site, operate for less than 30 days, but emit more because it operated more, making the arbitrary 30-day period just a threshold, with no beneficial air quality basis to justify it.

In some states, portable source air permits are tied to the portable source production, not tied to a physical site location. A portable crusher will be permitted, but the associated air emissions reporting is based on the annual throughput. Air emissions are not tracked by the physical location of production.[64] It will be very burdensome to calculate emissions at each physical site when portable units may operate at more than twenty sites in a year. For example, one Midwest member company has 32 portable crushers with permits and another 34 ancillary process portable units that were utilized at 185 different locations during an 18-month period. Developing a tracking system to calculate air emissions for each location, as well as creating an appropriate recordkeeping system, will be complex and burdensome. Site operators will also struggle to estimate portable emissions as one location may have multiple portable units coming to and leaving the site throughout the year.

Indeed, affected portable facilities could be required to report for each discreet 30-day period each time it was present for 30 days at a new site and to include county identifier codes and portable plant centroid positions. Such an approach would require portable facilities to first evaluate AERR applicability by totaling emissions of "all HAPs" to determine if point source HAP emissions thresholds were exceeded. If annual HAP thresholds were exceeded, then the portable source would need to determine if, and how many point source reports would need to be submitted based on each site where the portable facility was present for 30 days or more. Moreover, it is unclear in the proposal if the 30-day period is consecutive days or total days. Based on the complexities and the unnecessary burden envisioned under the "Portable Definition Option," the Associations strongly suggest that EPA eliminate this option from consideration.

[64] Aggregate operators likewise report that they have mining permits that travel with their equipment rather than have a permit for each individual facility. It would be nearly impossible for these operators to estimate emissions for each individual quarry site as not all equipment is in use and emissions vary depending on when and for how long equipment is used.

4.1.13 Drilling and completion activities at oil and gas surface sites should be excluded from any definition of "portable facility."

For onshore activities under Standard Industrial Classification Code (SIC) Code 13 – Oil and Gas Extraction, 40 CFR §52.21(b)(6)(ii) defines building, structure, facility, or installation as "… all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1⁄4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators or emissions control devices." The term "surface site" is defined under 40 CFR §63.761 as "… any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed." The operations described above are associated with the stationary components of a surface site defined under 40 CFR §63.761.

Air emissions associated with the development of surface sites, including site preparation, drilling and completion activities, and construction at surface sites are temporary in nature, are conducted in distinct stages, and do not fit the concept of a "portable facility." More specifically, temporary air emissions at surface sites can be associated with multiple coordinated activities over a defined development period which includes site preparation (fugitive dust emissions, non-road engines, nonroad vehicles), drilling rigs (non-road engines), material handling (non-road engines, nonroad vehicles, conveyors, filters), mobile sources (nonroad vehicles, delivery and construction trucks, automobiles), storage vessels (tanks), impoundments, and well completions (vents, flares, separators, nonroad engines for frac pumps, etc.). The operations described and surface site development are generally conducted by multiple contractors, are not under the control of the same person, and collectively do not fit the concept of a "portable facility." Therefore, accurately tracking and reporting all emissions (*i.e.,* HAPs and CAPs) would be extremely challenging, if not impossible. An operator cannot realistically track and report surface site development emissions that occur as a result of construction equipment, road machinery, mobile sources, non-road engines, stationary engines, vents, flares, and roadway dust associated with contractor operations.

Because emissions from drilling and completion activities associated with a surface site occur from operations associated with contractor activities that are not under common control, the Associations suggest that EPA propose separate definitions of “well drilling” and “completion activities” and exclude them from the definition of “portable facility” under §51.50. Facilities should not be responsible for reporting emissions of contractor-owned equipment.

4.1.14 Nonroad engines and nonroad vehicles should be specifically excluded from the definition of “portable facility.”

EPA’s definition of “portable facility" under proposed 40 CFR §51.50 would include nonroad engines and nonroad vehicles, thereby blurring the distinction between mobile sources and stationary sources under the proposed AERR rule. As a result, the Associations believe that the majority of “portable facilities” that would be subject to emissions reporting under the proposed AERR rule would actually be nonroad engines and nonroad vehicles, which are specifically included in the definition of “mobile source” under 40 CFR §51.50. Nonroad engines are included in the current 40 CFR §51.50 definition of “mobile source” as “…an internal combustion engine (including fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not affected by sections 111 or 202 of the CAA.” Nonroad vehicles are also included in the current 40 CFR §51.50 definition of “mobile source” as “… a vehicle that is run by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.” The suite of regulations affecting nonroad engines and nonroad vehicles are based on Section 213 of the CAA.

The Associations question the utility, cost effectiveness, and environmental benefit associated with reporting actual mobile source emissions, including those from nonroad engines and nonroad vehicles, when nonroad engines and nonroad vehicles, as mobile sources, are already subject to stringent tailpipe emissions and fuel standards. With the myriad of different engine sizes and different fuel types, facilities would be chasing down a lot of data just to report a minute amount of HAP emissions. EPA should not require industrial facilities to track and report emissions from nonroad engines that they own or that their onsite contractors own under the AERR Rule.

4.1.15 Any definition of "portable facility" must be compatible with SLT regulations.

How SLT agencies address portable facilities varies considerably. Although EPA cites examples of some portable facilities that may emit significant quantities of criteria air pollutants,[65] emissions from most portable facilities are more likely to meet *de minimis* or exemption criteria under SLT air quality programs. For example, Ohio defines "portable source" under Rule 3745-31-01(P)(22) as "… an air contaminant source that, in the director's judgment, is specifically designed to be transferred to a new site as needs warrant." Ohio specifies that an "air contaminant source" under Rule 3745-31-01(A)(8) is "… each separate operation, or activity that results or may result in the emission of any of the following air contaminants…" Guidance published by the Ohio Environmental Protection Agency (OEPA) uses the terms "portable source" and "portable facility" interchangeably, and states "[a] portable facility is considered to be a production unit and all the supporting emission units needed for the production unit to successfully operate that relocate together."[66] Other states, such as Pennsylvania, do not define "portable facility" and provide only minimal guidance regarding how portable facilities should be permitted (*e.g.*, in Pennsylvania's July 21, 2021, Document No. 275-2101-003, "Air Quality Permit Exemptions," related to portable engines and portable crushers).

Forcing SLT regulators to utilize a federal definition of portable facility to first accurately establish AERR applicability, and then to track and account for emissions of HAPs from such facilities (based on varying applicability thresholds) is destined to fail. Because of differences in how SLT regulatory authorities permit and track emissions from their variously defined portable facilities, any changes related to defining portable facilities at the federal level would first need to be accepted and implemented consistently by SLT regulatory authorities for such changes to be effective.

If EPA retains the requirement to report emissions from portable facilities in the revised AERR Rule, it must revise the definition of "portable facility" to be "an air contaminant source, comprised of a production unit and all supporting emission units needed for the production unit to successfully operate that relocate together, that is specifically designed to be transferred to a new site as needs warrant." EPA should also exempt portable sources that fall under the definition of insignificant source that must be added to the rule.

[65] 88 Fed. Reg. at 54157.
[66] OEPA Engineering Guide 44: Portable Source Permitting, Relocation, and Compliance May 1, 2019.

4.1.16 We oppose "Alternative E1" for portable sources being considered by EPA.

As EPA notes in the preamble,[67] Alternative E1 (aggregated monthly reporting of portable facility emissions) does not reduce the reporting burden for operators of portable facilities. Portable facilities such as drilling rigs and completion operations would likely exceed the proposed annual HAP reporting thresholds in Table 1B of Appendix A. Therefore, reporting for these sources would be required under the revised AERR rule. This increased requirement would be burdensome and unjustified. A member (a mid-sized operator) of one of the Associations has 30 domestic onshore drilling rigs and 20 fracturing cores, each of which operates at 20 to 25 discrete locations per year. The proposal would require evaluating emissions data from 1,000+ locations annually to determine if reporting is required. The applicability of the rule to drilling rig and completion operations should either be modified or eliminated to reduce the reporting burden. We recommend that all portable sources not registered with a local, state, or federal agency be excluded from AERR rule applicability. EPA could also set a minimum facility size, or "utilization" threshold, to reduce the burden of the rule on these operators.

4.1.17 EPA should not require stationary point sources to quantify and report mobile source emissions.

EPA proposes under §51.5(b) to require facilities to include emissions from mobile sources "…operating primarily within the facility site boundaries of a point source or multiple adjacent point sources when assessing whether facility emissions exceed the emissions reporting thresholds in Tables 1A and 1B to Appendix A of this subpart and when submitting point source emissions data under this subpart." But these sources are not included in a facility's air permit and are not included in the emissions that facilities report to SLT authorities. Reporting of emissions from mobile sources would be inconsistent with the emissions that are permitted, and potentially confusing to the public. Mobile sources are simply not part of the stationary source air permitting regime and it is not clear how EPA's CAA § 114 authority would apply here, as gathering this information would not lead to a regulatory program under CAA § 112. Given that mobile sources have emission standards, are subject to in-use verification, are not included in facilities' permits, we question the utility, cost effectiveness, and environmental benefit associated with reporting actual mobile source emissions. It is unclear how EPA would include mobile source emissions in

[67] 88 Fed. Reg. at 54157.

any risk modeling based on AERR data. Therefore, this proposed requirement is unnecessary, unclear, burdensome, without benefit, lacks the appropriate regulatory authority to implement it under these provisions, and should be removed.

EPA's proposed definition of "mobile source" under §51.50 does not provide any clarification regarding the Agency's intended mobile source reporting requirements for sources that "operate primarily within the facility site boundaries." While the preamble includes references to "…vehicles like cargo trains, employees' personal vehicles, or delivery trucks (which would not be included)," inclusion of "nonroad vehicles and trucks at mines, forklifts, and movable electricity generators," and exclusion of "temporary or occasional on-site contractors (such as temporary construction, landscapers, or repair services)",[68] the criterion included in the regulatory text that the mobile source is "…operating primarily within the facility boundaries…" is very vague and will likely result in confusion and reporting errors by affected point sources. First, site boundaries are not present at all operations where facility-affiliated mobile sources and contractor mobile sources are in operation. For example, a pipeline or drilling operation will not have a traditional "facility boundary," but rather will have a right of way. Also, in areas of intensive natural gas and oil well development, mobile sources associated with the development company and multiple contracting companies may traverse between multiple sites across a relatively large geographic area on any given day. Many metal and nonmetal surface mine operations have multiple surface extraction locations without fixed facility boundaries and also utilize rights of way or haul roads which do not provide sufficiently clear boundaries.

Second, it is not clear as to which mobile sources EPA wants included in the report. Several examples of mobile source types where confusion could arise include on-site vehicles operated by contractors that are routinely at the facility (or travel across multiple sites as in the examples above), locomotives, and vessels. EPA should not require point sources to report emissions from locomotives, vessels, or barges while operating within the facility site boundaries or at docks, as emissions associated with commercial marine and locomotive services are already being reported by SLTs under the nonpoint source requirements[69]; having facilities report them could lead to double counting. In addition, splitting the emissions reporting requirements between point sources and commercial transit operators would unnecessarily complicate reporting conventions.

[68] *Id*. at 54175.
[69] *Id.* at 54125.

EPA should likewise not require emissions reporting for contractor vehicles that are used on-site. Contractor vehicles could include motor vehicles (*e.g.*, general duty trucks, dump trucks, etc.), non-road engines (*e.g.*, rental portable compressors, crushers, and generators), and non-road vehicles (*e.g.*, road machinery, excavation equipment, cranes, fork trucks, etc.). While these vehicles operate primarily within the facility's boundaries while the contractor is engaged by the facility, the facility neither owns nor operates such vehicles; does not inventory the equipment itself, the fuel it uses, or its emissions; and such vehicles are not on a facility's air permit. Indeed, in this example, it is not clear what, if any, reporting obligations EPA intends for the contractor but, the responsible official of a facility should not have to certify that emissions information provided by a contractor is true, accurate, or complete.

Even where EPA attempted to be more specific in identifying mobile source emissions that it would like sources to report, such as EPA's reference to "nonroad vehicles and trucks at mines," significant uncertainty remains on how to tally those emissions, and the burden in attempting to prepare those estimates would be highly unreasonable. Tracking emissions from mobile sources at a facility-specific level would unnecessarily increase monitoring, recordkeeping, and reporting burdens on affected point sources. Under proposed §51.5(b), facilities would be required to include emissions from mobile sources "…when assessing whether its facility emissions exceed the emissions reporting thresholds in Tables 1A and 1B to Appendix A of this subpart," even though mobile sources are not typically counted in determining permitting applicability. Using EPA's example of mines, this requirement would mean that each mine would be required to annually audit its entire fleet of mobile equipment, determine which ones are dedicated to that particular mine, and attempt to estimate emissions from the use of the equipment over the course of the entire year, a process that would require extensive time and effort to complete. EPA has not explained how this approach to estimate the information would return any more accurate data than estimating mobile sources using more general, region-wide assumptions. This approach is also inconsistent with current permitting and regulatory requirements, which typically do not require such a granular review of mobile source emissions. Moreover, such an undertaking would be an unsustainable logistical and financial burden for many mine operators, particularly those in the metal and nonmetal sector who are often small businesses operating with high costs and thin margins. Such facilities often shift mobile equipment from one facility to another based on need on short notice, further complicating accuracy of any calculations.

Finally, the information needed to track emissions from all mobile sources is generally not available at the point-source level. Mobile sources at facilities can include, but are not limited to, construction vehicles, road machinery, heavy duty trucks, light duty trucks, automobiles, fork trucks, manlifts, golf carts, etc. It is not the responsibility of stationary sources to calculate, track, and report emissions from mobile sources, and EPA should not try to impose a new obligation to do so now.

Given the confusion, lack of guidance provided by EPA, and lack of a regulatory basis regarding the proposed reporting of emissions from mobile sources operating at point sources, EPA should eliminate the mobile source emissions reporting provisions from the Proposed Rule and continue to rely on the existing mobile source emissions reporting methods and conventions currently in place for SLTs. Although we do not believe EPA should require emissions reporting for any onsite mobile sources, the requirement should at least be narrowed to mobile sources that always remain onsite, are owned/operated by the facility itself, and contribute directly to the facility's operations. Any requirement should also include a *de minimis* threshold to prevent the overly burdensome reporting for small mobile sources such as construction vehicles, road machinery, heavy duty trucks, light duty trucks, automobiles, fork trucks, manlifts, golf carts, etc. To accurately report emissions from these small sources, sources would need to track fuel usage for each individual source while operating on-site (which is virtually impossible), and would require monitoring usage for hundreds of additional sources at many facilities. A simple EPA tool to estimate these emissions would also be helpful to facilities if this requirement is finalized.

4.1.18 The scope of EPA's proposed "Option to Include PFAS as a required pollutant" is unclear.

It is unclear whether EPA's proposed "Option to Include PFAS as a required pollutant" seeks comment on a proposed reporting requirement that may be included in the final rule, or whether EPA is merely seeking preliminary comments and ideas on how a theoretical reporting regimen for PFAS could be designed and implemented as part of a future rulemaking.

In the Proposed Rule, EPA notes that "measurement methods are unavailable to measure many of the individual compound making up the collective group of PFAS compounds" and that "toxicity data are available for only a handful of compounds," explaining that "[t]hese limitations would

need to be accommodated by any regulations concerning the reporting of PFAS."[70] The Proposed Rule does not, however, contain any proposed language for the regulations that would be needed to accommodate absent measurement methods and toxicity data on which the public could meaningfully comment. EPA explains that "Given these considerations, the EPA seeks comment on [a] 'PFAS Option' for how the Agency could include PFAS reporting requirements in a final action."[71] This represents an open-ended request for suggestions, rather than an opportunity for the public to offer meaningful, targeted comments on a proposed reporting regime.

Based on the relatively brief discussion that the Proposed Rule dedicates to what would amount to a sweeping and burdensome PFAS reporting requirement and EPA's acknowledgement of the current unknowns related to PFAS measurement methods, toxicity data, and risk analysis, EPA seems to be merely seeking preliminary comment on a PFAS reporting framework that will assist the Agency in a distant rulemaking. To the extent that this was not EPA's intent, and a PFAS reporting requirement is being considered for inclusion in the final rule, the Associations urge EPA to clarify its position and provide the public a meaningful opportunity to comment through a supplemental notice for public comment, in which the details of the proposed PFAS reporting program are more thoroughly explained and all proposed regulatory text is provided.

4.1.19 It would be premature for EPA to require PFAS air emissions reporting with this rule.

EPA requests comment on whether the AERR Rule revisions should require reporting of PFAS air emissions.[72] It is premature for EPA to require facilities to report emissions of PFAS or any other non-HAP compounds with these revisions to the AERR Rule.

First, EPA's stated purpose for these revisions is to obtain better HAP emissions data. PFAS are not one of the listed HAPs. Second, EPA also desires to use the reported air emissions data to perform cumulative risk analyses. But, as EPA admits in the preamble, there are no health benchmarks for the inhalation toxicity of PFAS compounds. Moreover, EPA does not have the scientifically demonstrated method to quantify PFAS emissions or the data to develop PFAS reporting thresholds based on risk analyses; therefore, it is premature to consider TRI PFAS

[70] *Id*. at 54148.
[71] *Id*.
[72] *Id*.

emissions data as lacking.[73] Third, EPA would like to use the reported data to develop emissions factors. But, to our knowledge, there are extraordinarily few PFAS air emissions data available. And, where facilities may have performed stack testing of PFAS emissions, any resulting emissions factors would not be applicable, as such emissions are typically a result of a manufacturing process that involves production of PFAS-containing coatings.

Hence, EPA should not use this rule to require sources to perform PFAS source testing. There is no basis to require emissions testing or quantification/reporting of PFAS air emissions at facilities that are not manufacturing known PFAS-containing materials or combusting known PFAS-containing waste. And, as EPA acknowledges in the preamble to the Proposed Rule, there is currently no EPA approved reference method for PFAS air emissions testing, only an "other test method" (OTM-45) for some of the PFAS compounds that contains the following disclaimer:

> "The posting of a test method on the Other Test Methods portion of the EMC website is neither an endorsement by EPA regarding the validity of the test method nor a regulatory approval of the test method. The purpose of the Other Test Methods portion of the EMC website is to promote discussion of developing emission measurement methodologies and to provide regulatory agencies, the regulated community, and the public at large with potentially helpful tools. Other Test Methods are test methods which have not yet been subject to the Federal rulemaking process. Each of these methods, as well as the available technical documentation supporting them, have been reviewed by the EMC staff and have been found to be potentially useful to the emission measurement community."[74]

Additionally, EPA notes in the preamble to the Proposed Rule that TRI reporting of 180 PFAS compounds is now required at a threshold of 100 lbs, a threshold lower than that for most chemical substances listed on the TRI. EPA should continue to rely on TRI reporting for data on PFAS releases to the environment. In addition, some SLTs have already worked with specific facilities to address PFAS air emissions where there was a potential concern. There is no basis for EPA to broadly require all facilities to investigate PFAS air emissions under this rule.

[73] *Id*. OTM-50, which is intended to collect emissions samples and quantify up to 30 very volatile PFAS using gas chromatography/mass spectrometry (GC/MS), is still under development.
[74] https://www.epa.gov/sites/default/files/2021-01/documents/otm_45_semivolatile_pfas_1-13-21.pdf.

4.1.20 Any PFAS reporting threshold should be based on individual constituents or rational groupings of PFAS, rather than a single cumulative PFAS emission.

EPA acknowledges that unlike for HAPs, it lacks sufficient PFAS and risk data to develop specific threshold levels for reporting for individual PFAS compounds.[75] EPA's response to this is not to wait until it has sufficient data to support reasonable reporting thresholds for individual PFAS compounds or logical groupings, but rather is to arbitrarily apply the current TRI threshold of 100 pounds (0.05 tons) per year and to apply that threshold to a source's cumulative PFAS emissions in air.

EPA claims that by using the TRI threshold it is "reduc[ing] complexity and burden."[76] EPA explains that because TRI reporting captures a much broader picture of a facility's management of a chemical waste beyond air emissions, including waste disposal and releases to water and land, EPA's proposed reporting threshold is less stringent and "is not adding any burden on facilities to recognize that they may need to report to the AERR . . . ."[77]

EPA's estimated burden on the regulated community, however, ignores the obvious complexities that will stem from the proposed requirement that a facility's emissions of PFAS compounds be subject to a single cumulative reporting threshold. Under the current TRI requirements, a facility that is confident that it is safely below the 0.05 tpy reporting threshold for a particular PFAS compound is not required to perform additional calculations to determine exactly how much material is released. Under EPA's proposal, however, a facility with cumulative PFAS air emissions above 0.05 tpy would need to determine its emissions for every PFAS compound it emits, regardless of how *de minimis* the amount is for any particular PFAS compound. A theoretical facility that emits 90 pounds of a particular PFAS compound and emits approximately 0.5 pounds of 40 additional PFAS compounds in a year currently has no current TRI reporting obligations, as its emissions for any single PFAS compound do not exceed TRI's 0.05-tpy reporting threshold. Under EPA's proposal, however, that same facility would now have to calculate and report air emissions quantities for all PFAS compounds, even the 40 compounds for which it is emitting approximately 0.5 pounds per year. This represents a dramatic increase in regulatory burden that is not acknowledged in EPA's Proposed Rule. Meanwhile, another theoretical facility that emits 99 pounds of a single PFAS compound in a year would not have to

[75] 88 Fed. Reg. at 54148.
[76] *Id*.
[77] *Id*.

report its emissions under either the current TRI program or EPA's Proposed Rule, while its competitor facility would inexplicably be forced to expend significant resources and time calculating emissions in the tenths of pounds for dozens of separate PFAS compounds.

To the extent that EPA insists on requiring PFAS reporting obligations under the AERR, the Associations urge EPA to develop a reasonable emissions threshold for each PFAS compound rather than an unjustified, unworkable, and inequitable cumulative threshold for all PFAS compounds. EPA could also exempt facilities that do not intentionally add PFAS to their products, as has been done in several state regulations covering PFAS in packaging.[78]

4.1.21 EPA should not require submission of all source tests and performance evaluations.

The proposed revisions to AERR would require facilities to report the results of all stack tests and performance evaluations electronically to the CEDRI system when not otherwise reported to EPA.[79] It is not clear whether EPA means to require only HAP stack tests to be reported or whether all stack tests for any pollutant must be reported. EPA should not require reporting of any performance evaluation data under this Rule and should either narrow the scope of the stack test data to be provided or allow states to submit stack test data after they have reviewed and approved it.[80]

First, requiring facilities to report the results of performance evaluations of monitors, such as relative accuracy test audits (RATAs), serves no purpose. Such data would not be usable to EPA, as they do not represent source emissions. Performance evaluation results would not provide any relevant information to the Agency or the community regarding the level of a source's emissions and could not be used to develop emissions factors. These results would only serve to document that a facility is performing regular quality assurance activities on its monitors. So, the burden of reporting performance evaluations is not supported. At a minimum, EPA should narrow the scope of what it considers a performance evaluation such that submission of unusable data (*e.g.*, parameter monitor calibration data or concentration data that are not accompanied by flow data such that an emissions rate cannot be calculated) would not be required.

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[78] *See e.g.,* https://www.dec.ny.gov/chemical/124367.html.
[79] 88 Fed. Reg. at 54125.
[80] Notably, the proposal makes no mention of the EPA employee time needed to review every set of performance test data that would be required if this requirement is promulgated.

Second, EPA should narrow the scope of stack test data to be submitted. Facilities may conduct stack tests to evaluate alternate operating scenarios, evaluate emissions when control devices are not operating, optimize performance of equipment and control devices, determine worst-case emissions, or evaluate performance of a new or modified piece of equipment. A facility might perform a stack test to confirm there are no excess emissions when a control device is not operating optimally (*e.g.*, one field of an electrostatic precipitator or one compartment of a fabric filter is out of operation). One might be performed using a permitted fuel that is the highest emitting, but not normally burned. Or a stack test might be performed at a non-representative operating condition to evaluate compliance with an emissions standard during a certain operating scenario that occurs infrequently.

In this last example, the most recent stack test conducted by the facility may have been conducted at worst-case conditions or under an alternate operating scenario that does not constitute normal or representative operating conditions. Some stack testing also involves spiking of materials to achieve certain emissions levels or create worst-case conditions. The facility may have only operated under these unrepresentative conditions for the few hours it took to complete the stack test. Indeed, some facilities conduct source measurements for internal troubleshooting or prior to facility modifications intended to reduce emissions. Requiring facilities to justify why the most recent source test or site-specific monitoring data were not used to estimate annual emissions would increase the burden on facilities. The facility must already certify its emissions estimates are accurate; it should not have to also justify each selected emissions factor.

Some rules require sources to test at worst-case maximum emissions to demonstrate compliance. Data from such tests do not represent normal actual operation or emissions of the unit. EPA claims to need such data to develop and improve emissions factors.[81] But, data from stack tests that do not represent normal operation should not be used to develop emissions factors, and facilities should neither have to report them nor justify using other data to calculate actual emissions.

Finally, some facilities that stack test annually or every two years may use the average of the most recent three stack tests as their emissions factor if the source is operated fairly consistently

[81] *Id*. at 54125.

and there were no modifications or changes in the method of operation of the source across the three stack tests. One stack test is a snapshot in time, and an average of the most recent three stack tests might better represent annual average emissions. In this case, facilities using this more representative approach would be required to submit justification for doing so, an additional burden, as they likely have already discussed this approach with their SLT and received approval. As stated earlier, EPA should require facilities to submit only the results of stack tests that represent sustained normal operation. If this is the case, facilities would be less likely to need to justify use of other data to report annual emissions. Facilities should also be allowed to wait to submit stack test data until after it has been approved by their SLT.

In summary, EPA should limit the requirement to submit stack test data to only those tests that represent normal source operation and are conducted to demonstrate compliance with a specific regulatory requirement (*e.g.*, are otherwise required to be submitted to a regulatory agency). EPA should not require ERT submittal of performance evaluations. Entering data into the ERT can be difficult and burdensome; EPA should limit submittals to only the HAP stack test data that are representative.

4.1.22 EPA should clarify that the proposed revisions to the AERR Rule would not require facilities to conduct source tests to measure HAP or CAP emissions.

We support EPA's preamble statement that "[g]Iven these considerations, an addition of source testing requirements would likely be too unwieldy to be successful."[82] While we interpret this statement to mean that no new source tests would be required under the proposed revisions, the regulatory language proposed under §51.5(a) does not explicitly exclude the requirement to conduct new source testing: "[a] State or owner/operator must estimate annual actual emissions as defined in §51.50 of this subpart using the best available estimation methods for assessing whether its facility emissions exceed the emissions reporting thresholds in Tables 1A and 1B to Appendix A of this subpart and for submitting point source emissions data under this subpart." However, the term "best available estimation methods" is undefined within the proposal. Considering that §51.5(a) refers readers to an emissions estimation hierarchy that identifies source tests as a reliable but expensive emissions estimation approach, that "best available estimation methods" is undefined, and that the proposal does not explicitly exclude conduct of new source tests, we are concerned that EPA, SLTs, and the general public may subsequently

[82] *Id*. at 54169.

believe that new source testing is mandated when alternative emissions estimation methods are either unavailable or unreliable. Emissions testing, in general, is disruptive and expensive, especially when attempting to estimate emissions of "all HAPs" at a given facility, which may include dozens of individual constituents. We suggest that EPA revise the regulatory language under §51.5(a) to explicitly exclude all facilities from a requirement to conduct new source testing to account for "all HAP" emissions from affected facilities.

4.2 SOME PROPOSED REQUIREMENTS ARE OVERLY COMPLEX, AND IMPLEMENTATION WITHIN THE CURRENT TIMELINE IS INFEASIBLE.

4.2.1 The proposed requirements are overly complex.

The Proposed Rule is overly complex in two primary ways. First, EPA is proposing requirements that either apply to SLTs, apply to point sources, or could apply to either an SLT or a point source depending on whether the SLT has accepted reporting responsibility. This method of presentation in the Federal Register notice makes it difficult for facilities to have a clear picture of what their obligations would be under a revised AERR Rule, as there is uncertainty around whether they would have to report information to their SLT, to EPA, or to both. This would inevitably lead to confusion between agencies and industry as to which entity is required to submit what data. EPA is premature in proposing these expansive requirements. The Agency should work with and rely on SLTs to collect and report emissions data, not create a burdensome system where facilities would be required to submit one set of data to SLTs per their requirements, and then, another, more expansive set of data to EPA per the revised AERR Rule requirements. Each SLT has developed emissions inventory regulations and reporting methodologies that work for them.

Second, as already discussed in these comments, we read the proposed requirements to be expansive in their scope; it would be an enormously complex undertaking for facilities to comply with the rule. Instead of asking facilities to report any data they already have to SLTs, EPA is proposing requirements for them to quantify and report all HAPs using the best available emissions estimation methods. EPA may ultimately question facilities' reports if they use a methodology that is either not on EPA's hierarchy or at the bottom of it (*e.g.*, engineering judgement) or if their reported HAPs are not similar to other facilities in their industry or sector. Developing first time HAP emissions estimates can be an overly complex process in the face of such a daunting proposal. We are uncertain what EPA's review process would look like and how facilities would be expected to respond. EPA should acknowledge that the best available

methodology for one facility can be different than that from a similar facility, due to either resources or available information.

Third, it would require the facilities' constant attention to not only be on the lookout for better ways to estimate HAP emissions, but also to watch for changing HAP emissions thresholds that could trigger additional reporting requirements under a revised AERR Rule. EPA has proposed an endless annual reporting cycle where, in an effort to submit a complete report, facilities would have to constantly be on the lookout for changes. If EPA finalizes the AERR revisions, we propose that changes to HAP reporting thresholds only occur on a five-year frequency, to minimize complexity and burden. In addition, EPA should not revise any HAP threshold based on risk modeling until a revised risk value has been fully and scientifically vetted and any litigation around the value has concluded.

4.2.2 EPA's proposed reporting timelines are not reasonable.

Table 5 of the Proposed Rule's preamble lays out EPA's proposed timeline for the requirements the Agency proposes to add to the AERR Rule.[83] EPA proposes to require facilities to report 2026 actual emissions by May 31, 2027, with actual emissions for years 2027 and beyond to be reported by March 31 of the following year (although the language in the preamble at 88 Fed. Reg. 54160 is confusing in that it references both March 31, 2028, and March 31, 2031, as the first early reporting dates Tables 3 and 5 show two different dates [Table 5 actually has both dates], so we are not sure whether EPA is proposing to move the point-source reporting deadline to March 31 in 2028 or 2031). There are already many environmental reporting obligations that facilities must meet annually, many of which fall in the first half of the year:

[83] *Id*. at 54193.

Month	Environmental Reporting Obligation
Varies, but typically in first half of the year	SLT emissions inventory Title V annual compliance certification Annual air permit reporting for non-Title V facilities Required corporate reporting Projected actual emissions reporting Stormwater annual report Fugitive emissions reports SLT annual hazardous waste reporting Updated top-screen submittal to DHS 5-year RMP updates Test plan/protocol submittals Internal corporate reporting Responses to agency information requests
January	Quarterly compliance reports Semi-annual Title V compliance reports (although some SLTs require them in months other than January and July) Semi-annual MACT and NSPS compliance reports Semi-annual state-required reports Annual air regulatory compliance reports Annual wastewater reports (production report, biocides report, BMP incident report) Monthly DMR reporting
February	Tier II reports Monthly DMR reporting Waste minimization reports
March	GHG reports Biennial hazardous waste reporting Monthly DMR reporting Emissions reduction credit balance report
April	Quarterly compliance reports Monthly DMR reporting
May	Monthly DMR reporting

Month	Environmental Reporting Obligation
June	Monthly DMR reporting
July	TRI Quarterly compliance reports Semi-annual Title V compliance reports Semi-annual MACT and NSPS compliance reports Semi-annual state-required reports Monthly DMR reporting
August	Monthly DMR reporting
September	TSCA chemical data reporting (every 4 years) Monthly DMR reporting
October	Quarterly compliance reports Monthly DMR reporting
November	Monthly DMR reporting
December	Monthly DMR reporting

It would be very burdensome on facilities to add "reporting HAP emissions under AERR Rule to EPA" to the already long list of environmental reporting obligations they have in the first half of the year. While we would prefer to wait and report to EPA until the 4th quarter of each year, EPA should, at a minimum, move the deadline to July of each year (*e.g.*, harmonize it with TRI reporting). As the burden of reporting these emissions is likely to land on facilities, as opposed to SLTs, HAP reporting under a revised AERR Rule would, at least in the beginning, be an extra report to add to the list. It is not reasonable to require reporting by more than 100,000 facilities by March 31 of each year. Indeed, there is not enough consulting workforce available to assist all these facilities in quantifying and reporting emissions in a 3-month window.

Compounding on these issues, many of our members rely on data and analytical results from their suppliers of surface coatings and other materials to create emissions estimates, making a first-quarter deadline infeasible. If EPA finalizes a 3-month reporting deadline, it is less likely to receive complete, quality data, than if it finalizes a more reasonable reporting deadline. Facilities also need a mechanism to correct or contest information either pre-populated into CAERS, submitted to CAERS, or adjusted by the Agency in CAERS. EPA should also clarify that the AERR Rule submittal is not a Title V applicable requirement and that facilities are not required to report the status of their submittal on their annual Title V compliance certification.

With respect to submitting the first reports for the 2026 reporting year in 2027, this Rule is not likely to be finalized before late 2024; hence, SLTs and facilities would have little time to adapt regulatory requirements, digital systems, and current emissions estimation approaches to the final revised AERR requirements. Implementing new air toxics programs takes time and resources that SLTs may not currently have. EPA should postpone the first required emissions inventory submittal deadlines until SLTs can adjust their statutes/regulations and online systems to accept these data. If finalized as proposed, the revised AERR Rule would unfairly force thousands of facilities into duplicate reporting of information. EPA should finalize AERR revisions that have a narrower scope, and reporting deadlines should be dependent on when SLTs can assume reporting responsibility. At a minimum, EPA should provide three full calendar years after the Rule is finalized for facilities to determine applicability and gather information that they will be required to be reported. EPA could also stagger the required date of the first report by NAICS code, by prioritizing the sectors where they believe they have the largest information gaps.

We also suggest EPA change the reporting frequency for non-major/non-Title V facilities to either once in three years or once in five years. Typically, non-Title V facilities are only required to prepare a submit an emissions inventory at the time of permit renewal to demonstrate they still qualify for their particular class of permit. Most major-source facilities are typically required to submit emissions inventories annually, but most non-major facilities are not. EPA could utilize TRI data or ambient monitoring data in the intermittent years to determine if the character of emissions from non-major sources has changed significantly.

In addition, we disagree with EPA's proposed timing for facilities to enter stack test and performance evaluation data into the ERT. First, the language is not clear. Section 51.30(e) requires reporting of test results by (1) the earliest scheduled reporting date of any form of reporting, or (2) within 60 days of completing the measurements. Instead of reporting each test as it occurs, EPA could reduce the burden of the program by allowing all tests within a single year to be reported at the same time annually. We suggest the first required date for reporting of either stack tests or HAP emissions be no earlier than October 31, 2027, because many facilities of the over 100,000 non-major facilities to be impacted will need time to determine if and how they are subject to the revised AERR Rule.

4.2.3 EPA's proposed timeline for implementing threshold revisions is not reasonable.

Whether facilities are required to report their emissions under the AERR depends significantly on the threshold values EPA assigns to the list of HAPs in Table 1B to Appendix A of Subpart A. EPA is proposing to allow only six months' notice when it revises thresholds in the future (revised thresholds that EPA publishes in the Federal Register six months before the end of the inventory year would apply for reporting emissions for that inventory year).[84] It is not reasonable to adjust thresholds within an inventory year. Facilities must have adequate time to evaluate whether an adjustment to a threshold causes them to either become subject to the rule for the first time or become subject to reporting for an additional pollutant. A facility that is subject to reporting for the first time due to a new lower threshold value should be allowed time to evaluate the Rule's requirements, establish the appropriate data collection and emissions quantification mechanisms, and come into compliance with the Rule's requirements. EPA should not apply any thresholds that are published during a particular year to that year's inventory; it should apply them to a future year's inventory such that a revised threshold is known prior to the start of a reporting year (for example, if a threshold is revised in June 2028, it should apply to the 2029 reporting year, but if a threshold is revised in November 2028, it should apply to the 2030 reporting year). If a facility does not even realize it is subject to AERR Rule reporting until half-way through the year, it may not have collected all required data during the first half of the year (and, if it had performed any stack tests, it likely would not have submitted the reports to the ERT unless otherwise required by another federal rule). Similar to when new chemicals or facilities have recently been added to the TRI, facilities should be required to start gathering data in the next full calendar year, for reporting the following year.

4.3 CONFIDENTIALITY CONCERNS

EPA proposes to make a "determination that all data that parties are required to report under the revised AERR, including the data from the additional categories associated with emissions testing, is 'emissions data' as defined at 40 CFR 2.301(a)(2)(i)."[85] As a result, EPA proposes that "the reported information is not subject to confidential treatment in accordance with CAA section 114(c)."[86] EPA's proposal, which turns its back on congressional intent to balance public

[84] *Id*. at 54137.
[85] *Id*. at 54164.
[86] *Id*.

disclosure with the well-recognized need to protect confidential business information, is unfounded for three reasons.

First, the regulatory provision related to "emissions data" at 40 CFR § 2.301 applies only to information "provided or obtained" under the authority of CAA § 114. But, as explained above, the Proposed Rule is not authorized under CAA § 114. Consequently, § 2.301 is inapplicable to the information that would have to be submitted under the Proposed Rule.

Second, as explained in detail below, the Proposed Rule would require affected sources to submit proprietary information related to their operations (such as production rates and other details of production processes). EPA does not in the Proposed Rule acknowledge that making such information publicly available can and would have a material impact on affected companies (*e.g.*, by revealing sensitive processing information to potential competitors, domestic and foreign) and does not provide any explanation as to why there is greater value in putting such information in the public domain than protecting it from public disclosure. EPA also does not assess regulatory alternatives that might provide the public with sufficient information while reducing or eliminating the requirement to put confidential business information into the public domain. In short, EPA seeks to apply § 2.301 in a rote manner that fails to identify and consider factors that are relevant to the purpose and scope of the Proposed Rule. Turning a blind eye towards relevant factors is fundamentally arbitrary and capricious.[87]

Third, § 2.301(2)(i) specifies that "emissions data" only includes information that is "necessary to determine the identity, amount, frequency, concentration, or other characteristics" of the emissions. Because affected facilities would be required under the Proposed Rule to quantify and report emissions of relevant air pollutants, it is not "necessary" for EPA to request the underlying information that might have been used to accomplish the quantification, because the quantification will already have been done. Thus, in this case, the term "emissions data" cannot reasonably be extended to such underlying information. This conclusion is supported by § 2.301(a)(2)(i)(C), which specifies that "emissions data" includes only a "general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources." Indeed, the detailed site-specific information (including

[87] *Motor Vehicle Mfrs. Assn. v. State Farm*, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency has … entirely failed to consider an important aspect of the problem.").

processing information and precise location information) that would be required to be reported under the Proposed Rule cannot be "emissions data" because it comprises far more than "a general description of the location and/or nature of the source."

We expand on these issues in the discussion below.

4.3.1 Some data collected under the AERR Proposed Rule is confidential.

EPA proposes that information collected through a revised AERR Rule is emissions data and not subject to confidential treatment. This is a change from the current AERR Rule, which acknowledges that EPA and SLTs may treat some data differently.[88] The Associations acknowledge that levels of emissions from our members' facilities are not confidential, but we do not agree that any data used by a facility to calculate those emissions are not confidential. As EPA points out in the preamble, SLTs agree that not all data should be publicly available.[89] CAA Section 114(c) acknowledges that some data submitted to the Administrator can be considered a trade secret and held confidential. Facilities routinely submit confidential and non-confidential versions of permit applications and other reports where emissions are shown, but some or all of the inputs to calculate those emissions may not be shown. All information related to emissions calculations is available to the Agency, so it already has the information it needs to review the details of the emissions calculations.

On the other hand, certain information is not always available to the public, including a facility's competitors, such as proprietary emissions factors, specific proportions or identities of materials entering a manufacturing process, components of recipes for certain products, etc. Facilities should not be required to disclose all of the details of their emissions calculations to the public; they should be entitled to confidential treatment of data that are proprietary to their particular way of manufacturing their product, in order to remain competitive in the global marketplace. Indeed, reporting of process throughput information would provide information to competitors on facility capacity and, potentially, on market share that could be used by a direct competitor or foreign entity to their advantage in marketing and business planning. Additionally, facilities may have invested in extensive site-specific emissions testing that is particular to their site and process and should not have to make all of the specific results available to their competitors, potentially

[88] 88 Fed. Reg. at 54163.
[89] *Id*. at 54164.

allowing them to avoid the cost of performing emissions testing to develop their own emissions factors. Another example would be facilities that have conducted costly process-specific testing to determine or confirm proprietary emissions factors for NSR and PSD permitting purposes. In some cases, facilities have been able to report emissions data from a group of sources in aggregate, to mask confidential unit-specific inputs, but they would not be able to do so under a reporting scheme that requires emissions to be reported for each release point. In addition, the public certainly does not need access to all of a facility's unit-specific detailed information to be able to understand what HAPs are being emitted and the amount of HAPs being released from the facility.

For example, one of our members is required to submit its emissions inventory to the Bay Area Air Quality Management District (BAAQMD) in California. The BAAQMD requested the facility submit both a public and a confidential version of their emissions inventory, identify each entry it considers CBI, provide justification for why the information is CBI, and have the responsible official sign each assertion of CBI. Under California Government Code §7924.510, the data used to develop the reported emissions can be classified as a trade secret.[90] EPA should not prohibit states from considering certain data as CBI under a revised AERR Rule.

EPA is also proposing at 40 CFR 51.35(b) to require detailed information to accompany any stack test reports submitted to CEDRI:

- the capacity of the unit being tested,
- the load of the unit during the testing period,
- the level of activity of the unit and operating conditions of the unit during the testing period,
- process data (*e.g.*, temperatures, flow rates) pertaining to the unit and its control devices during the testing period,
- test purpose and other parameters measured, and
- process and emission unit description.

[90] Cal. Gov. Code §7924.510(d) states "Data used to calculate emission data are not emission data for the purposes of this subdivision and data that constitute trade secrets and that are used to calculate emission data are not public records."

In proposed 40 CFR 52.25(c), EPA also asserts that it can require facilities to provide "other data or documentation to support their submissions when information provided does not fully explain the source or quality of the data provided." We have the same concerns with these requirements as discussed above. Facilities should be able to claim certain process-specific information as confidential, to avoid disclosing operational details to their competitors. At a minimum, EPA should allow an actual annual emissions report to consist of average hourly emissions rates and actual hours of operation if material throughputs and rate-based emissions factors are confidential.

Additionally, EPA states in the preamble that "EPA may change the composition of the data published, timing, or method of any release of collected information without further notice."[91] It is not acceptable that a facility would have no notice of its confidential information being released to the public based on a change in EPA policy. It is neither unreasonable nor burdensome to EPA for industry to expect the Agency to hold certain information as confidential, especially in an electronic reporting scheme. Certain fields within the database of information received by EPA could simply be marked as confidential and not made available on whatever website EPA will use to disclose a facility's level of HAP emissions. In EPA's GHG reporting rule at 40 CFR Part 98, EPA has either made determinations that certain data elements are CBI, or could be CBI (*e.g.*, certain inputs and outputs for emission units, certain constituent amounts of process materials).[92] It is neither consistent nor reasonable that certain facility data is CBI under one EPA rule and not under another.

We also have concerns regarding the reporting of certain release point location data. Some facilities are subject to the Risk Management Program (RMP) rule, the Chemical Facility Anti-Terrorism Standards (CFATS), or both. These programs do not provide for disclosure of certain information to the public (exact locations of chemicals and processes at a facility, for example). Indeed, certain information is considered chemical-terrorism vulnerability information (CVI) and is not to be disclosed to the public. We again acknowledge that HAP emissions are public information; however, process locations and other details should not be made available to the public due to both safety and trade secret concerns.

[91] 88 Fed. Reg. at 54163.
[92] https://www.epa.gov/sites/default/files/2020-04/documents/direct_emitters_cbi_table.pdf.

4.3.2 EPA's tools are impracticable, and EPA fails to address the format and context via which this information would be publicly available.

Much of the regulated community which EPA would require to report HAP emissions has little-to-no experience with either CAERS or the SPECIATE Databse, especially the over 100,000 minor sources that EPA proposes to cover under the revised AERR Rule. Developing HAP emissions inventories by release point using best available emissions estimation methods would be a daunting enough task for minor sources; but, determining whether additional data should be mined from SPECIATE is not a familiar task for most point-source facilities. We are unsure whether EPA has updated the SPECIATE database with all the information it received as part of major source RTR work and associated submittals.

Based on limited knowledge of the information in the SPECIATE database, reliance on the EPA SPECIATE database to develop facility-level HAP emissions information is unlikely to be successful. The database presents emissions unit level profiles that allow total VOC emissions and total PM emissions to be converted to estimated emissions of specific chemicals, including some HAPs. These data might be suitable for a few select sources that have been subject to targeted studies and, thus, have well characterized emissions; these are the sources that are most likely to have already well-developed HAP emissions inventories (*e.g.*, coal-fired boilers). For many smaller sources, the profile is estimated from data that are limited or absent. For example, the speciation profile of PM emissions from Lime Handling sources was developed from studies of Gypsum Handling. The PM speciation profile for Kraft Recovery Furnaces was developed from four sampling runs at a single process unit in 1989. No speciation profiles are present for corrugated box manufacturing, lumber drying, and many of the smaller units at area source facilities that are most likely to lack a detailed HAP emissions inventory. Given that speciation profile studies are a small subset of all emissions testing, the data in the SPECIATE database will likely always be of lower quality than data developed from more-targeted testing or industry-sponsored databases.

Point sources have little experience with CAERS and, so, we have little ability to comment on its ease of use, the level of effort to enter such data into that portal, or the ability to update information that is pre-populated in the system. However, some of our members were part of a pilot program to use CAERS for Georgia inventory reporting. Even though facilities did not report HAPs, the data bulk input feature did not work well (old data were present), requiring manual input of and adjustments to data, and the emissions calculation methodology was inflexible, providing few

ways to change it to the actual calculation methodology. These problems will be compounded by adding HAP emissions and thousands of facilities when using CAERS to show calculation methodologies for HAPs. Multiple reporting deadline extensions were granted in the first year due to difficulties the users had.

Moreover, there is no discussion regarding the consequences of unintended misreporting of pre-populated dated or the inability to update data, In addition, there are instances when emissions inventories must be revised following submittal, due to new information being generated or errors being found in a report. Our members have not been able to determine if there is a mechanism or a timing requirement for correcting historical data. As we have stated throughout these comments, the proposed scope of the revised AERR Rule would be a heavy lift for all sources, but especially for minor sources that will not have familiarity with EPA tools or electronic data portals, nor experience with HAP emissions testing or HAP emissions data in general. Existing platforms, such as the ERT, have been described by our members as cumbersome, outdated, and not user-friendly. Continued efforts to modernize and streamline existing and new reporting systems such as ERT, CAERS, SPECIATE and others should be prioritized to reduce the reporting burden and the need for consulting services, especially if new, smaller reporters are expected to adopt these electronic tools.

Finally, EPA has not made it clear how it intends to make data collected under a revised AERR Rule available to the public. Because the data EPA collects from tens of thousands of sources of differing sizes and levels of familiarity with air regulations and emissions reporting will vary in completeness, quality, and level of conservatism, EPA should work with facilities and SLTs to evaluate their first submittals before releasing any data directly to the public. For example, a facility could make an inadvertent error in an emissions estimate or in reporting release-point parameters that could result in a high screening level risk estimate. Or a facility could characterize some of its releases conservatively as area sources instead of point sources, which could result in ambient concentrations that are overestimated. If EPA finalizes expansive AERR Rule revisions, any anomalies in the reported data or in the resultant screening risk analyses should be investigated with facilities prior to releasing data to the public. If collected data are used for modeling, we request that EPA allow facilities the opportunity to participate to ensure the information is used correctly. Some facilities' experience with EPA's activities around ethylene oxide shows how damaging a poor public participation process can be.

5. CONCLUSION

In summary, our members want to provide EPA with the data it needs to fulfill its statutory requirements and we understand the need for good inventories to support air quality planning. However, the proposed AERR Rule expansion is too broad and too costly a mechanism to gather HAP emissions information from industry, is not justified, and the proposed schedule is unworkable. EPA has substantially underestimated the number of sources that would be affected by the proposed requirements, as well as their cost and burden. At the same time, EPA has calculated no benefits from this multi-billion-dollar proposal. EPA should not impose these burdensome requirements on over 130,000 facilities (the majority of which are not major sources of HAPs) for no quantified benefit. EPA should withdraw this proposal and work with the SLTs to target information gathering towards a smaller number of sources where risk from HAP emissions is a concern. The Agency should not finalize a broad, permanent, nationally applicable reporting program that will result in duplicative reporting by facilities for little to no benefit.

Thank you for the opportunity to provide these comments. If you have any questions or need clarification on any of our comments, please contact Leslie Bellas of AFPM at lbellas@afpm.org or 202-844-5496.