

Miami Operations
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March 31, 2025

Via Email (airaction@epa.gov)

The Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Presidential Exemption: “National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review,” 89 Fed. Reg. 41648 (May 13, 2024); Miami Smelter in Gila County, Arizona

Dear Administrator Zeldin:

Freeport-McMoRan Miami Inc. (“FMMI”) writes to request a two-year Presidential Exemption under Section 112(i)(4) of the Clean Air Act for compliance deadlines applicable to FMMI’s primary copper smelter located near Miami in Gila County, Arizona (“Miami Smelter”). This request applies to all the deadlines promulgated under the National Emission Standards for Hazardous Air Pollutants: Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review, 89 Fed. Reg. 41648 (May 13, 2024) (“Copper Rule”). For the reasons set out in more detail below, the technology to implement the Copper Rule is not available, and it is in the national security interests of the United States for the President to grant a two-year exemption.

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

Congress has committed the determination as to whether a technology is “available” to the President’s discretion.¹ This discretion includes the consideration of costs when determining if a control technology is available.² Based on a sophisticated engineering and cost estimation process, FMMI

¹ The Supreme Court has recognized that where “the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

² *Cf. Michigan v. EPA*, 576 U.S. 743, 755–57 (2015) (finding that the EPA unreasonably deemed cost irrelevant when it decided to regulate hazardous air pollutants from power plants).