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The Office of Policy and Strategic Planning
United States Department of Commerce
HC Hoover Building Rm. 5863
1401 Constitution Ave. NW.
Washington, DC 20230

**Re: U.S. Department of Commerce Request for Information
Regarding the Impact of Federal Regulations on Domestic Manufacturing
82 Fed. Reg. 12,786 (Mar. 7, 2017)
Docket Number 170302221-7221**

Dear Director Comstock:

The Council of Industrial Boiler Owners (CIBO) appreciates the opportunity to comment on the Department of Commerce's (DOC's) Request for Information regarding the Impact of Federal Regulations on Domestic Manufacturing (the DOC RFI). 82 Fed. Reg. 12,786 (Mar. 7, 2017).

CIBO is a trade association of industrial boiler owners, architect-engineers, related equipment manufacturers, and University affiliates representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information about issues affecting industrial boilers, including energy and environmental equipment, technology, operations, policies, laws and regulations.

CIBO represents members engaged in manufacturing across a wide range of sectors throughout the United States and the permitting and regulatory responsibilities in each sector vary greatly. While it would be difficult for purposes of the DOC RFI to articulate the regulatory programs and permits relevant to each of our members, across all 20 major industrial sectors, CIBO provides comments on four key areas of regulation that are very burdensome for our members. Specifically,

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CIBO is focusing on four areas of environmental permitting and regulation under the federal Clean Air Act that prevent our members and industry in general from improving their facilities and increasing production to better compete in the global market.

We fully support the Trump Administration and Department of Commerce efforts to engage manufacturing stakeholders in this process to better understand our industries and the impact of Federal regulatory programs and permitting requirements. While CIBO focuses its comments on four areas with a common nexus in the Clean Air Act, numerous other Federal regulatory programs also impact the manufacturing sector by making expansion more costly, imposing unnecessary compliance costs that force closures and eliminate jobs, and in the end, limit the domestic manufacturing sectors' ability to compete with foreign manufacturers. To that end, CIBO looks at the DOC RFI as the first step in a long overdue process of regulatory reform that is critical to the health of the domestic manufacturing sector and the United States economy as a whole. We look forward to working with the Trump Administration, the Department of Commerce, and other Federal agencies on the issues we have highlighted below as well as others that impact the manufacturing sector.

REGULATORY BURDEN AND COMPLIANCE ISSUES FOR CIBO MEMBERS

As discussed above, CIBO has focused this response to the DOC RFI on issues associated with the Federal Clean Air Act, 42 U.S.C.A. § 7470, et seq., and several of the related regulatory programs carried out by the U.S. Environmental Protection Agency (EPA).

A. The Clean Air Act National Ambient Air Quality Standards (NAAQS)

Background: The Clean Air Act requires EPA to set NAAQS for six criteria pollutants. Congress intended for EPA and the States to work together in a logical fashion to set standards for ambient air pollutants. However, after decades of EPA setting NAAQS, the process is best described as byzantine, wasteful of resources and skewed in favor of denying U.S. industry the ability to expand operations. CIBO provides below examples of burdensome aspects of the NAAQS program as well as potential solutions.

Regulatory Burden	Potential Solution
EPA fails to focus on NAAQS implementation policies, guidance and tools early enough in the NAAQS review process. The current approach results in EPA developing tools and policies in response to, rather than anticipation of, NAAQS implementation challenges. This often results in even greater compliance challenges for sources than were presented by the underlying emission standard itself.	EPA should address NAAQS implementation issues early in the standards review process so that when the new NAAQS is established there is an adequate implementation strategy in place. If EPA cannot issue a NAAQS implementation strategy concurrent with the new standard, EPA should apply the former NAAQS standard to any permitting analyses until the new implementation tools and policies are developed.
EPA's current dispersion modeling criteria is not adequately reflective of actual ambient impacts.	EPA should adjust its dispersion models to take advantage of modern capabilities that calculate ambient air concentrations based on variable emissions, background, and meteorological conditions. EPA should adopt more flexible policies to allow the use of more realistic emissions and modeling data.
In evaluating the NAAQS, EPA evaluates ambient air impacts based on anywhere the general public can access. EPA's current policy is unrealistic because it requires the evaluation of ambient air impacts at locations where individuals would not reasonably be exposed (e.g., on a waterway, roadway, or railway), for the duration or averaging time (e.g., 24-hour or longer time periods), and frequency (e.g., 4 or 8 days per year) of the current probabilistic NAAQS.	EPA should modify its policy for ambient air to make modeled impacts consistent with reasonably anticipated exposures for which the NAAQS are designed to protect. Modeling should not be required if human exposure at a site is unrealistic for the period addressed by a NAAQS.

B. New Source Review (NSR) and Prevention of Significant Deterioration (PSD) Permits

Background: Current New Source Review permitting requirements at 40 CFR 51.166 and 52.21 make it extremely difficult to improve the efficiency of boiler operations and even to maintain or improve boiler facilities. NSR policies on existing sources also make it difficult for industry to fully utilize previously permitted and funded capital investments. NSR policies that prevent industry from making efficiency or quality improvements, maintaining investments, or fully utilizing installed equipment capability must be changed so that U.S. industry can compete effectively in a global economy. NSR permitting significantly hinders implementation of smaller efficiency improvements, quality or reliability improvements, and pollution prevention projects at

manufacturing sites, refineries, utilities, and commercial establishments across the United States. As a general matter, not just efficiency improvements for boilers are hindered, but also those for many types of equipment in our industrial facilities (e.g., steam turbines, gas turbines, internal combustion engines, boilers, fired heaters).

Regulatory Burden	Potential Solution
<p>When considering “netting transactions,” current EPA policy calls for the emissions impact of contemporaneous projects to be quantified using the actual-to-potential (ATP) test. This is required under this policy even if those projects relied on the actual-to-projected actual (ATPA) emissions comparison for their initial PSD applicability determination.</p> <p>In addition, a 2006 proposal to allow “project netting” was never finalized. Project netting calculations are more straightforward and a regulatory change to explicitly allow project netting would let facilities receive credit for emission reductions that are achieved as part of an overall project, without introducing complexity into the program.</p>	<p>EPA should rescind the 2011 policy memo that requires the ATP emissions test for contemporaneous projects in netting transactions, and to promulgate changes to the appropriate definitions within the PSD regulations.</p> <p>Netting policy should switch from “potential” emissions to “actuals” to avoid unnecessary PSD and NSR reviews when actual emissions will decrease as a result of a project.</p> <p>EPA should finalize the September 14, 2006 proposal to allow project netting for PSD applicability analyses.</p>
<p>EPA’s “Clean Unit” exemption promulgated in 2002 allowed any emission unit that had been through a permitting process that resulted in Best Available Control Technology (BACT) or Lowest Achievable Control Technology (LAER) emission control levels being imposed would trigger NSR only if was seeking an increase in its permitted allowable emissions. The “Clean Unit” exemption appropriately alleviated regulatory burdens for sources; however, it was vacated by the D.C. Circuit in 2005.</p> <p>Now, sources with state of the art emission units are required to participate in a burdensome permitting process that results in minimal improvements to existing air quality or the efficiency of the emission control systems installed on the source.</p>	<p>EPA should consider other practical approaches using existing authority that can eliminate the lengthy and onerous permitting requirements where no environmental benefit will be realized.</p> <p>Reinstating the “Clean Unit” exemption may require amendments to the CAA.</p>

Regulatory Burden	Potential Solution
<p>The Pollution Control Projects (PCPs) exemption finalized in 2002 exempted certain project from having to undergo preconstruction NSR and permitting. The PCP exclusion was also vacated by the D.C. Circuit in 2005.</p>	<p>EPA should consider other practical approaches using existing authority that can eliminate the lengthy and onerous permitting requirements where no environmental benefit will be realized.</p> <p>Reinstating the “Pollution Control Project” exemption may require amendments to the CAA.</p>
<p>Provisions for Plant-wide Applicability Limits (PALs) were established in order to provide facilities a simplified process for approval of projects under the NSR rules, as long as facility-wide emissions remain below the PAL after the modification. The PAL provisions were included in the 2002 NSR Reform rules as a way for facilities to quickly respond to changes in market conditions while still achieving a set level of environmental protection.</p>	<p>EPA should undertake a review of the PAL provisions and eliminate those that, for little or no environmental benefit, constitute disincentives for facilities to establish PALs. In particular, the requirement for a 10-year review that could result in a reduction in the PAL level should be eliminated.</p>
<p>There are no greenhouse gas (GHG) emissions capture or control technologies that can be applied to most types of combustion units. Typically, facilities purchase new combustion units or modify existing combustion units to enable them to combust different fuels in order to realize a reduction in energy cost. Such changes generally involve the purchase of newer and more efficient equipment or burners, regardless of whether a requirement to conduct a GHG BACT analysis is triggered. Therefore, a GHG BACT analysis does not result in GHG emissions reductions and typically only serves to slow the process of making energy efficiency improvements at smaller facilities and add to the regulatory burden faced by these facilities.</p>	<p>EPA should clarify what constitutes “economically reasonable” for GHG BACT, exclude carbon capture and sequestration from BACT reviews, and reinforce that BACT does not require “redefining the source” for alternative energy sources.</p>

Regulatory Burden	Potential Solution
US facilities are being forced to waste money controlling certain emissions with no tangible health or environmental benefit.	<p>BACT cost analyses should be more consistent in determining whether an emission control technique is economically feasible.</p> <p>Therefore, the economic threshold for applying CO control should be approximately two orders of magnitude lower (i.e., \$50/ton). EPA should revise and finalize its perpetual “draft” BACT guidance document (issued as a draft in 1990, but never finalized), after publishing an opportunity for comment in the Federal Register. In the revised version, EPA should amend the guidance to rectify inconsistencies cost analyses. .</p>
If more projects can avoid being subject to PSD through revisions to the PSD applicability procedure, the lengthy permitting process for modifications and expansions of existing facilities and new manufacturing sources could be avoided.	<p>Emission thresholds for permitting should be reviewed and adjusted to properly require permitting only where it is needed and can yield environmental benefit. EPA should consider other practical approaches using existing authority that can eliminate the lengthy and onerous permitting requirements where no environmental benefit will be realized.</p> <p>For example, major source permitting should be triggered based on NSPS hourly emission rate increase test and sources should be allowed to use actual permitted emissions rather than future potential emissions or future projected actuals in cases without “netting.”</p>

C. Treatment of “Malfunction” Events Under the CAA National Emission Standards for Hazardous Air Pollutants (NESHAP)

Background: Congress in the Clean Air Act and EPA in its regulations have acknowledged that malfunctions are an inevitable part of running a boiler and that even the best performing sources have malfunctions. Nonetheless, EPA has used two recent court decisions to justify not considering malfunction events in setting Part 63 standards (e.g., Industrial Commercial and Institutional Boiler NESHAP at 40 CFR 63, Subpart DDDDD).

Regulatory Burden	Potential Solution
In setting CAA MACT and NSPS standards for boilers, EPA is not accounting for periods of malfunction of every boiler that operates at every power plant, industrial or manufacturing site, university, commercial facility and other facilities. EPA has set technology-based limits that are based only on normal operating conditions. This means that the standards are not achievable with available control measures and not reflective of what the best-performing sources achieve in practice. This also means that for any malfunction period that occurs, every boiler of potentially any size – hundreds of thousands of boilers – face possible enforcement actions by EPA, States and citizen enforcers.	EPA has the express authority under the Clean Air Act to address malfunctions through §112(d) numeric emissions limits, work practice standards under §112(h), or a combination of these. EPA has many years of experience developing regulations under these authorities and adjusting them to thousands of different operating conditions at thousands of different boilers. The recent court decisions did not dictate the path that EPA has chosen. Those cases left EPA wide latitude to continue its longstanding practice of developing emission standards that reflect particular boiler operations.

D. CAA §112 Risk and Technology Reviews

Background: Under the Clean Air Act, EPA must review its Part 63 NESHAPs to determine whether recent developments in technology should be adapted by the regulated source category and whether there is any additional risk to human health or the environment that is not accounted for in the existing standards. Two aspects of the “Risk and Technology” Review (RTR) program, if left unattended, will continue to result in needless overregulation of the manufacturing sector.

Regulatory Burden	Potential Solution
<p>EPA has missed most of the statutory deadlines for these RTRs and now faces multiple lawsuits that are being used to set new deadlines for these rules. The outcome is that the courts – not Congress or EPA – are now driving the schedule for completing these rules.</p>	<p>As it currently stands, environmental groups file suit against EPA for failing to implement the RTR process. Reviewing Federal courts then establish the RTR rulemaking schedule during the settlement process. To avoid this scenario, EPA should work to develop a global RTR schedule that will fully resolve all pending litigation and preempt any further RTR deadline suits. In this way, EPA will be able to more sensibly allocate resources to the RTR proceedings.</p>
<p>When conducting the RTRs, EPA is adding requirements to already onerous compliance programs. For example, some RTRs impose new recordkeeping requirements that do not increase safety or lower risk to human health or environment. In other cases, EPA has concluded that there is no residual risk or advancement in technology, yet EPA has nonetheless made the standards more stringent.</p>	<p>EPA is directed by the statute to focus RTRs on the precise goals of addressing residual risk and new technologies, processes and practices.</p> <p>EPA should establish guidelines for RTRs that are based on the statutory goals. New requirements should not be added for source categories where there are no residual risk concerns and no new cost-effective technology. Reviews should not replicate the MACT floor-setting process of statistical analysis of the emissions from the lowest emitting 12 percent of sources.</p>

Beyond the four key areas CIBO has focused on above, other inefficiencies should be addressed. In some cases, EPA may be able to resolve these through rulemaking; in other cases, legislation to amend the Clean Air Act may be necessary. For example, the schedule for reviews should be set at a longer interval for major rules in the Clean Air Act. The current five and eight-year time frames have been shown to be impractical and unworkable. Additional fixes might include controlling emissions on a cap-and-trade basis, which could result in NSR be eliminated as completely unnecessary (given that there would be an absolute cap).

If you have any questions concerning our comments or require clarification, please contact me at 540-349-9043. Thank you for your consideration.

Sincerely yours,

/s/ Robert D. Bessette

Robert D. Bessette

President