April 21, 2022

Submitted via regulations.gov

Todd Coleman
Office of Pollution Prevention and Toxics (7404T)
Environmental Protection Agency
200 Pennsylvania Ave. NW
Washington, DC 20460-0001

Re: **Docket ID No: EPA-HQ-OPPT-2016-0725**
Colour Index Pigment Violet 29 (PV29; CAS Number: 81-33-4) Draft Revision to Risk Determination

Dear Mr. Coleman:

The Alliance for Automotive Innovation[1] (Auto Innovators) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) "Risk Determination: Colour Index Pigment Violet 29 (PV29); Draft Revision to Toxic Substances Control Act"[2] (hereafter "draft revision"). This draft revision reflects EPA's second time implementing several significant policy changes in the approaches and assumptions applied during risk assessment and determination process. While these changes do not significantly change the risk determination made in EPA's December 2020 PV29 revised risk determination, the findings in this draft revision are significantly different than those made in the November 2018 risk determination. By adopting these risk determination policy changes, EPA precludes the option of returning to the original "no unreasonable risk" findings in the 2018 assessment for all automotive uses at the assessment stage.

These risk assessment and subsequent risk determination policy changes, most notably the "whole chemical approach", will result in unwarranted unreasonable risk determinations for many safe uses at the assessment stage. These policy changes will also create a significant burden for the industrial sector as they will need to continue to provide review and comment on uses that otherwise would have been determined not to pose an unreasonable risk. This burden along with the uncertainty created for the regulated community and the public adds an unnecessary layer of time and cost for all involved, including EPA staff. While we understand the agency believes there are compelling reasons, based on the statute, to shift to a "whole chemical approach", Auto Innovators hopes to work with the agency to find the right balance for implementing these changes.

---

[1] Formed in 2020, the Alliance for Automotive Innovation is the singular, authoritative and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents the manufacturers producing nearly 99 percent of cars and light trucks sold in the U.S. The organization, a combination of the Association of Global Automakers and the Alliance of Automobile Manufacturers, is directly involved in regulatory and policy matters impacting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, technology and other automotive-related companies and trade associations. The Alliance for Automotive Innovation is headquartered in Washington, DC, with offices in Detroit, MI and Sacramento, CA. For more information, visit our website http://www.autosinnovate.org.

[2] 87 FR 12690, March 7, 2022. Docket ID No: EPA-HQ-OPPT-2016-0725.

We further understand that this draft revision would supersede the specific conditions of use identified to have "no unreasonable risk" in the January 2021 PV29 risk evaluation and withdraw the associated TSCA section 6(i)(1) order. In addition, the draft revision now would make a revised determination of unreasonable risk for PV29 as a whole chemical substance.[3] EPA is requesting comment on its implementation of these new risk assessment approaches, such as the application of the whole chemical approach for PV29 and EPA's new policy of assessing worker exposure assuming that no occupational use of personal protective equipment (PPE) is in place for potentially exposed workers.

Auto Innovators has several concerns about this draft revision, including: (I) specific assumptions about PV29 use and handling in the automotive sector and EPA's apparent disregard for previous comments submitted about PV29 use in the automotive sector, and (II) the application of new policy approaches for risk evaluations and related consequences. We address these concerns in the following comments.

I. PV29 Uses in the Automotive Manufacturing Sector

As we have consistently informed EPA, our sector has very limited uses of PV29. Where those uses may still be employed, however, there are several inaccuracies in EPA's use and exposure assumptions that must be addressed before a proposed risk management rule is issued. These points have been reinforced in our previous comments to the agency, including comments submitted on December 19, 2020.[4] Subsequently, in August 2021, we submitted additional information, in response to questions raised regarding our previous input.[5]

In EPA's 2018 draft PV29 risk evaluation,[6] EPA concluded that PV29 did not present an unreasonable risk of injury to human health or the environment under any conditions of use. In February 2020, EPA issued a TSCA section 4(a)(2) order to two companies, a manufacturer and an importer of PV29, requiring the development of information necessary to decrease uncertainty in the risk evaluation. As a result of the data submitted in response to that test order, EPA revised its risk determinations. In the revised evaluation, EPA reaffirmed its earlier findings that industrial and commercial use in plastic and rubber products and carpeting in the automotive sector does not present an unreasonable risk. However, EPA also updated its risk determination for industrial and commercial uses in paints, coatings, and basecoats for automobiles (original equipment manufacturer (OEM) and refinishing) and determined that these uses pose an unreasonable risk of injury to health for workers and occupational non-users (ONUs).

Auto Innovators believes that the assumptions EPA has made in this draft revision, and that provide the underpinning for the unreasonable risk determinations, are flawed. EPA's assumptions ignore common OEM practices and use scenarios for PV29. As a result, the inaccuracies in the exposure evaluation have led to a significant overestimation of worker and ONU exposures, which may result in EPA selecting unnecessary risk mitigation efforts to address those exposures. Auto Innovators is reiterating previously submitted information that more accurately reflects how PV29 is used by our industry, albeit in minimal instances overall, and we are concerned that the effort put into providing these comments has been ignored or at best, discounted. EPA continues to move forward with exposure assumptions that equate OEM worker exposure to paints premixed with small quantities of PV29 to exposures of workers in PV29 manufacturing facilities where concerns are driven by inhalation of the powder form of

---

[3] 87 FR at 12690.
[4] EPA-HQ-OPPT-2018-0604-0108, https://www.regulations.gov/comment/EPA-HQ-OPPT-2018-0604-0108.
[5] August 19, 2021 Letter from Auto Innovators to Ms. Seema Schappelle, EPA.
[6] EPA-HQ-OPPT-2018-0604-0001, November 15, 2018. https://www.regulations.gov/document/EPA-HQ-OPPT-2018-0604-0001.

PV29. Auto Innovators urges EPA to review its exposure assumptions based on actual use patterns of PV29 in OEM facilities as this would be the clearest way to address our concerns. At a minimum, however, if EPA does not take our recommended change in this risk assessment, then we request that EPA reflect actual exposure patterns when developing risk mitigation measures going forward.

A. Differentiation between OEM and Refinishing Facilities

When developing a risk management strategy, EPA should differentiate between OEM facilities and other types of refinishing operations. In August 2019, EPA staff toured a Toyota OEM manufacturing facility. During that tour, EPA management and staff were able to witness first-hand the way that paints, coatings, and basecoats are applied. While the OEM painting processes are typically closed to the public, the publicly available video, *Toyota Production Documentary - Toyota Manufacturing Production and Assembly at Toyota Factory – YouTube,* captures the same painting processes that EPA staff were able to view firsthand.[7]

As can be seen in the video, robotic sprayers are employed throughout the process in a contained and dedicated space; this dedicated space is particularly important to prevent dust, debris, or other materials from adhering to the painted vehicle. Thus, application of paints and coatings in an OEM facility results in very little opportunity for worker exposure because workers are not directly present. If a worker is required to "cut in" during the painting process, i.e., if a flaw is noticed or there is an equipment issue, employee exposure is controlled with negative pressure respirators with organic particulate cartridges, powered air purifying respirators, and/or disposable filtering facepiece respirators. While we cannot comment on the application processes used at refinishing facilities, we do request that if there are differences in exposure potential, that any risk management approach reflect those differences.

B. Use of PV29 in Powder Form

EPA's unreasonable risk concerns are based on inhalation exposure for workers, primarily related to PV29 in a powder form. Auto Innovators would like to reiterate that PV29 is not used in powder form in OEM facilities. PV29 is fully incorporated into the paint or coating by the paint manufacturer prior to sending it to the OEM facility.

Yet, EPA assessed inhalation exposures for automotive workers using the maximum concentration of particles (powder form) measured at the PV29 manufacturing site as a high-end exposure estimate:

> The particle size distribution data used for risk characterization was based on the reported range of values for the workplace submitted by the manufacturer and importer of C.I. Pigment Violet 29.[8]

Similarly, based on our understanding of what is described in the revision, inhalation exposures for ONUs were assessed using the maximum concentration of PV29 measured during the Section 4 Test Order monitoring at the manufacturing site as a high-end exposure estimate.

---

[7] Found at https://www.youtube.com/watch?v=k4-eJsFdxaU.
[8] Page 5, https://www.epa.gov/system/files/documents/2022-03/c.i.-pigment-violet-29-revised-section-5.pdf.

EPA assumed that automotive workers engaged in these conditions of use are exposed similarly to workers who manufacture the powder form of PV29. As stated in comments submitted by David Wawer on behalf of the Color Pigments Manufacturers Association:

> The revised draft says it assumes that workers in the industrial and commercial use industries, and in the disposal of their products, can be exposed to PV29 via "handling of C. I. Pigment Violet 29 in pure powder form, loading and packaging operations, unloading and storage at the receiving facility, transfer to process equipment, milling or grinding of finished articles containing C.I. Pigment Violet 29 and spray painting of coatings containing C.I. Pigment Violet 29," and that EPA would assume these workers are exposed at the same level as manufacturing exposures measured by Sun. [Revised Draft Risk Evaluation at 45, 61 & 66] But these assumptions are wrong. Such workers never handle PV29 in pure powder form. Nor is there any potential for workers handling plastic, paint or ink to be exposed to PV29 particles. Cutting, grinding, and similar physical processing of molded plastic parts or fibers could conceivably cause a release of plastic particles, but it does not release pigment particles. Nor does application of paint or ink containing PV29. Even spray applications of paint containing PV29 cause the release of paint particles, in which PV29 crystals are bound up with binders, liquids and additives. As a result, these workers have essentially no potential exposures to PV29 particles.[9]

While EPA's assumptions may be appropriate for facilities that manufacture or process PV29, they are not representative of use scenarios once the powder is incorporated into a mixture, like a paint or coating. In the case of OEM uses of paints and coatings that may contain PV29, no particulate exposure is anticipated, again as a result of the PV29 already being incorporated and not being present in a powder form at the OEM facility. Thus, Auto Innovators requests again that EPA revise the current exposure scenarios at OEM facilities to reflect the actual use scenario. Further, we request that EPA remove the incorrect assumptions for exposure to the powder form of PV29 and address the incorrect assumption that PV29 concentrations at OEM facilities are present at the same concentrations as at the manufacturing facilities for PV29. When EPA assesses the very limited uses of PV29 by OEMs and applies the correct exposure parameters, we are certain that EPA will once again determine that OEM uses of PV29 do not present an unreasonable risk.

II. EPA's Application of New Policy Approaches for Risk Evaluations

On June 30, 2021, EPA formally announced a "Path Forward for TSCA Chemical Risk Evaluations."[10] This new document includes new approaches and policies for EPA-conducted risk evaluations that will have significant impacts on EPA's unreasonable risk determinations. These policy changes include: (1) the adoption of a whole chemical approach; and (2) assessments that do not assume use of PPE in workplace environments.

A. The Whole Chemical Approach May Have a Series of Unintended Consequences that Conflict with Some of the Major Goals of TSCA

Prior to the issuance of the draft revision for Cyclic Aliphatic Bromide Cluster (HBCD) and this draft revision for PV29, EPA's risk evaluations resulted in separate unreasonable risk determinations for every relevant condition of use of a chemical. The conditions of use reflected those identified in the

---

[9] Comment submitted by David Wawer, Executive Director, Color Pigments Manufacturers Association, EPA-HQ-OPPT-2018-0604-0105, Dec 2, 2020. Found at https://www.regulations.gov/comment/EPA-HQ-OPPT-2018-0604-0105.

[10] "EPA Announces Path Forward for TSCA Chemical Risk Evaluations," *Press Release*. June 30, 2021. *Found at:* https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations.

associated scoping document and "as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of."[11]

The resultant risk determinations were clear in terms of which conditions of use were determined to pose an unreasonable risk and which conditions of use did not pose an unreasonable risk. The determinations that a particular condition of use did not present an unreasonable risk were issued by order under TSCA section 6(i)(1) and therefore were covered by TSCA's preemption provisions. We understand that the issuance of these TSCA section 6(i)(1) orders have complicated EPA's process, because they are considered a final action. On the other hand, these same orders provide certainty and clarification for industry, both in its linkage to preemption and in reducing efforts under the risk mitigation phase.

EPA's adoption and application of a whole chemical approach reduces the clarity and certainty provided by the previous approach of making separate determinations of unreasonable risk for every condition of use of a chemical. The consequences of this new approach will result in prolonged uncertainty for the regulated community, continued use of resources to research uses which pose no risk, and a negatively biased whole chemical "finding" that will undoubtedly be used to push back on uses that may not have an unreasonable risk. It may also potentially result in regrettable substitutions, as manufacturers seek to quickly implement functional alternatives.

One of the compelling TSCA amendments was the preemption provision that provided assurance that in most cases TSCA regulatory actions would preempt a patchwork of inconsistent state regulations of the same chemical. By issuing orders of "no unreasonable risk" findings at the final risk evaluation phase for certain conditions of use, those specific uses would automatically be granted long-term preemption, effective at the time the TSCA section 6(i)(1) orders were issued. These final agency actions would preclude any inconsistent state regulations.

To manufacture an automobile to meet multiple and often inconsistent individual state chemical regulations would be technically and economically prohibitive. The consequence of allowing states to issue chemical regulations while EPA assesses a chemical and until EPA issues a final risk management rule could create an unworkable and confusing set of requirements for any sector, including the automotive sector.

1. Preemption for First Ten TSCA Work Plan Chemicals

Our comments on long-term preemption for the first 10 Work Plan chemicals[12] are based on our understanding that (1) the initial 10 Work Plan chemicals are exempt from pause preemption; and (2) permanent preemption is triggered when EPA issues a final agency action related to the chemical(s). A final agency action would include an order under TSCA section 6(i)(1) or a final rule.

[11] TSCA Section 3(4): Definitions.
[12] EPA, "TSCA Work Plan Chemicals." Found at: https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-work-plan-chemicals.

EPA's implementation of its whole chemical approach, combined now with a reluctance to make a no unreasonable risk determination at the final risk evaluation stage, appears to potentially ignore the intent of TSCA section 6(i)(1):

> (i) FINAL AGENCY ACTION.—Under this section and subject to section 18—
> (1) a determination by the Administrator under subsection (b)(4)(A) that a chemical substance does not present an unreasonable risk of injury to health, or the environment shall be issued by order and considered to be a final agency action, effective beginning on the date of issuance of the order;

EPA announced its intent to withdraw the previously issued TSCA 6(i)(1) orders for those conditions of use for which no unreasonable risk was found for all of the initial 10 risk evaluations. Since pause preemption is not provided under TSCA when EPA is preparing risk evaluations for the initial batch of 10 Work Plan chemical substances, if risk findings are not made separately for each condition of use for these chemicals based on the final risk evaluation, orders of "no unreasonable risk" will not be issued. As a result, states may implement patchwork regulations on all uses until EPA issues a final risk mitigation rule. After a final rule is issued, long-term preemption would apply to all unreasonable and no unreasonable risk uses, unless EPA were to grant a long-term preemption waiver to a state that could show good cause for a separate and different approach.

Given the length of time between EPA's initial risk determinations for the initial batch of 10 Work Plan chemicals and the time that a final risk management rule may be issued, states may choose to fill the void with their own risk management programs and use that as justification for requesting and receiving a waiver of preemption. In that case, conditions of use that EPA ultimately finds present no unreasonable risk may be captured in these potential state programs.

While EPA has announced an intent to withdraw the TSCA section 6(i)(1) orders for the initial batch of 10 Work Plan chemicals, Auto Innovators believes there is no compelling reason to withdraw these orders at this time. Given that EPA's new assumptions about the use of PPE (discussed further below) are driving many of the shifts to "unreasonable risk" determinations, it is highly likely that risk determinations will be revised from their original "no unreasonable risk" findings. These orders should remain in place until EPA completes its second round of final risk evaluations for the initial batch of 10 Work Plan chemicals and determines which conditions of use would be subject to risk management action. EPA can use the risk management rule to revise, alter, or withdraw the TSCA section 6(i)(1) orders, as necessary.

By keeping the existing orders in place, EPA would have time to review additional input that will be submitted on the revised draft risk evaluations for the 10 Work Plan chemicals and adjust their unreasonable risk findings as appropriate. Meanwhile, the orders would also continue to provide the necessary clarity as a final action that provides preemption. This approach would provide industry with more certainty surrounding the conditions of use that have already been evaluated, until such time as the risk management rule supersedes any existing orders.

2. Preemption for High Priority Substances

While the first 10 Work Plan chemicals are exempt from the application of pause preemption, EPA's revised whole chemical approach also raises questions about the application of preemption for the high priority substances. These concerns are based on our understanding that: (1) chemicals designated as high priority substances under TSCA are subject to pause preemption, and that pause preemption is activated when EPA issues the scoping document for a high priority substance; (2) pause preemption ceases when EPA issues a final risk evaluation or reaches the statutory deadline for publication of the

final risk evaluation; and (3) permanent preemption is activated when EPA issues a final Agency action related to the chemical(s). A final agency action would include an order under TSCA section 6(i)(1) or a final rule. Our comments also assume that EPA will adopt a whole chemical approach for most of the high priority substances.

A whole chemical approach is likely to interfere with long-term preemption for the high priority substances. As with the 10 Work Plan chemicals, if EPA takes a whole chemical approach for the high priority substances, EPA will not issue 6(i)(1) orders at the final risk determination stage, which would cease pause preemption, and as a result, states may implement regulations on all uses until EPA issues a final risk mitigation rule. It is unclear what benefit is to be gained by extending the period before EPA signals that a condition of use does not present an unreasonable risk. Choosing to create a lengthy period of uncertainty when some conditions of use could be removed from further regulatory process appears to have no upside.

B. Assumptions that Personal Protective Equipment Is Not Routinely Used

In the initially issued final risk evaluations for the 10 Work Plan chemicals, estimates of worker exposure were calculated both with and without the use of PPE, assuming the use of PPE as stipulated by the Occupational Safety and Health Act (OSHA) standards. Subsequently, EPA determined that it is more appropriate, when conducting risk evaluations, to assume that PPE is not used by workers during the risk evaluation. Instead, information related to PPE use will be considered by EPA during the risk management phases. This new approach is reflected in EPA's June 30, 2021, press release announcing EPA's new approaches to risk evaluations, in the section on personal protective equipment.

> In the final risk evaluations for the first 10 chemicals, the previous administration generally assumed that workers were always provided, and used, personal protective equipment (PPE) appropriately. However, data on violations of PPE use suggest that assumptions that PPE is always provided to workers, and worn properly, are not justified. Continued use of this assumption could result in risk evaluations that underestimate the risk, and in turn, risk management rules may not provide the needed protections.
>
> EPA is therefore revisiting the assumption that PPE is always used in occupational settings when making risk determinations for a chemical. Instead, the agency plans to consider information on use of PPE, or other ways industry protects its workers, as a potential way to address unreasonable risk during the risk management process.
>
> The first 10 risk evaluations already include exposure analysis with and without PPE. Therefore, removing this assumption does not create need for new analysis. However, this shift could change some of the conclusions about risk on some conditions of use for six of the first 10 chemicals for which "no unreasonable risk" findings were made based on the use of PPE. Specifically, this shift could impact conclusions about risk for some conditions of use for methylene chloride, 1-bromopropane, HBCD, NMP, perchloroethylene, and 1,4-dioxane.[13] [emphasis added]

[13] EPA, "EPA Announces Path Forward for TSCA Chemical Risk Evaluations." *Press Release*, June 30, 2021. https://www.epa.gov/newsreleases/epa-announces-path-forward-tsca-chemical-risk-evaluations.

EPA further clarifies this approach in the PV29 revision, stating:

> Making unreasonable risk determinations based on the baseline scenario should not be viewed as an indication that EPA believes there are no occupational safety protections in place at any location or that there is widespread noncompliance with applicable OSHA standards. Rather, it reflects EPA's recognition that unreasonable risk may exist for subpopulations of workers that may be highly exposed because they are not covered by OSHA standards, such as self-employed individuals and public sector workers who are not covered by a State Plan, or because their employer is out of compliance with OSHA standards, or because EPA finds unreasonable risk for purposes of TSCA notwithstanding existing OSHA requirements.[14]

While we appreciate EPA's clarification, it will of course continue to be important that EPA and industries using these chemicals work together to make sure the proper use and handling scenarios are reflected. Nonetheless, EPA's plan to incorporate PPE use, and other industry practices used to protect workers, only during the risk management process will likely impact risk determinations for some conditions of use for any chemical substances currently undergoing risk determination.

Further, if assuming the use of PPE in workplace facilities *underestimates* potential exposure to certain subpopulations of workers, such as occupational non-users or self-employed individuals, assuming no PPE use will likely *overestimate* worker exposure. As a result, the draft and final risk determinations may be inaccurate and misleading. In addition, these revised assumptions will likely result in extra workload and resources for EPA and the regulated community alike going into the risk management phase. This approach doesn't appear to fix a perceived problem but rather replace it with a different problem that could create a false or misleading perception of worker risk. For the extended period between EPA's release of its risk assessments and its issuance of final risk management rules, the public may be left with the perception that risks are greater than they are and that manufacturing facilities are out of compliance with federal and state safety standards.

Further, if EPA believes that certain workplace risks are not being adequately controlled or that workers not covered by OSHA standards are at a greater exposure risk, then EPA has an obligation under TSCA section 9(a) to consult with OSHA before superseding OSHA's authority. The more straightforward approach would be to identify real and actual risks and then to coordinate with OSHA to update and enforce its requirements and compliance program; TSCA should not be used in place of or as a workaround to OSHA's requirements. For workers not covered by OSHA standards, we recommend that EPA and OSHA work together to find an appropriate means for providing any necessary requirements, preferably under OSHA, if unreasonable risk is determined. Any such result from coordination and consultation with OSHA should also be made publicly available to further transparency, process, and due diligence. In the case of the PV29 revision, any such information has not been made available to the public, i.e., via the docket, to date, as would be expected under the requirements of 15 U.S.C. § 2608.[15]

---

[14] Page 8, https://www.epa.gov/system/files/documents/2022-03/c.i.-pigment-violet-29-revised-section-5.pdf.

[15] 15 U.S.C. § 2608(a)(1) states that: "…the Administrator shall submit to the agency which administers such law a report which describes such risk and includes in such description a specification of the activity or combination of activities which the Administrator has reason to believe so presents such risk. Such report shall also request such agency—

(A)
(i) to determine if the risk described in such report may be prevented or reduced to a sufficient extent by action taken under such law, and
(ii) if the agency determines that such risk may be so prevented or reduced, to issue an order declaring whether or not the activity or combination of activities specified in the description of such risk presents such risk; and

(B) to respond to the Administrator with respect to the matters described in subparagraph (A).

Any report of the Administrator shall include a detailed statement of the information on which it is based and shall be published in the Federal Register."

Moreover, the first 10 risk evaluations already include exposure analysis with and without PPE. If EPA feels compelled to assess chemicals with and without PPE, then Auto Innovators recommends that it continue the approach of presenting both scenarios in its risk determinations for all future risk determinations – with and without PPE. This dual scenario would provide the appropriate bounding scenarios for risk exposures in the workplace. Moreover, when businesses provide information during the risk determination stage that demonstrates compliance with PPE and/or other information that demonstrates workplace exposures are limited or minimal, e.g., a closed-loop manufacturing process or a contained room like OEM painting facilities, then EPA should apply that information as part of the risk determination.

Waiting until EPA proceeds to the risk management phase to include the use of OSHA-required PPE and related workplace standards creates a false impression of risk that lacks transparency, will be misleading to the public, and overestimates the risk of exposure in workplaces that require workers to follow PPE practices. In addition, it creates an extra layer of work for EPA and industries to work through the risk management phase, when adequate protections may already be in place.

In ensuring appropriate and necessary workplace protection, workers are given high priority. The auto industry employs millions of workers at our U.S.-based facilities. The auto industry has spent decades designing safe and compliant workplaces for our workers and building state-of-the-art manufacturing facilities to efficiently, safely, and consistently produce the vehicles that our customers rely on. It is our intent to work with EPA to find ways to make sure that EPA is accurately accounting for the protections in place in our facilities, identifying risks where real exposures may be occurring and appropriate use scenarios.

In addition to presenting risks under assumptions with and without PPE use, it would be appropriate for EPA to review and revise its modeling assumptions specific to automotive manufacturing to ensure it reflects the state-of-the-art facilities used today. We have raised this issue on several occasions with EPA staff but have not seen any updated models that reflect current industry practices.

III. Conclusion

Auto Innovators requests that EPA fully consider our comments on PV29 from today as well as those comments in previous submissions to the agency.

As we have indicated, exposure to PV29 dust in automotive painting and coating operations at OEM facilities is highly unlikely, because OEM worker exposure to paints premixed with small quantities of PV29 is not analogous to exposures of workers in PV29 manufacturing facilities, where concerns are driven by inhalation of the powder form of PV29. The lack of exposure to PV29 dust at OEM facilities should be fully incorporated by EPA prior to assigning any risk management strategy. We believe the data support a finding of “no unreasonable risk” finding for these uses.

Auto Innovators also recommends that EPA reconsider the two new risk determination policy approaches that it has applied in the PV29 draft revision. As discussed in detail above, there is a trade-off between the certainty provided to EPA by holding on final actions and the uncertainty and risk to preemption by taking this approach. While it may not have been the intent of Congress to create a scenario where early final actions could be subject to challenge, it is difficult to envision that Congress intended for the already-narrowly provided preemption provisions to result in gaps through the full chemical review process – prioritization to scoping to risk assessment to management. Thus, we continue to recommend that EPA assess individual conditions of use and make any findings in the final risk determination. In those cases where a “no unreasonable” risk determination is made, issuing “no

unreasonable risk" orders would allow EPA, the regulated community, and the public to focus time and resources on any uses that pose an unreasonable risk. At a minimum, if EPA proceeds with the whole chemical approach, EPA should maintain any existing 6(i)(1) orders until the final risk management rule is effective.

Auto Innovators believes the revised approach to PPE usage does not provide a significant benefit for evaluating worker protection. We continue to support the goal of robust, scientific and data-driven chemical risk assessment. Therefore, we recommend that EPA continue to assess worker exposures assuming the proper implementation of OSHA workplace requirements, which are standard industry practice for our sector. Finally, we recommend that EPA work with OSHA to address any unreasonable risks if any circumstances are identified and employ the appropriate statute for addressing those risks.

Thank you for your consideration of our comments, and we welcome any additional discussion or questions regarding this submission.

Sincerely,

Julia M. Rege
Vice President, Energy & Environment