American Forest & Paper Association

Flawed Rules Violating Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency 'Deregulatory Initiative," and other Executive Orders (April 2024)

The American Forest & Paper Association looks forward to discussing how we can best support the Administration's deregulatory agenda. AF&PA has a long track record of working with EPA, OMB, and other agencies on achievable, efficient regulations that can stand the test of time. To this end, we want to highlight how many of our regulations of greatest concern violate the criteria established by President Trump for rescinding unlawful regulations, as set forth in Executive Order 14219, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative." These regulations also violate other Executive orders, such as undermining the President's goal to rescind or reform regulations that impose a substantial restraint on economic growth and global competitiveness under Executive Order 14192, "Unleashing Prosperity Through Deregulation," as well as regulations that place an undue burden on the development or use of domestic energy resources under Executive Order 14154, "Unleashing American Energy."

Our review focuses on the criteria in Section 2(a) of E.O. 14219, as follows.

<u>E.O. 14219, Section 2(a) Criteria:</u>

i. unconstitutional regulations and regulations that raise serious constitutional difficulties, such as exceeding the scope of the power vested in the Federal Government by the Constitution;
ii. regulations that are based on unlawful delegations of legislative power;
iii. regulations that are based on anything other than the ***best reading*** of the underlying statutory authority or prohibition;
iv. regulations that **implicate matters of social, political, or economic significance** that are ***not authorized by clear statutory authority***;
v. regulations that ***impose significant costs*** upon private parties that are ***not outweighed by public benefits***;
vi. regulations that harm the national interest by significantly and unjustifiably ***impeding technological innovation***, infrastructure development, disaster response, inflation reduction, research and development, ***economic development, energy production***, land use, and foreign policy objectives; and,
vii. regulations that impose ***undue burdens on small business*** and ***impede private enterprise and entrepreneurship***. (Emphasis added.)

1. <u>PM NAAQS Rule</u>

AF&PA Recommendation: We recommend that EPA reconsider the March 6, 2024, PM NAAQS -- which dramatically lowered the standard from 12 ug/m^3 to 9 ug/m^3 (close to average U.S. background (8 ug/m^3)) – through a flawed, legally dubious, and rushed review, including inadequate consideration of attainability, cost and scientific uncertainties, as well as the failure to provide a workable, attainable permit implementation plan. (RIN 2060-AV52). We are encouraged by Administrator Zeldin's March 12 announcement and look forward to supporting EPA in this effort.

Qualifying Criteria:

- ***"Best reading" (iii):***
  - The March 2024 final PM NAAQS reconsideration rule and standard of 9 ug/m^3 is not based on the "best reading" of the statute. It ignores the obligation to consider all relevant factors under CAA § 109(d) ("as may be ***appropriate***"), such as feasibility and attainability, when deciding ***whether*** to reconsider a standard. EPA also did not conduct a "thorough review" of the science and the scientific uncertainties.

- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - Based on an industry study authored by AF&PA in 2022 and comments on the proposed rule, the best-case estimates is $2.6 billion in implementation costs for the pulp, paper and wood products industry alone, plus other impacts that are neglected, such as competitiveness and job impacts and unquantified opportunity costs from thwarted projects that often lower emissions per ton of production. Additionally, the health benefits of lowering ambient exposure to approach background levels remain uncertain, given the uneven quality of existing public health studies and the lack of a systematic review of the science.

- ***Impeding economic development, energy production, and innovation (vi):***
  - **Nonattainment areas**: The new PM NAAQS standard of 9 ug/m^3 significantly expands nonattainment areas, which increases costs on and impedes existing and new manufacturing facilities. The additional cost burden impedes technology innovation, economic development and energy production.
  - **Blocking permits even in attainment areas**: But there is an additional major problem that has been unappreciated: the lack of permitting "headroom" – even in cleaner attainment areas where pulp and paper mills often are located – *immediately* prevents new projects from being built, including many that would lower emissions per ton of production, and in turn harms U.S. job growth and

global competitiveness. EPA's cost-benefit analyses focus only on the cost of engineering controls, but these neglected opportunity costs are large.

- ***Undue burdens on small business, private enterprise and entrepreneurship (vii)***:
  - Small businesses and private enterprises in both non-attainment and attainment areas could be subject to stringent and expensive requirements that impede or block job creation, economic growth, innovation and entrepreneurship.

2. PM NAAQS Permit Implementation/New Source Review (NSR)

AF&PA Recommendation: We urge EPA to resolve the air permitting gridlock due to lack of permit "headroom" -- even in attainment areas -- by committing the necessary focus and resources. A credible NAAQS implementation program should be based on the best technical practices, including timely using within the next year more realistic receptor locations, as well as more realistic emissions, exposures, background adjustments, and modeling data. We applaud Administrator Zeldin's March 12 announcement to increase flexibility on NAAQS implementation and reform the NSR program as an important first step.

Qualifying Criteria:

- ***"Best reading" (iii):***
  - The Clean Air Act authorizes EPA to adopt policies, air quality models, and measurement procedures that reflect best estimates of the true impact of new projects, but that direction is currently being ignored, ultimately harming U.S. capital investments, job creation, and competitiveness.

- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - EPA's failure to modernize the permitting program imposes significant costs without commensurate benefits and causes lost opportunities for economic development and job growth that would help U.S. manufacturers compete in a global marketplace.
  - NSR policies unnecessarily and counterproductively force more projects through the burdensome permitting process without any commensurate public health gains. These guidances should be reviewed and modified, including accounting protocols, the ability to start parts of projects early, and inappropriate control technology assumptions.

- ***Impeding economic development, energy production, and innovation (vi):***

- The current burdensome permitting policies impede technology innovation, economic development and energy production because of the arcane procedures that exacerbate the lack of permitting "headroom" in attainment areas, ultimately preventing new projects from being built (including ones that would lower emissions per ton of production) and hurting job growth and global competition.

3. **Good Neighbor Plan Rule**

AF&PA Recommendation: We are aligned with the steps taken by the EPA on March 10, 2025, to reconsider the Good Neighbor Plan. Ultimately, we recommend that EPA reconsider and withdraw the June 5, 2023, Good Neighbor Plan (RIN: 2060-AV51).

Qualifying Criteria:

- ***"Best reading" (iii):***
  - EPA ignored its obligation under the Clean Air Act to only cover sources that (1) significantly impact downwind air quality, and (2) are cost-effective to control. EPA exceeded its statutory authority, failed to reasonably respond to public comments and the detailed data we provided, and was arbitrary and capricious in including paper mill boilers in its rule, contrary to its own two-pronged criteria for inclusion in the proposed rule.

- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - The final rule could cost the pulp and paper industry nearly half a billion dollars while harming U.S. manufacturing competitiveness and jobs, create new emissions and not result in any measurable improvements in attainment of the ozone NAAQS.

- ***Impeding economic development, energy production, and innovation (vi):***
  - The rule would result in energy intensive controls that increase CO_2, hurt competitiveness and redirect investment to non-productive activities.

4. **Pulp and Paper Subpart MM and Subpart S MACT Reviews**

AF&PA Recommendation: We recommend that EPA reconsider its plans to require pulp mills to undertake extensive HAP testing this spring by first determining whether new standards are "necessary" for each HAP-equipment combination -- considering all relevant factors, including public health risks, likely control costs, technical feasibility to accomplish testing, adequacy of current requirements, value of additional data and other relevant factors. Based on an assessment of public health benefits and costs (including any new test data) under section 112(d)(6), we recommend that EPA only set new standards (either work practices or limits) that are "necessary," reasonable, and achievable and complete this MACT review promptly.

Qualifying Criteria:

- ***"Best Reading" (iii):***
  - EPA needs to first consider whether a hazardous air pollutant (HAP) gap needs to be addressed "as ***necessary***" under CAA section 112(d)(6) – taking into account costs, benefits, and other factors – before setting a standard.
- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - Given that EPA already determined that previous air pollution controls reduced risks to acceptable levels, any further obligations need to be the minimum necessary under the Clean Air Act, including use of flexible and cost-effective work practices. If EPA fails to use its statutory discretion, costs could be several billion dollars in added costs without any meaningful public health improvement.

5. <u>CERCLA Listing of PFOA/PFOS as Hazardous Substances</u>

AF&PA Recommendation: EPA should propose and finalize a new rule to withdraw the CERCLA Listing Rule. In the ongoing litigation, EPA also should confess legal error, including on its failure to reasonably consider costs. (RIN: 2050-AH09).

Qualifying Criteria:

- ***"Best reading" (iii)*:**
  - The CERCLA Rule is not the best reading of the statute, as EPA's interpretation of CERCLA section 102(a) has no fixed boundaries, is inconsistent with the statutory text (list "as may be ***appropriate***") and structure, and was inconsistent with prior agency interpretations.

- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - As noted in AF&PA's comments, an economic analysis prepared for AF&PA indicates that the potential annualized costs of the rule for the pulp and paper industry alone, including potential need to send mill residuals to Subtitle C landfills and potential need to construct landfills at paper mills, could be $573 million to $776 million. In addition, the rule would lead to high truck traffic carrying residuals to landfills, resulting in increased truck exhaust emissions, burdening landfill space, and other adverse consequences to public health and the environment.

- ***Undue burdens on small business and impede private enterprise (vii)*:**

- The CERCLA Listing Rule would impose high undue burdens on small businesses and harm private enterprise. AF&PA membership includes companies that meet the Small Business Administration's standard for small business paper mills. 13 C.F.R. § 121.201.

- **Violating E.O. 14154, "Unleashing American Energy":**
  - The CERCLA Rule also violates Section 2(h) of E.O. 14154 because EPA did not provide an adequate opportunity for public comment on its belated and flawed Regulatory Impact Analysis, nor provide for rigorous, peer-reviewed scientific analysis.

6. Washington Human Health Water Quality Criteria (HHWQC) Rule

AF&PA Recommendation: We recommend that EPA repeal and replace the HHWQC Rule for Washington State. (RIN 2040-AG21)

Qualifying Criteria:

- ***"Best reading" (iii):***
  - November 2022 rule is not the best reading of the statute, as it ignores the obligation to consider cost and attainability.

- ***Regulation that implicates matters of economic and political significance not authorized by clear statutory authority (iv):***
  - EPA showed no treaty text or statutory provision sufficiently clear to support EPA's expansive claim of authority to impose billions of dollars of costs on regulated parties. Plaintiff's Complaint at p. 25, *Association of Washington Business, et al., v. EPA,* No. 1:23-cv-03605 (D.D.C.).

- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - One major study concluded that the WA HHWQC Rule was technologically and economically unattainable, with about $6 billion to over $11 billion in compliance costs for major permittees, according to treatment technology review and assessment. *See* Northwest Pulp and Paper Association, et al., Comments on EPA Proposed HHWQC for State of Washington at p. 70 (Docket ID No. EPA-HQ-OW-2015-0174) (May 31, 2022).

- ***Impeding economic development (vi):***
  - The rule jeopardizes water permits essential for industrial and municipal sources to operate in Washington State.

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7. EPA's December 20, 2024, Action Approving Washington State's Revised Water Quality Criteria ("Approval Rule")

AF&PA Recommendation: We recommend that EPA repeal this midnight approval rule.

Qualifying Criteria:

- ***"Best reading" (iii):***
  - The December 20, 2024, Approval Rule is not the best reading of the statute, as it ignores the obligation to consider cost and attainability.

- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - One major study concluded that this regulatory approach was technologically and economically unattainable, with about $6 billion to over $11 billion in compliance costs for major permittees, according to treatment technology review and assessment. *See* Association of Washington Business, et al., Comments on State of Washington Proposed Human Health Water Quality Criteria at pp. 276-277 (CR 102 – WSR 24-19-075) (Oct. 25, 2024)

- ***Impeding economic development (vi):***
  - The rule jeopardizes water permits essential for industrial and municipal sources to operate in Washington State.

8. Tribal Reserved Rights Rule

AF&PA Recommendation: We recommend that EPA reconsider the Tribal Reserved Rights Rule. (RIN 2040-AG17)

Qualifying Criteria:

- ***"Best reading" (iii):***
  - The Tribal Reserved Rights Rule is not the best reading of the statute, as the rule exceeds EPA's statutory authority, and failed to fully consider costs, including expected costs on regulated entities, and undermines cooperative federalism under the Clean Water Act.

- ***Regulation that implicates matter of economic and political significance not authorized by clear statutory authority (iv):***
  - The Tribal Reserved Rights Rule triggers the major questions doctrine and fails it. *See* Memorandum in Support of Plaintiff's Motion for Summary Judgment at pp. 19-27, *Idaho, et al., v. EPA,* No. 1:24-cv-00100 (D.N.D.).

- ***Imposing significant costs that are not outweighed by public benefits (v):***

- As discussed in AF&PA's comments, we estimated the cost to the pulp and paper industry alone could be on the order of $828 million to $943 million per year. *See* Comments on EPA Tribal Reserved Rights Rule at p. 7 (Docket ID No. EPA-HQ-OW-2021-0791) (Mar. 6, 2023).

- ***Impeding economic development (vi):***
  - The rule could lead to unattainable water quality standards and unattainable limits in Clean Water Act NPDES permits needed for industrial and municipal sources to operate in states with tribal waters.

9. SDWA Maximum Contaminant Levels (MCLs)

AF&PA Recommendation: We recommend that EPA ensure the PFAS MCLs Rule is set at workable levels. (RIN: 2040-AG18).

Qualifying Criteria:

- ***Imposing significant costs that are not outweighed by public benefits (v):***
  - As noted in comments from the PFAS Coalition, the rule failed to set MCLs at levels where costs are justified by the benefits, as required under the statute. PFAS Coalition, Comments on EPA Proposed PFAS National Primary Drinking Water Regulation at p. 15 (Docket ID No. EPA-HQ-OW-2022-0114) (May 30, 2023).

  - In addition, comments from the U.S. Chamber of Commerce noted that for some rural non-transient, non-community water systems, the costs of the rule could threaten the viability of these systems. U.S. Chamber of Commerce and its Coalition, Comments on EPA Proposed PFAS National Primary Drinking Water Regulation at p. 34 (Docket ID No. EPA-HQ-OW-2022-0114) (May 30, 2023).

- ***Undue burdens on small business and impede private enterprise (vii)*:**
  - The PFAS MCL Rule would impose high undue burdens on small businesses and harm private enterprise. AF&PA membership includes companies that meet the Small Business Administration's standard for small business paper mills. 13 C.F.R. § 121.201.

10. Treasury Clean Electricity Tax Credits Rule

AF&PA Recommendation: We urge Treasury to restore our industry's longstanding eligibility for the energy production and investment tax credits – which arbitrarily was effectively rescinded by a Biden Treasury Department midnight rule -- consistent with

President Trump's priority to ensure U.S. energy dominance and abundance and the global competitiveness of U.S. manufacturing (RIN 1545-BR17).

Qualifying Criteria:

- ***"Best reading" (iii):***
  - The Clean Electricity Tax Credits Rule clearly is not the best reading of the statute, as the rule and preamble interpretation of Sections 45Y and 48E of the Internal Revenue Code is contrary to the plain language and structure of the statute, as well as Congressional intent.

- ***Impeding technological innovation (vi):***
  - By declining to provide regulatory certainty to pulp and paper mills' energy systems, the rule impedes technological innovation and energy production.
  - Replacing the Section 45 and Section 48 tax credits with a credit dependent on the "greenhouse gas emissions rate not greater than zero" approach – yet refusing to recognize an energy system that qualifies – is contrary to the law, Congressional intent, and science. It also undermines the ability of U.S. forest products mills to advance technological innovation and energy production.
  - For pulp and paper mills, the Biden Treasury rule unreasonably eliminated tax credits, which many of the industry's energy systems have long qualified for under Sections 45 and 48 tax credits, which promoted manufacturing competitiveness.

- **Violating E.O. 14154, "Unleashing American Energy":**
  - The Biden Treasury Clean Electricity Tax Credits Rule also violates E.O. 14154, Sec. 3, because it places an undue burden on the development and use of bioenergy at U.S. forest products mills and creates an unlevel playing field between bioenergy and other energy sources such as wind, solar, etc.