



AmericanCoatings
ASSOCIATIONSM

August 3, 2020

The Honorable. Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process, Docket EPA-HQ-OAR-2020-00044

Dear Administrator Wheeler,

The American Coatings Association (“ACA”) is pleased to submit this letter in support of the Environmental Protection Agency’s (“EPA”) efforts to increase consistency and transparency in considering benefits and costs in the Clean Air Act Rulemaking Process.

ACA is the premier trade association for manufacturers of paints and coatings and their raw material suppliers. Our industry ships an estimated \$28.4 billion in paint and coatings annually, and we have seen our industry continue to grow in the last decade. Our diverse Members operate a broad array of establishments, from manufacturing and chemical supply facilities to hardware stores and name-brand retailers.

Coatings products, as well as the coatings manufacturing process, is heavily regulated under the Clean Air Act. In fact, there are 66 regulations listed on EPA’s website that apply directly to coatings products in a wide range of categories and coatings manufacturing processes.¹ Consequently, ACA’s goal in every rulemaking is to provide relevant information about the impact on our manufacturing processes and the products, including the cost of the proposed regulation, and assist EPA in the development of reasonable regulations.

In this proposed rule, EPA is proposing to establish procedural requirements governing the development and presentation of benefit-cost analyses (BCA), including risk assessments used in the BCA, for significant rulemakings under the CAA. ACA supports the inclusion of such procedural requirements, including robust stakeholder engagement and transparency.

¹ Environmental Protection Agency, *Clean Air Act Guidelines and Standards for Solvent Use and Surface Coating Industry* (June 20, 2020), <https://www.epa.gov/stationary-sources-air-pollution/clean-air-act-guidelines-and-standards-solvent-use-and-surface>.

1. ACA Supports the Inclusion of a BCA for all Significant Regulations

As indicated above, the coatings industry is heavily regulated under the CAA and many other safety, health and environmental regulations. Regulations play an important role. In addition to establishing standards and requirements, they provide all members of the industry a “level playing field.” As such, an important aspect of the regulatory process is evaluating the economic cost of the proposal to the industry and downstream customers as well as the potential benefits to the public.

Forecasting the total costs of any proposed regulation is challenging and cumbersome, but it is these costs that must eventually be borne by the regulated industry, and an accurate and transparent analysis is key to developing a practical and reasonable regulatory framework. In addition, completion of this exercise, if done according to best practices and in a transparent fashion, has the ability to increase the trust of engaged stakeholders.

A formal BCA helps ensure that the rulemaking process will adequately consider the potential costs and benefits of the proposal with a delineated structure for evaluating those costs and benefits. It also encourages robust stakeholder engagement with the rulemaking process. Furthermore, the resulting regulatory framework, with the necessary transparency, should be firmly rooted in legitimacy.

2. ACA Supports Consistent and Uniform Standards for Conducting and Presenting a BCA in the Rulemaking Process

In each and every rulemaking, ACA engages with members of the coatings industry to determine the impact of new proposals on the manufacturing process, the product itself, and the distribution network. ACA strives to use real data in the rulemaking process regarding costs and the environmental benefits of any requirements, and in turn, ACA has worked diligently with EPA to achieve standards that best consider any potential economic impacts. However, without consistent and uniform standards for providing cost data, all stakeholders are not afforded a clear opportunity to bring to light, explain, and address the significant costs and burdens potentially imposed by any new proposal

a. Consistent and Uniform Standards

Consistent and uniform standards for a BCA in significant rulemakings are essential for providing a forum in which to discuss the economic ramifications on the regulated industry and the potential benefits to society. Without such standards, proffering economic data in a regulatory setting may be fraught with peril as the agency does not have any objective reason to “trust” this data. For example, many years ago, ACA engaged in a significant rulemaking under the CAA which

proposed a long list of new requirements for the coatings industry,² ACA contracted with a third-party to determine the actual cost of the proposed requirements and regulatory alternatives.

EPA's cost assumptions in the proposed rule did not comport to the cost data that our industry members were providing. It seemed clear to us that EPA's cost analysis utilized technical assumptions, rather than real-time operations data. If there were consistent and uniform BCA standards codified under the CAA, ACA believes that this process would have been better informed.

b. Transparency

Transparency in the BCA process is essential. Stakeholders as well as the agency need to be able to evaluate the economic data that serves as the foundation for a regulatory framework. A lack of transparency or failure to share economic data can result in regulatory requirements that do not make sense. The MACT rulemaking also provides an example of a lack of transparency. During this rulemaking, EPA advised industry that heightened regulatory levels were not justified based on its cost-effectiveness analysis. Nevertheless, in the proposal, EPA moved forward with the heightened requirements and did not provide access to the new analysis that supported them. Without access to this analysis, stakeholders were unable to verify the assumptions upon which EPA's decisions were made.

This same rulemaking provides another example: EPA also proposed new cleaning standards for process tanks, a requirement which would significantly increase the cost of compliance. In this instance, EPA did provide the economic analysis and stakeholders were able to determine that the cleaning standards were not included in its economic analysis. Without transparency and the ability to review the underlying economic analysis, industry would not have been able to respond to this issue.

In yet another example from this same rulemaking, evaluation of the cost-effectiveness study revealed that EPA estimated compliance costs using a nationwide approach which was greatly skewed due to four larger facilities driving the cost estimates. Using compliance costs for all facilities that would be subject to the rule revealed that the total annual cost of compliance was 24 times the amount that EPA had estimated.³ Again, this illustrates the importance of transparency

² On April 4, 2002, EPA proposed Maximum Achievement Control Technology (MACT) standards under Section 112(d) of the 1990 Clean Air Act Amendments (CAA) for the Miscellaneous Organic National Emission Standards for Hazardous Air Pollutants (NESHAP) category, or as commonly referred to, the "MON." This proposed rule proffered establishing national emission standards for hazardous air pollutants that had previously been largely unregulated. These pollutants were released from organic chemical processing units at major sources and included the manufacture of many coatings.

³ EPA found that the cost for controlling stationary process tanks to a level of 75% would be \$2,550 per Mg of HAP reduction per year. However, when reviewed, ACA found that the total annual cost to comply ranged from 0.0 to 1.8 million dollars per ton/yr. (1.5 million dollars per Mg/yr.) per facility. If the entire compliance costs of all 69 facilities were averaged, the cost per facility would be nearly \$47,500 per Mg/yr.

regarding BCA. Without the opportunity to review the agency's cost estimates, there would not have been any avenue available to provide the facility specific cost data and refute the methodology employed by the agency. Indeed, in addition to transparency, this example also calls out the need for consistent and uniform standards in developing BCA.

Conclusion

EPA's proposed rule would provide the necessary transparency and consistency to engage stakeholders in the benefit cost analysis. ACA encourages the agency to ensure that consistent and uniform standards are developed and implemented. In addition, it is essential that BCA be shared with the regulatory community.

The American Coatings Association looks forward to working with the EPA to support and advance this important regulation providing transparency and consistency to our rule making process.

With Kind Regards,

A handwritten signature in blue ink, appearing to read "Heidi K. McAuliffe". The signature is fluid and cursive, with the first name "Heidi" and last name "McAuliffe" clearly legible.

Heidi K. McAuliffe, Esq.
Vice President, Government Affairs