March 18, 2019

U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OAR-2013-0495
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Proposed Amendments to Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (EGUs); Docket ID EPA-HQ-OAR-2013-0495

The National Association of Manufacturers (NAM), the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states, submits the following comments in response to the Proposed Amendments to Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, Docket ID No. EPA-HQ-OAR-2013-0495.

The NAM supports a regulatory structure to address GHG emissions under the Clean Air Act (CAA) that accomplishes needed reductions while preserving manufacturing competitiveness. We do not believe these goals are mutually exclusive and look forward to working with EPA to accomplish them.

Manufacturers have reduced our GHG emissions by 13 percent since 2005. Many of those reductions have come from improved energy efficiency and changes to the mix of fuels manufacturers use. As users of one-third of the energy consumed in the U.S., manufacturers represent a significant share of the electricity demand served by the EGUs to whom this regulation applies. We also serve as a testing ground for many of the new technologies that EGUs, manufacturers and commercial and residential consumers will ultimately embrace to become more efficient, reduce GHG emissions and continue the downward emissions path needed to address global climate change.
I. **Comments on Endangerment**

At the outset, the NAM wishes to make clear that it does not recommend revisiting the Endangerment and Cause or Contribute Findings for Greenhouse Gases made under Title II for mobile sources in December 2009. Nor does the NAM recommend upending the “significant endangerment” finding for EGUs under Section 111 that underpins this rulemaking. While we believe EPA should have done more to distinguish the original Section 111 endangerment finding for EGUs from the Title II finding (which has a different legal standard), unraveling that finding would provide considerable regulatory uncertainty for the electric utility sector, which has made significant investments in its fleet for compliance purposes.

However, the NAM requests EPA to use this rulemaking to require a new Section 111 “significant endangerment” determination based on GHG emissions from a source category before it can regulate that source category’s GHG emissions under any portion of Section 111. This finding must be new and independent and cannot impute the findings from the Endangerment and Cause and Contribute finding for mobile sources, which were judged on a different legal standard for endangerment. The NAM further requests the EPA define the term “significant” as it pertains to GHG emissions from a source category.

Section 111 requires the EPA to make a determination that pollutants from the source category that it seeks to regulate “cause[, or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,” 42 U.S.C. § 7411(b)(1)(A). The plain language of Section 111 requires EPA to make a significant contribution endangerment determination that is specific to the source category and individual pollutant that it seeks to regulate. To regulate GHG emissions from EGUs, then, EPA must first make a specific determination that (1) GHG emissions (2) from coal- and natural gas-fired EGUs (3) “cause[, or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,” 42 U.S.C. § 7411(b)(1)(A). The Agency must repeat this same test for any other source category it seeks to regulate for any specific emissions not otherwise regulated by the CAA.

The endangerment determination in Section 111(b)(1)(A) is fundamentally different than that in Section 202(a) and other Clean Air Act provisions, in part because it: (1) is source category based; and (2) requires a finding of significance. Under Section 111(b)(1)(A) EPA is only permitted to regulate “a category of sources ... if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” (emphasis added). The significance test in Section 111 is a higher standard than the “cause or contribute” finding required by Section 202. Section 111(b)(1)(A) is more demanding than other provisions of the Clean Air Act and requires EPA to make an endangerment determination that is not only specific to each source category and pollutant that EPA seeks to regulate, but also based on a higher “significance” threshold.

The EPA did not satisfy the requirements of Section 111(b)(1)(A) in the original 111(b) or 111(d) regulations for EGUs, often referred to as the Clean Power Plan. We have consistently urged the EPA to establish that, for any and all 111(b) or (d) standards of performance that pertain to any GHGs, the Agency must first make a separate significant contribution endangerment finding based on the specific GHG emissions for the category. Such a finding must be a necessary precursor to regulation of a source category.
II. **BSER Determination**

The NAM agrees with EPA that partial carbon capture and sequestration (CCS) should not be considered BSER for EGUs. The technology is not an adequately demonstrated system of emission reduction for newly constructed coal-fired EGUs, and cannot therefore meet the definition of BSER. There are no such commercial-scale EGUs currently in existence and reliance on heavily subsidized, pilot-scale facilities is unwarranted. Further, there are a number of implementation challenges associated with CO₂ transport and storage that remain. Further, design constraints, site-specific limitations, and a lack of proximity to potential geologic storage sites would make retrofitting existing sources with CCS technology more difficult. Any BSER analysis for EGUs should be limited to heat rate improvements.

The NAM strongly supports continuing research, development and demonstration of carbon capture, beneficial use and storage (CCUS) technology. Although CCUS (or even partial CCS) is not BSER today, we are optimistic that the federal government will continue to work with industry to develop policies to enable CCUS to thrive, so that it can be considered adequately demonstrated in a short time. These policies include, but are not limited to:

- Reforming Class VI Underground Injection Control requirements to streamline permitting;
- Addressing potential barriers to reporting requirements for the 45Q tax credit;
- Supporting a variety of CCUS incentives to broadly encourage deployment;
- Assuring availability of offshore lands for CO₂ storage;
- Promoting CCUS pipeline and infrastructure development by addressing permitting barriers; and
- Supporting strong funding for CCUS research, development and deployment.

III. **Combined Heat and Power (CHP)**

The EPA has specifically exempted certain EGUs from applicability, including certain combined heat and power (CHP) units. The NAM believes the EPA should retain these exemptions. Industrial CHP units are typically customized to suit the needs of each host facility and are therefore unsuitable for uniform nationwide BSER analyses or standards of performance. Industrial CHP units should, however, be allowed to participate voluntarily alongside other energy sources that can reduce net GHG emissions if so desired by States in the formation of their plans.

IV. **Definition of Modification**

Under Section 111(b), a modification is any physical or operational change to an existing source that increases the source’s maximum achievable hourly rate of air pollutant emissions. Several NAM members would like additional clarity as to how an operational change would be treated as a “modification.” For instance, if an EGU changes its plant mission from traditional base load to daily shifting (load following) demand in response to changing conditions, this could result in significant increased low and part load operation such that emissions levels increase. EPA should clarify whether this be treated as a modification under Section 111(b).
Thank you for the opportunity to provide these comments. We appreciate the EPA’s continued outreach to the manufacturing sector to better understand what we are doing, what we have planned for the future, and what measures we have undertaken that are delivering cost-effective results. We look forward to working with EPA as it finalizes this rule.

Sincerely,

[Signature]

Ross Eisenberg
Vice President, Energy & Resources Policy