



Representing the Interests of America's Industrial Energy Users since 1978

May 15, 2017

**VIA Electronic Filing**

**RE: US Environmental Protection Agency  
Office of Regulatory Policy and Management  
Request for Comment, Evaluation of Existing Regulations  
82 FR 17793 (April 13, 2017)  
Docket No. EPA-HQ-OA-2017-0190**

Dear Associate Administrator Dravis:

In a Request for Comment implementing Executive Order 13777, "Enforcing the Regulatory Reform Agenda," the US Environmental Protection Agency (EPA) seeks input from the public on regulations that should be modified, replaced, or repealed. EPA requests that commenters include specific suggestions, Federal Register citations, and how to accomplish the needed reform. The information submitted in response to the Request for Comment will assist the EPA Regulatory Reform Task Force in identifying and prioritizing regulations that are duplicative, unnecessary and appropriate for amendment or rescission.

The Council of Industrial Boiler Owners (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 appreciates the opportunity to submit the attached comments, which explain in detail CIBO's suggestions of regulations that EPA should modify, replace, or repeal. CIBO filed the attached comments in response to the recent US Department of Commerce Request for Information, *Impact of Federal Regulations on Domestic Manufacturing*, 82 FR 12786 (March 7, 2017). CIBO's comments are also responsive to the EPA Request for Comment, as they specifically highlight four areas of environmental permitting and regulation under the Clean Air Act (CAA) that should be amended because they burden US industry without providing any additional benefit to human health or the environment. CIBO suggests four regulatory areas in need of reform:

- CAA National Ambient Air Quality Standards (NAAQS) that unnecessarily prevent industry from expanding operations.

- New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permitting requirements that make it extremely difficult to improve, maintain, or increase the efficiency of boiler facilities.
- The need to consider “malfunction” events under the CAA National Emission Standards for Hazardous Air Pollutants (NESHAP) in setting Part 63 standards (40 CFR 63, Subpart DDDDD), in order to provide facilities with a path to compliance.
- Needless overregulation imposed on industry as a result of EPA’s interpretation of elements of the CAA § 112 Risk and Technology Reviews (RTRs).

Of these four issues, CIBO wishes to emphasize in particular NSR. EPA’s interpretations to determine applicability of the PSD program under the NSR regulations (40 CFR 52) are evolving over time. Activities once exempt from NSR are more heavily scrutinized and subject to EPA enforcement now, creating a serious inconsistency for the regulated community. The regulations were amended in 2003 to address certain concerns raised by industry, yet the fundamental applicability determinations (*i.e.*, what is a modification, will a physical change result in an increase in emissions) remain subject to agency staff interpretations. In addition, EPA has been using these NSR regulations, evolving interpretations, and review of industrial activity to impose increasingly stringent emissions standards, in lieu of rulemaking to accomplish these results. EPA has in some cases applied current policy interpretations to support enforcement against work conducted 20 years prior to the policy. This practice further creates inconsistency and unpredictability for the regulated community. It causes distractions and diverts resources from growth opportunities. The entire NSR regulation should be reviewed because it stymies innovation and job creation in the US.

The four issues noted above, addressed in greater detail in the attached comments, are very important to CIBO members and are in need of EPA attention and modification. As noted in each of the four topic areas, EPA could accomplish almost all of the suggested improvements under existing authority, which would greatly reduce the regulatory burden on industry without sacrificing environmental protection. With respect to only in a few specific suggestions – as noted in the comments – would there be a need to seek legislative change.

In addition to the four topics with specific suggestions for reform, CIBO suggests these regulatory areas as also greatly in need of EPA attention and reform:

- In the CAA NESHAP program, remove the Once-in, Always-in policy that requires sources to remain major sources after the first substantive compliance date. Sources that remove or reduce HAP emissions should not have to remain major and should have some method to become an area source.
- Eliminate the requirement that boilers and incinerators, when switching fuels, remain under either Commercial and Industrial Solid Waste Incineration (CISWI) or Maximum Achievable Control Technology (MACT) standards for six months.

- Eliminate indirect emission reductions and benefits from levels below NAAQS from rule justification protocols.
- Eliminate the Once-in, Always-in NO<sub>x</sub> State Implementation Plan (SIP) Ozone season electronic reporting and Part 75 Continuing Emission Monitoring Systems (CEMS) monitoring requirements for industrial units that obtain federally enforceable operating limits that limit heat input to below the 250 MMBtu/hr threshold.
- In cost/benefit analyses, the calculated impact on energy cost and jobs lost should be separate from jobs gained.
- Establish that baseline data for rule evaluation be not more than four years from rule proposal.
- Eliminate the Office of Enforcement and Compliance Assurance (OECA).
- Eliminate the additional layer of SIP approval by EPA regional offices and direct that the Regions facilitate State compliance activities.
- List “other treated railroad ties” (OTRTs) as a categorical non-waste fuel under 40 CFR 241.4, consistent with the Resource Conservation and Recovery Act (RCRA), and reinterpret the comparable contaminant criterion (an element of the legitimacy factors analysis) so that facilities are not limited to using OTRTs in boilers that are “designed to burn” only EPA-specified traditional fuels.
- The pre-construction/Title V permit process needs to be streamlined and shortened to ensure the viability of new projects.
- A proposed rule seeks to reduce the greenhouse gas (GHG) threshold for requiring Best Available Control Technology (BACT) to 75,000 tons/year. The basis for this reduced threshold needs to be reviewed to determine if a higher threshold is appropriate.
- In analyzing economic impacts, EPA should consider impacts on sectors beyond the sector being regulated.
- In analyzing health impacts, EPA should evaluate the accuracy of its methodologies and how it analyzes raw data and should ensure the process is fully transparent.
- For the Mercury and Air Toxics Standards (MATS), these issues should be addressed:
  - Revert to the original definition of “coal” as defined by ASTM Standards, instead of the revised definition that that included coal refuse even though EPA had not properly evaluated the technical and economic impact of using coal refuse as a fuel and not accounted for its environmental benefits.
  - Make adjustments to several aspects of the standards in order to continue to encourage the use of coal refuse as fuel in order to clean up coal refuse piles, including the acid gas and SO<sub>2</sub> emission limits, consistently with the New Source

Performance Standards (NSPS) for SO<sub>2</sub>, which established a lower percent capture of SO<sub>2</sub> as an option over the emission rate.

- Emission monitoring requirements, especially for stack testing, should be reexamined for Low Emitting Electrical Generating Units (EGU) (LEE) requirements, so that once LEE requirements are met, additional stack tests are not required, which add significant costs without any additional environmental protection.
- Cross-State Air Pollution (CSAPR) Ozone NO<sub>x</sub> Rule and the Federal Implementation Plan (FIP) should be vacated for a variety of reasons, including but not limited to: improper modeling; failure to consider State Programs to meet the 2006 NO<sub>x</sub> standards; using improper monitors; failure to consider costs and technical feasibility based on the limits the FIP allocations would place on emissions; and failure of downwind states to take necessary action such as addressing high energy demand days with behind-the-fence emergency generation with no real NO<sub>x</sub> control.
- FIP process should be adjusted to give States enough time to submit SIPs after a rule is final or after a final decision in a judicial challenge to a final rule.
- Emissions monitoring and reporting requirements should be amended to address these inefficiencies:
  - The various EPA air programs require emission data to be filed separately for each program area, including but not limited to CSAPR, Acid Rain and MATS. These should be streamlined to eliminate duplication.
  - Allow sources with emission units with CEMS that are regulated by both 40 CFR 75 and 40 CFR 60 to be required to only monitor under Part 75, or at least provide an option for the facility to use either method.
  - The electronic data reporting should be through one portal with a basic set of data from which all the emission calculations for each program could be made. The data validity requirements should be the same for all programs.
- Clean Water Act (CWA) Effluent Limitations Guidelines (ELG) for Steam Electric Generating Facilities should be amended to address several issues, in particular this primary issue: EPA should not apply these limits to sites where coal combustion residuals (CCR) are being used in mine land reclamation. The basis for the ELG relating to coal combustion waste is the CCR rule. The CCR rule does not apply to the use of CCRs in mine land reclamation. Thus, the ELG was not based on CCRs in mine land reclamation.
- Revise the Waters of the US rule (WOTUS) to interpret the definition of “navigable waters” in the CWA consistently with Justice Scalia’s opinion in *Rapanos v. United States*, 547 U.S. 715 (2006).

- Allow gas fired/oil backup sources affected by 40 CFR 60.40b(j) in the NSPS Subpart Db to comply with the high heat release emissions standards in 40 CFR 60.44b(a)(1) and (a)(2).

CIBO welcomes the opportunity to discuss any of these issues with EPA in greater depth.

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

Attached: Comments of CIBO in response to US Department of Commerce Request for Information, *Impact of Federal Regulations on Domestic Manufacturing*, 82 FR 12786 (March 7, 2017).



*Representing the Interests of America's Industrial Energy Users since 1978*

March 31, 2017

**Via Electronic Filing in**  
**Docket ID DOC-2017-0001**

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,

**CIBO, 6801 Kennedy Road, Suite 102, Warrenton, VA 20187 – 540-349-9043**

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
<p>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.</p>	<p>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.</p>
<p>EPA's current dispersion modeling criteria is not adequately reflective of actual ambient impacts.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>

**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).

<b>Regulatory Burden</b>	<b>Potential Solution</b>
<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>

<b>Regulatory Burden</b>	<b>Potential Solution</b>
<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>

<b>Regulatory Burden</b>	<b>Potential Solution</b>
<p>US facilities are being forced to waste money controlling certain emissions with no tangible health or environmental benefit.</p>	<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>
<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>	<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).

<b>Regulatory Burden</b>	<b>Potential Solution</b>
<p>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.</p>	<p>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.</p>

**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.

<b>Regulatory Burden</b>	<b>Potential Solution</b>
<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