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OF THE
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VIA ELECTRONIC FILING

Nick Parsons
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
2000 Traverwood Drive, Ann
Arbor, MI 48105

**RE: EPA Fuels Regulatory Streamlining Proposed Rule, 85 FR 29034 (May 14, 2020);
Docket No. EPA-HQ-OAR-2018-0227**

Dear Mr. Parsons:

The U.S. Chamber of Commerce appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) proposed rule titled, "Fuels Regulatory Streamlining," hereafter referred to as the "Proposed Rule," that proposes to streamline the agency's existing fuel quality regulations for gasoline, diesel, and other non-Renewable Fuel Standards fuels.

We support EPA's efforts to update these fuel quality regulations to remove redundant compliance provisions, eliminate out-of-date requirements, and improve the clarity of the regulatory text. This rulemaking has the potential to reduce unnecessary testing and other compliance burdens on a broad range of gasoline and diesel fuel producers, distributors, and retailers while maintaining the same environmental protections of the agency's emissions reduction programs. The rule will also update the regulations to be more reflective of today's fuels marketplace that has evolved over the last several decades since EPA began regulating fuels, fuel additives, and regulated blendstocks.

I. EPA's Retrospective Review Of Existing Regulations Is An Important And Necessary Tool To Maintain An Effective Regulatory System

EPA's retrospective review of existing regulations is an important tool for agencies to evaluate the effectiveness of existing regulations and is consistent with good regulatory practices promoted across many Administrations. Since President Nixon's establishment of the "Quality of Life Committee" in the 1970s, every President has issued one or more executive orders providing guidance to agencies on good practices for maintaining an effective regulatory system. The executive orders often cite the need to improve agency regulatory development in a way that

is transparent to the public and to ensure that regulations are not “duplicative” and “overlapping.”¹

Developing regulations that are not duplicative or overlapping is complicated by the complex web of existing regulations across federal, state, and local governments. The enactment of significant federal environmental statutes—including the Clean Air Act, Clean Water Act, Toxic Substances Control Act, Resource Conservation and Recovery Act, Safe Drinking Water Act, and others; brought environmental improvements, but also a growing complexity of regulatory requirements. One measure of this complexity, though imperfect, is the number of pages published in the Code of Federal Regulations (CFR) through which agencies codify final regulatory actions. From 1970 to 2018, the number of pages published in the CFR grew more than threefold to 185,000 pages.² The increasing duplication and overlap of regulatory requirements brought parallel growth in federal government paperwork requirements on the public and businesses, which are now estimated to be over 10 billion hours per year.³ The sheer volume of these requirements can be overwhelming for businesses big and small due to competing demand for limited resources and personnel.

Regulations play a helpful role in shaping the welfare of economies and society such as protecting the environment and public safety, but they can also cause unintended harm by disrupting markets if unnecessarily burdensome and/or not aligned with market realities. To address unintended issues created by government regulation, a 2011 executive order directed agencies to retrospectively review existing regulations to consider how best to “modify” or “streamline” regulations that are “outmoded, ineffective...or excessively burdensome.”⁴ EPA’s Proposed Rule is a good example of the agency following this retrospective review executive order to streamline the agency’s regulatory requirements that have become outdated and redundant.

II. EPA’s Proposed Rule Provides Needed Clarity To The Layers Of Overlapping Fuels Regulatory Requirements

We support the agency’s efforts to untangle and clarify the existing gasoline and diesel fuel program’s regulatory requirements. The current regulatory programs under 40 CFR parts 79 and 80 cover the reformulated gasoline (RFG), anti-dumping, diesel sulfur, gasoline benzene, gasoline sulfur, E15 misfueling mitigation, and national fuel detergent programs. Removing expired provisions and consolidating the remaining provisions into a single set of requirements will be beneficial to regulated entities, but will also simplify EPA’s role of explaining and implementing the requirements.

Although these fuels programs affect many of the same parties, they were developed separately through various rulemakings over several decades. With each new fuel program the agency codified, the agency added a new subpart to the end of 40 CFR part 80 so that now there are

¹ Executive Order 12291, Federal Regulation, February 17, 1981.

² Code of Federal Regulations Total Pages and Volumes 1938-2019, Federal Register Statistics, <https://www.federalregister.gov/reader-aids/understanding-the-federal-register/federal-register-statistics>

³ Sludge and Ordeals, Cass R. Sunstein, 68 Duke L.J. 1843 (2019), <https://scholarship.law.duke.edu/dlj/vol68/iss8/6>

⁴ Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821, January 21, 2011.

subparts A through O. For each of these fifteen subparts, the agency developed provisions needed to implement the new regulatory requirements that augmented the prior version of the program. Once the program was implemented, the interim requirements were not eliminated from the CFR text. These outdated interim requirements created confusion as to which requirements were still relevant. Eliminating these outdated requirements will help simplify compliance.

Another useful update the agency is making will consolidate the regulations around various functional elements in separate subparts. For example, the agency consolidated all regulatory definitions into a dedicated subpart. The existing regulations have fifteen different sets of definitions, one for each subpart in 40 CFR 80, making it difficult to reference and crosscheck terms for compliance purposes. Putting all of the definitions into one section will make it easier for regulated entities to reference, particularly those new to these regulatory programs. The agency took a similar approach for all gasoline standards and all reporting requirements and other functional elements to improve readability and clarity.

III. EPA's Proposal to Define RFG By Reid Vapor Pressure Instead Of Percent Reductions In Toxic Air Pollutants Emissions Performance

To update the fuels regulations consistent with today's market, we support the agency's proposal to (1) replace the existing compliance mechanism used for RFG batch certification—the Complex Model⁵—with a summer RVP maximum per gallon standard; (2) apply that same single RVP standard to all RFG nationwide; (3) provide greater flexibility for blending of oxygenates (ethanol and biobutanol) and E0 in RFG areas; and (4) remove a number of other restrictions that now create a distinction without a difference between RFG and conventional gasoline.

The Proposed Rule will greatly reduce the testing and associated reporting requirements by shifting testing for gasoline to the most important parameter, reid vapor pressure (RVP), as opposed to the extensive list of toxic air pollutant and other fuel component measurements. This shift in testing is possible as the differences in RFG fuels, used to address potentially higher summertime emissions in major metropolitan areas, and conventional fuels, used in the remainder of the country, have narrowed. With updates to fuel quality standards and other market changes over the last several decades, RVP is the primary variable that changes to produce RFG fuels in the summer months, making it a logical choice for driving compliance testing.

These proposed changes are expected to maintain the stringency of the standards associated with RFG while alleviating unnecessary compliance requirements by simplifying the fuel testing, recordkeeping, and reporting requirements. The current requirements are for refiners to sample and test RFG for 11 parameters that would then be entered into the Complex Model to show compliance, while the Proposed Rule would allow refiners to show compliance with the RFG standards by adjusting just one parameter, the RVP.

⁵ The Complex Model required refiners to sample and test RFG for 11 parameters.

In addition to reducing the required number of parameters to be tested and reported, we support EPA's proposal to consolidate the RFG regions so that a single RVP standard applies to all RFG nationwide. Currently, there are three different RFG VOC regions each with slightly different required levels of VOC emissions reductions as compared to conventional gasoline. The RFG program with different regions was established in 1995 at a time when RFG gasoline composition was vastly different from conventional gasoline. Since 2000, a series of gasoline regulations and market changes have narrowed this gap making it possible to consolidate the VOC regions and create a single summer RVP standard for all RFG areas.

Not only do these changes help reduce fuel testing and the associated recordkeeping and reporting requirements, but it is also expected to reduce costs in the fuel supply chain. Having one fuel that meets the RFG requirements across the nation will allow refiners, distributors, and retailers to eliminate the need for separate transportation containers and storage vessels for gasoline. This will also help reduce fuel supply bottlenecks caused by emergency situations such as hurricanes or other natural disasters where the necessity to keep RFG separate from conventional fuel can disrupt supply of fuels to impacted areas. In addition to the disruptions to the supply chain due to these emergencies, refiners were often required to apply for administrative waivers from the RFG requirements. These administrative steps will be eliminated by allowing for the nationwide use of the same fuel and help refiners get needed fuels to meet demand.

IV. EPA's Proposal To Allow Refiners To Obtain Credit For Sulfur And Benzene Reductions Due to Downstream Ethanol Blending

We support providing credit to refiners for sulfur and benzene reductions due to downstream ethanol blending. As the transportation fuel market has continued to evolve, the vast majority of gasoline sold in the U.S. is blended with ten percent ethanol. Ethanol is typically very low in sulfur and benzene content. Because much of the ethanol blending does not happen at the refinery gate, which is the point of regulation for these fuel quality requirements, the refiners do not currently get credit for the downstream dilution benefit of the lower sulfur and benzene content of the finished gasoline.

Parties at all locations downstream of refineries (e.g., pipeline, terminal, retail) are now increasingly engaged in the process of adding ethanol to produce the finished fuel. Blending ethanol downstream of the refinery is done in part due to ethanol's affinity for water. If blended too early in the supply chain, ethanol-gasoline blends adsorb water and separate into two phases, causing the water to collect in low spots of pipelines, storage systems, and transportation vehicles. Gasoline that contains water can cause engine performance issues.

Due to the limitations on where ethanol can be blended, the fuel product at the refinery gate does not account for the emission reduction benefits of the ethanol blending that happens downstream. What this means is that the final fuel retail product overcomplies with EPA's standards. Compliance is achieved at the refinery gate, but those additional emissions reductions are not currently captured by refiners when ethanol is blended downstream. EPA's proposal would allow refiners to get credit for those sulfur and benzene reductions after completing a few

verification steps. We support the proposal to give dilution credit to downstream blenders of ethanol and the associated verification steps for the associated sulfur and benzene reductions.

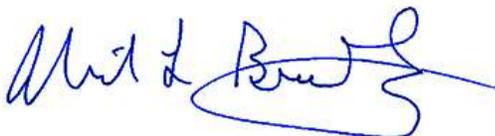
V. EPA's Finalization Of The Rulemaking Should Be Prioritized To Provide Adequate Lead Time For Implementation

We applaud EPA's streamlining effort and the collaborative working relationship that the agency fostered with stakeholders to develop the Proposed Rule, but recommend that the agency expedite its finalization. The agency issued four discussion drafts, equivalent in detail to the Proposed Rule, with the first being made public in May 2018.⁶ The discussion drafts undoubtedly improved the quality of the Proposed Rule; however, to meet the implementation deadlines in the Proposed Rule, the agency should expedite the completion of the final rulemaking. Issuing the final rulemaking this Fall will provide a few more months for regulated entities to implement the new testing and paperwork provisions.

VI. Conclusion

The U.S. Chamber of Commerce appreciates the opportunity to comment on the Proposed Rule and supports the agency's efforts to streamline existing fuel quality regulations to better reflect today's fuel market.

Sincerely,



Neil L. Bradley

⁶Fuels Regulatory Streamlining - Discussion Draft Regulations, May 2018, <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockkey=P100U140.pdf>