II. FMMI's request for a Presidential Exemption meets the statutory requirements under Section 112(i)(4)

Section 112(i)(4) of the Act provides that "[t]he President may exempt any stationary source from compliance with *any standard or limitation under this section* for a period of not more than 2 years if the President determines that *the technology to implement such standard is not available* and that *it is in the national security interests of the United States to do so*."[8]

As initial matters, the Miami Smelter is a stationary source subject to the Copper Rule's standards and limitations. The Copper Rule was promulgated by the EPA pursuant to Section 112(d) and 112(f) of the Act.[9] The language "any standard or limitation under this section" in Section 112(i)(4) means that the President may exempt a stationary source from any type of standard or limitation promulgated pursuant to Section 112, regardless of the particular subdivision relied upon by the EPA.[10] It is thus of no consequence, for purposes of the Presidential Exemption, that the EPA relied upon both Section 112(d) and 112(f) to promulgate the Copper Rule.

Section 112(i)(4) calls for two predicate determinations. First, the President must determine that "the technology to implement [the exempted standard or limitation] is not available." Second, the President must determine that "it is in the national security interests of the United States" to exempt the stationary source from compliance. Below, FMMI explains why both predicate determinations are met with respect to the Copper Rule.

A. The technology to implement the Copper Rule is so radically cost-ineffective that it is "not available" in a commonsense understanding of the term

The President must "determine[]" that "the technology to implement" the exempted standard or limitation "is not available."[11] As detailed below, Congress did not specify under what circumstances the President should find a technology "not available" and instead committed this determination to the President's discretion. Here, the radical cost ineffectiveness of the requisite control technology strongly supports finding it "not available."

Based on a sophisticated engineering and cost estimation process, FMMI estimates that the pollution controls required to comply with the main requirements of the Copper Rule will cost in the range of $237 million to $309 million or higher and will reduce only between 0.2 and 2.2 tons per year of metal HAP. Using the annualized capital and operating cost approach under the EPA's Air Pollution Cost Control Manual, these controls will cost between $21 million and $164 million per

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[8] 42 U.S.C. § 7412(i)(4) (emphases added).

[9] 89 Fed. Reg. at 41651, 41653.

[10] *Cf. Babb v. Wilkie*, 140 S. Ct. 1168, 1173 n.2 (2020) ("We have repeatedly explained that the word 'any' has an expansive meaning." (internal quotation marks and citation omitted)); *accord New York v. EPA*, 443 F.3d 880, 885–86 (D.C. Cir. 2006) (giving the word "any," as used in the Clean Air Act, an "expansive meaning" (citations omitted)).

[11] 42 U.S.C. § 7412(i)(4).