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Ms. Samantha K. Dravis
Regulatory Reform Officer and Associate Administrator, Office of Policy
US Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460
Submitted via www.regulations.gov

Re: EPA-HQ-OA-2017-0190 (82 FR 17793)

Dear Ms. Dravis:

The American Petroleum Institute (“API”) is pleased to provide comments to the US Environmental Protection Agency (“EPA”) in response to the EPA’s solicitation of input from the public to inform its Regulatory Reform Task Force’s evaluation of existing regulations. API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America’s energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

Background

America is now the world’s leading producer and refiner of oil and natural gas, a reality that was unimaginable just a decade ago. We’ve transitioned from an era of energy scarcity and dependence to one of energy abundance and security. The developments of the past decade have brought cost savings for American consumers, good paying jobs, renewed opportunities for U.S. manufacturing, a stronger economy and greater national security. Record U.S. production and refining is happening alongside greater environmental progress: CO₂ from power generation is down to near-30 year lows, thanks in large part to greater use of natural gas. Also, cleaner burning transportation fuels and industry investments in emissions reducing technologies have enabled reduced emissions of criteria air pollutants. In 2015, energy-related savings put an extra \$1,337 back in the pocket of the average American family, and AAA reports that drivers saved as much as \$550 in fuel costs. Energy abundance has helped cut energy and material costs for American manufacturers and is helping to attract manufacturing back to the U.S.

Technological innovations and industry leadership have propelled the oil and gas industry forward, despite the unprecedented level of federal regulatory actions targeting our industry. Consistent with President Trump’s stated objectives of American energy independence and economic growth, EPA and other federal agencies should embrace and advance a regulatory system that promotes access to domestic oil and natural gas resources, streamlined permitting and cost-effective regulations. In 2011 and 2015, API supported EPA efforts to relieve the burdens imposed by its rules and the time has come to review those regulations and the additional requirements imposed by the previous Administration, while continuing to promote public health, safety and the environment as industry and citizens support.

API has recently submitted detailed comments to the Department of Commerce and other agencies to improve the manufacturing climate in the United States. (See docket DOC-2017-0001). The business community, including the oil and natural gas industry, relies upon a cost-effective regulatory system that promotes the certainty and predictability necessary to make the massive capital investments required to bring energy and other projects to the U.S. economy.

Key EPA regulations

Below, we highlight three of the key regulations which we urge EPA to review: oil and gas New Source Performance Standards (NSPS), Renewable Fuels Standards (RFS) and Ozone National Ambient Air Quality Standards (NAAQS) implementation. EPA Dockets EPA-HQ-OAR-2010-0505, EPA-HQ-OAR-2016-0004, and EPA-HQ-OAR-2016-0202 respectively contain API's recent comments on these three regulations. Greater detail on those and other regulations is found in Attachment 1, which contains API's detailed comments for the EPA regulatory review.

First, regarding the oil and gas final NSPS rule issued last year,¹ API submitted a detailed petition for administrative reconsideration of the final rule to Administrator McCarthy in August, 2016. The previous 2012 standards and innovation are already effectively reducing emissions. We are encouraged by EPA's April 4, 2017 announcement to review the 2016 standards,² and API supports a full review of all elements of the rule and the revision of the standards. Additionally, we recommend that EPA act quickly to extend the rapidly approaching compliance deadlines while the agency reconsiders the rule. EPA should also withdraw the Control Technique Guidelines it issued in October 2016, which share the same basis as the NSPS rule and call for similar requirements as the NSPS rule.

Second, there are a number of problems with the outdated Renewable Fuel Standard Program. API recommends:

- (1) EPA should utilize its waiver authority to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the mandate does not exceed the E10 blendwall.
- (2) In order to maintain a market for ethanol-free gasoline, EPA should not set a RFS mandate that would cause the average ethanol content to exceed 9.7 percent of projected gasoline demand. EPA should use realistic projections of E0, E15, E85 and cellulosic demand when setting the annual Renewable Volume Obligations.
- (3) EPA should reject calls to move the RFS Point of Obligation. The RFS has significant structural flaws, and moving the point of obligation will not alleviate them; it will simply reallocate the problems to a different group of fuel supply chain participants. The issue was considered by the two previous administrations and both appropriately decided to place the obligation with refiners and importers.
- (4) EPA should work with Congress to reform and ultimately end this unworkable program as the program does not reflect current market realities and it creates the potential for economic harm.

¹ Final Rule (June 3, 2016; 81 *Fed. Reg.* 35,824) for the Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources (NSPS OOOOa rule)

² 82 *Fed. Reg.* 16,331

Third, regarding the Ozone NAAQS, API has commented previously that the more restrictive ozone standards imposed by EPA in late 2015 were unnecessary, because ambient ozone levels were declining and the public health was already protected with an adequate margin of safety. We also pointed out, as EPA correctly identified, that ozone levels would keep falling. Unfortunately, EPA's new standards create tremendous burden on states and risk significant impacts on job growth, and the potential number of U.S. counties thrown out of attainment could more than triple.

API supports EPA reconsideration of the 2015 Ozone NAAQS based on the issues API identified in its previous comments and court briefs, and is encouraged by EPA's motion to delay oral arguments on the 2015 Ozone NAAQS, while an internal review of the final rule is undertaken. It is critical that the EPA complete this review quickly as deadlines pertaining to the 2008 and 2015 ozone NAAQS are quickly approaching. If the EPA decides not to reconsider the 2015 Ozone NAAQS after its review, we encourage EPA to expeditiously revoke the 2008 Ozone NAAQS as proposed in the 2015 Ozone Nonattainment Area Classifications and SIP Rule in order to avoid unnecessary burden associated with implementing two Ozone NAAQS Simultaneously.

Comprehensive Review of EPA Regulations

In addition to the detailed comments contained in Attachment 1, as part of the review process API suggests, in no priority:

1. The cumulative cost impacts of regulations on individual industrial sectors be considered.
2. The review process seeks and utilizes actual compliance costs from impacted industries to the maximum extent possible.
3. The benefits attributable to any rule be determined based on measurable metrics to the maximum extent possible and be clearly attributable to the regulation under review.
4. Benefits are not double counted, i.e., the same benefits being attributed to multiple rules.
5. The science and data used to support a regulation should be reviewed to determine if they are still valid based on scientific integrity, consistent with EPA's Principles of Scientific Integrity and Policy (2012), with meaningful disclosure of all potential areas of bias, guarding against manipulation or misinterpretation. New information available since promulgation of the rule should be considered, consistent with the provisions mentioned above.
6. Reporting burdens be closely examined to evaluate if the amount, method and frequency of data collection are actually being used to any beneficial purpose and are actually necessary to meet the objectives of the regulation.
7. EPA should consider greater use of general permits as a cost effective permitting alternative.
8. EPA should evaluate how regulations can be written more clearly.
9. EPA should consider incentives for enhancing self-compliance auditing under the EPA Audit Policy and voluntary programs.
10. EPA should consider increasing flexibility in rules to allow sources broader usage of available technologies to monitor, model, and demonstrate compliance. Rules dictating precise monitoring, repair, modeling or compliance methods should be reviewed to eliminate outdated methods (i.e. Method 21 for LDAR monitoring).
11. All rules, including those subject to legal challenges, should be included in the review process.
12. Duplicative and overlapping regulations should be curtailed.
13. Regulations should be examined for any unintended, negative effects on recycling (i.e., regulations that create economic barriers to recycling).

Attachment 2 contains suggestions for future regulations and Attachment 3 highlights relevant economic impact studies.

In conclusion, we look forward to further working with Administrator Pruitt, EPA leadership and staff on these and other rules. Federal regulatory policy can either strengthen or weaken the U.S. energy renaissance, with impacts that extend far beyond our industry. Regulatory actions should be rooted in sound science and data, with a consideration of the costs and benefits, while protecting public health and the environment. With these goals in mind, we stand ready to work with EPA and the rest of the Administration to find reasonable solutions to the challenges before us.

Please do not hesitate to contact me via email at Feldman@api.org via phone at (202) 682-8340 for any clarification or supplemental information.

Sincerely,

Howard J Feldman

Attachments 1-3

Attachment 2

Future Regulations

1. Regulations need to be given a chance to take affect and be implemented before additional requirements controlling the same pollutants from the same sources are rolled out.
2. EPA needs to avoid rushing regulatory development with arbitrary, politically-motivated deadlines. This results in poorly crafted regulations leading to use of private and government resources on multitudes of regulatory revisions or expensive and protracted litigation. This places great cost on industry with no corresponding environmental benefit.
3. EPA should use the results of the review to improve cost/benefit analysis of future proposed regulations.
4. Where EPA identifies excessive regulatory burden, revisions should be made promptly to those regulations to eliminate wasted efforts.
5. EPA needs to look at the broader impacts of its regulations when it is promulgating them. This is inclusive of job impacts, energy security, and viability of regulated and indirectly impacted industries. For example, when EPA was promulgating the section 202 tailpipe light duty vehicle and then the truck standard, it did not consider and quantify the ramifications on stationary sources. The full effect of these regulations was not considered in the rulemaking and there was significant impact upon stationary sources.
6. EPA needs to adhere to the Administrative Procedures Act and other requirements for promulgating regulations and actually conduct detailed analysis prior to rulemaking. These would include, among others: a review of EPA's Information Quality Act Guidelines, where applicable; a detailed Regulatory Flexibility Act analysis to determine the impact of a regulatory action upon small businesses before certifying there is no significant economic impact; Unfunded Mandates Act to determine the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule; Paperwork Reduction Act analysis to see if Office and Management and Budget approval needed for information collection requirements of a rule; an E.O. 13211 review to determine impact on energy supply, distribution and use; an E.O. 12866 review to determine costs and benefits of regulation and reasonably feasible alternatives identified by agencies or the public and to include considering the option of not regulating; an E.O. 13132 and 13175 review as to federalism – what is the impact of a regulation on state and local governments.
7. EPA, state and local governments, affected industry and NGO's need to revisit the automatic regulatory review triggers of the Clean Air Act. Too often, EPA's priorities are focused on meeting a court-imposed deadline for a regulatory review. If EPA wants to improve its regulations and focus on the most significant regulations, it needs Congressional relaxation of the numerous and frequent reviews that are required.

8. EPA should ask for, and carefully consider, comments related to overlap and duplicative/reporting/compliance between/within EPA regulations and those issued by other agencies such as DOT, USCG, etc. Much confusion and wasted time results from trying to interpret overlapping rules and jurisdictions, and complying with duplicative regulatory requirements.
9. EPA should seek industry input during specific regulation review to allow identification of industry issues and opportunity for introducing improved approaches.
10. Regulations should facilitate, rather than impede reducing, reusing, and/or recycling of raw materials. For example, requiring burdensome TSCA reporting of industrial by-products that are subsequently recycled or reused discourages businesses from engaging in ventures that may have positive benefits for the environment.

Attachment 3

Relevant Economic Impact Studies

List of API studies relevant to the economic impact of the EPA regulations

API contractors prepared the economic impact studies on EPA regulations listed below. API will provide the full studies to EPA upon request.

Report: Economic Impacts Resulting from Implementation of the RFS2 Program

Contractor / date: NERA Economic Consulting; July, 2015

Issue: Renewable Fuel Standard

Summary: NERA concluded, in affirming their previous study, that implementing the Renewable Fuel Standard at statutory volumes was infeasible and would result in severe economic harm. Severe economic harm is caused by insufficient RINs, market disruptions and outrageously high consumer costs for gasoline and diesel.

Report: Economic and Supply Impacts of a Reduced Cap on Gasoline Sulfur Content

Contractor / date: Turner, Mason & Company / February, 2013

Issue: Tier 3 fuel standards

Summary: TM&C quantified the economic and supply impacts of a reduction in the per gallon sulfur cap from current limits, with regards to a lower annual average sulfur limit of 10 ppm. TM&C concluded that the lower annual average sulfur limit of 10 ppm would effectively impose a tighter per gallon cap, but that imposing a tighter cap would increase capital costs by \$2 to \$6 billion and increase annual operating costs by \$900 million. The overall potential loss of gasoline supply due to a tighter cap could be 130,000 barrels per day, but in some regions, shortages could reach 25% to 50% during outages of sulfur reduction units. TM&C showed that a sulfur cap reduction would increase capital and operating costs, reduce compliance flexibility, and could result in potential loss of gasoline supplies.

Report: Addendum to Potential Supply and Cost Impacts of Lower Sulfur, Lower RVP Gasoline

Contractor / date: Baker & O'Brien; March 2012

Issue: Tier 3 fuel standards

Summary: Baker & O'Brien assessed potential impacts of fuel regulations related to tier 3 fuel standards. Across the scenarios examined, annual compliance cost ranged from \$13.2 billion to \$2.4 billion and compliance investment ranged from \$17.3 billion to \$9.6 billion. Scenario parameters closest to tier 3 regulations (sulfur reduction only, no change to RVP) resulted in estimated annual compliance costs of \$2.4 billion and compliance investment of \$9.8 billion. Allocated to gasoline production costs, the fuel regulations in the scenario increase the marginal cost of gasoline in most markets by 6 to 9 cents per gallon.

Report: A Comparison of U.S. Oil and Natural Gas Policies: Pro-Development vs. Proposed Regulatory Constraints

Contractor / date: Wood Mackenzie; June 2015

Issues: Ozone, Methane emissions from existing sources, Clean Water Act, Refinery NSPS, Renewable Fuel Standard, NEPA

Summary: This study compared a "Pro-Development Policy" path and a "proposed regulatory constraints" path that modeled the total cumulative impacts of 10 regulatory initiatives from the EPA and other federal agencies. Individual impacts of proposed or recent regulations were not calculated. The study found that a path of regulatory constraints could lead to a reduction 3.4 million barrels of oil equivalent in US production, a loss of 830,000 jobs, a decrease of \$133 billion per year in the U.S. economy, and a cumulative loss of \$500 billion in government revenue.

Report: API Comments on the Proposed Rulemaking – Standards of Performance for New Stationary Sources: Oil and Natural Gas Production and Natural Gas Transmission and Distribution – Attachment E, API’s Review of EPA’s Cost Benefit Analysis

Contractor / date: Environmental Resources Management, Inc. (ERM); December 2015

Issue: New source performance standard for oil production and natural gas transmission and distribution; (40 CFR Part 50, Subpart OOOOa)

Summary: ERM provided a critical review and analysis of the RIA provided by EPA for the proposed changes to the NSPS OOOOa Rule. ERM found that EPA underestimated the technical costs of controls by nearly \$500 million (\$310 million versus \$806 million), and overestimated the emissions benefits by more than 43,000 metric tonnes, equating to roughly \$64 million. As a result, ERM calculated that the rule would result in social net costs, not benefits, over approximately \$410 million in 2025. ERM provided additional commentary on the inappropriate use of the social cost of methane by EPA.

Report: A Review of the Damage Functions Used in Estimating the Social Cost of Carbon

Contractor / date: NERA Economic Consulting; February 2014

Issue: IWG Social Cost of Carbon calculation

Summary: NERA performed a literature review regarding IAM damage functions and provided context for the damage functions used in the IWG analysis. NERA found that the uncertainties that underlie the SCC values resulting from uncertainties in damage functions create significant problems within the SCC. Possible damage estimates at a given point could differ by a factor of 20 or more, a fact that is obscured within the SCC. The report concluded that the parameter values and calibration procedure for the damage functions used in the modeling supporting the SCC are arbitrary. As a result, the IWG would need to significantly improve the characterization of uncertainties in the SCC in order to provide credibility.

Report: Energy Market and Macroeconomic Impacts of Compliance with a Rule Targeting Existing Oil and Gas Sources

Contractor / date: Earth System Sciences Inc. (ESS) and NERA Economic Consulting (NERA); Expected May 2017

Issue: Potential existing source performance standard for methane emissions from oil and natural gas operations

Summary: Incremental costs (net of recovered gas) are estimated to be in excess of \$3 billion per year. Costs are dominated in the Onshore Production and Gathering segment. Annual reoccurring costs are dominated by leak detection and recovery (LDAR). Estimated reduction of GDP \$7 to \$11 billion per year and a reduction of jobs supported in the economy of 60,000 to 125,000 job-equivalents. Economic impacts are near the higher end of the range in the early years but continue through end of modeling time horizon (2031).

List of other studies relevant to the economic impact of the EPA regulations

API would like to highlight the following economic impact studies on EPA regulations listed below.

National Association of Manufacturers

Report: Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone

Contractor / date: NERA Economic Consulting; February, 2015

Issue: Ozone NAAQS

Summary: Emission reductions required to attain a national Ozone NAAQS of 65 parts per billion would reduce national GDP by \$140 billion per year and result in an annual average loss of 1.4 million job-equivalents. In net present value (over the 2017 to 2040 timeframe) national GDP would be reduced by over \$1.7 trillion.

National Association of Manufacturers

Report: Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone

Contractor / date: NERA Economic Consulting; July, 2014

Issue: Ozone NAAQS

Summary: Emission reductions required to attain a national Ozone NAAQS of 60 parts per billion would reduce national GDP by \$270 billion per year and result in annual average losses of 2.9 million job-equivalents. Net present value (over the 2017 to 2040 timeframe) of national GDP would be reduced by over \$3 trillion. In a sensitivity case analysis of potential impacts, if new natural gas wells were constrained by the tighter Ozone NAAQS, average annual losses would be \$360 billion in GDP and 4.3 million job-equivalents. The net present value of GDP would be reduced by more than \$4 trillion.

American Council for Capital Formation

Report: Technical Comments on the Social Cost of Methane As Used in the Regulatory Impact Analysis for the Proposed Emissions Standards for New and Modified Sources in the Oil and Natural Gas Sector

Contractor / date: NERA Economic Consulting; December 2015

Issue: Social cost of methane, as used in new source performance standard for oil production and natural gas transmission and distribution; (40 CFR Part 50, Subpart OOOOa)

Summary: NERA provided a critical review of the social cost of methane estimates used in the RIA provided by EPA for the proposed changes to the NSPS OOOOa Rule. NERA took an in depth look at the Integrated Assessment Models used to generate the estimates, and provided modeling runs both to replicate EPA's work and provide corrected estimates. NERA found that correcting for errors in EPA's estimate for the social cost of methane (including discount rates, domestic net benefits, and radiative forcing impacts) could lower the social cost of methane by as much as 94%.

Report: The Impacts of Restricting Fossil Fuel Energy Production

Contractor / date: OnLocation Inc.; April 5, 2017

Issue: Opposition to Fossil Fuels

Summary: Based on the models used, a U.S. policy of "keep it in the ground" is projected to generate the following impacts relative to EIA's Annual Energy Outlook 2016 Reference Case. The keep it in the ground scenario includes no new oil and natural gas leases on private, State or federal lands, a ban on hydraulic fracturing, no new or expansions of existing coal mines, and no new energy infrastructure to transport oil and natural gas within and outside of North America.

US impacts by 2040:

- Loss of 5.9 million jobs
- Loss of \$11.8 trillion in cumulative GDP
- Potential increase of \$4,552 annual energy expenditures per household
- Potential increase of \$40 in the price of a barrel of crude oil (WTI)
- Potential increase of \$21 in the cost of natural gas (MMBTU)
- Potential increase of 56.4 percent in retail electricity prices