Regulatory Policy Committee	**Opinion**	
Impact Assessment (IA)	Amending COMAH 1999 to align the thresholds for Heavy Fuel Oil with those of Petroleum Products.	
Lead Department/Agency	Health and Safety Executive	
Stage	Consultation	
IA Number	Not provided	
Origin	European	
Expected date of implementation (and SNR number)	-	
Date submitted to RPC	03/05/2013	
RPC Opinion date and reference	28/06/2013	RPC13-HSE-1785
Overall Assessment	**AMBER**	

RPC comments

The IA is fit for purpose for consultation but will need to be improved in a number of areas at final stage. In particular, the IA needs to demonstrate clearly what would be the correct baseline in the future to compare with the proposal, to estimate the actual impacts of the proposal; and the gaps in monetised estimates of costs and benefits will need to be addressed to enable an assessment of the real impact on business to be determined. Evidence of no gold-plating and no impact on small and micro businesses will also need to be provided. In addition, for Statement of New Regulation (SoNR) purposes, an equivalent annual net cost to business (EANCB) will need to be provided for validation.

Background (extracts from IA)

What is the problem under consideration? Why is government intervention necessary?

The UK is required to implement Article 30 of the new Seveso III Directive (replacing Seveso II Directive) into UK law by 14 February 2014. We propose doing this by minor amendment to the Control of Major Accident Hazards Regulations 1999 (COMAH). This amendment will take a significant number of sites out of scope of COMAH. The EC classification ('dangerous for the environment' - DFE) of Heavy Fuel Oil (HFO) causes problems for industry under consequential requirements of COMAH. UK lobbied and secured Article 30 in the Seveso III Directive, enabling HFO to be treated under COMAH as 'petroleum products'; relaxing significantly the demands on UK industry.

What are the policy objectives and the intended effects?

(i) Implement the change proposed in the Seveso III Directive to the classification of HFO into UK law- (ii) Enable many UK industry stakeholders to be removed completely from legislative requirements and others to have simpler compliance duties (iii) Giving clarity and legal certainty to UK businesses on how HFO should be treated; (iv) Deliver a 'level playing-field' in the EU where the same thresholds will be used; and (v) Avoid infraction and associated costs for failure to implement Article 30 of the Directive.

Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options

Benefit and costs and the baseline. The IA says that the proposal *"..will take a significant number of sites out of scope of COMAH."* (Page 1). However, it says that because the current requirements are *",..not enforced proactively in the UK..*(para 3), then any cost savings from the proposal are *"..largely theoretical in nature.."* (para 12). On this basis it says that the current non-quantification of impacts and *"..level of analysis provided is sufficient.."* para 28).

However, the IA needs to demonstrate clearly what would be the correct baseline in the future to compare with the proposal, to estimate the actual impacts of the proposal. If the current requirements were never intended to apply in the future then the proposal would appear to provide no potential savings to business. But if the current requirements would have been applicable under law in the future then the proposal would appear to provide cost savings. The IA should clearly explain to consultees which of these two cases would be the situation in the absence of the proposal, to enable them to provide robust information on the impacts of the proposal.

Further, the IA does not provide an assessment of the environmental impacts of the proposal to demonstrate that there will be no detriment.

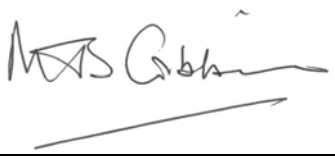
Comments on the robustness of the Small & Micro Business Assessment (SMBA)

The proposals regulate business but come into force before 1 April 2014 and therefore the SMBA is not applicable.

Comments on the robustness of the OITO assessment.

The IA says the ".. *proposal is out of scope of OITO. The proposed amendment implements a European Directive; it does not "gold-plate" by going beyond its provisions or fail to adopt available derogations"*. As this proposal is of European origin and there is no evidence that the increase in regulation would go beyond minimum requirements, or of a failure to take available derogations which would reduce the costs to business, then it appears to be out of scope of One-in, Two-out (Better Regulation Framework Manual - paragraph 2.9.8. ii). The IA will need to demonstrate this more clearly at final stage.

In addition, as the Statement of New Regulation (SoNR) now provides information of the costs to business of EU measures, the final stage IA will need to include evidence to support an estimated EANCB figure for validation.

Signed  **Michael Gibbons,** Chairman