



STREAMLINING PERMITTING AND REDUCING REGULATORY BURDENS FOR **DOMESTIC MANUFACTURING**

U.S. Department of Commerce
October 6, 2017



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Introduction

Federal regulations impose enormous costs on America's businesses and working families. These costs burden virtually every sector of our economy, although the manufacturing sector is disproportionately hard hit. The direct costs on manufacturing companies were estimated by the National Association of Manufacturers (NAM) to be \$138.6 billion as of 2014,¹ though this estimate does not include indirect negative effects on the U.S. economy such as reduced innovation and global competitiveness, lost investment, and significant job losses. Small businesses are also disproportionately burdened by excessive federal regulation.

As a nation, we can and must do better. That is why, on January 24, 2017, President Trump signed a Presidential Memorandum on *Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing*.² The Memorandum, which is one part of an Administration-wide regulatory reform agenda,³ required the Secretary of Commerce, in coordination with other executive departments and agencies, to conduct outreach to stakeholders on the impact of federal regulations and permitting requirements on domestic manufacturing and to submit a report to the President setting forth a plan to streamline federal permitting processes and to reduce the regulatory burdens affecting domestic manufacturing.

For this report, the Department of Commerce sought input from stakeholders through a Request for Information (RFI) published in the Federal Register.⁴ The RFI asked industry stakeholders to identify the most burdensome regulations and permitting requirements they face and requested feedback on how regulatory compliance and permitting could be simplified. This report reflects extensive, thoughtful comments received from U.S. manufacturers as well as upstream and downstream industries closely linked to the manufacturing sector.⁵ It aggregates and summarizes many of the most important recommendations raised by industry and presents the Department's recommendations for streamlining the federal permitting processes and reducing the regulatory burdens that affect domestic manufacturing.

In response to the RFI, industry expressed clear support for the need to protect the environment, human health, and worker safety, but shared concrete, detailed concerns about how the federal government tries to achieve those objectives. Respondents identified numerous regulatory and permitting problems,

¹ W. Mark Crain and Nicole V. Crain, "[The Cost of Federal Regulation to the U.S. Economy, Manufacturing, and Small Business](#)," A Report for the National Association of Manufacturers, September 2014.

² [82 FR 8667](#) (January 24, 2017).

³ President Trump has issued several executive orders that provide impetus and direction for regulatory reform efforts. These include [EO 13771](#) on Reducing Regulation and Controlling Regulatory Costs, which directs departments and agencies to identify for elimination at least two regulations for every one new regulation issued; [EO 13777](#), on Enforcing the Regulatory Reform Agenda, which requires agencies to designate a Regulatory Reform Officer (RRO) who is responsible for overseeing regulatory reform initiatives, and to establish a Regulatory Reform Task Force (RRTF); and EO 13683 which directs agencies to review regulations affecting the domestic energy industry and to appropriately reduce undue burdens to the development of domestic energy resources.

⁴ [82 FR 12786](#) (March 7, 2017).

⁵ This report focused on regulatory and permitting issues that directly impact the construction, operation or expansion of manufacturing plants. While focused on the manufacturing sector, upstream and downstream industries also submitted comments echoing the concerns of U.S. manufacturers and highlighting unique issues that they face. This report includes that input because regulatory barriers that adjoining industries experience can weaken production and investment in the domestic manufacturing sector.

including: onerous and lengthy permitting processes that increase cost, add uncertainty, and inhibit investment in new and existing manufacturing facilities; inadequately designed rules that are impractical, unrealistic, inflexible, ambiguous, or that show a lack of understanding of how industry operates; unnecessary aspects of rules, or unnecessary stringency, that are not required to achieve environmental or other regulatory objectives; overlap and duplication between permitting processes and agencies; and overly strict or punitive interpretations of guidance, policies or regulations that are often counter to a pro-growth interpretation. The Department identified 20 sets of regulations and permitting reform issues from the respondents as being a top priority for immediate consideration. See the section titled, “Recommendations and Priority Areas for Reform.”

Despite numerous regulatory reform initiatives over the years, businesses continue to express concerns about increasing regulatory burdens. The fact that manufacturers continue to raise the same concerns, even after decades of regulatory reform efforts by the federal government, indicates a failure on the federal government’s part to fully engage with regulated industries and fully understand the real-world impact of its regulations. There is a vital need for better dialogue and understanding between regulators and industry. In the meantime, the urgency for reform continues to grow. A 2017 NAM study states that most manufacturers perceive their regulatory burden to have increased significantly, such that reducing their current burden is at least as important as reducing the cost of new regulations.⁶ We must do both.

Summary of Recommendations

The Department makes three major recommendations based on a thorough review of responses to the RFI.

Agency “Action Plans”. Each agency’s Regulatory Reform Taskforce (RRTF) should deliver to the President an “Action Plan” in response to all permitting and regulatory issues highlighted in the responses to the RFI, with particular attention to the “Priority Areas for Reform” section located at the end of the report.

Annual Regulatory Reduction Forum. There is no regular process for consultations with industry to identify specific actions the federal government can take to eliminate unduly burdensome regulations and accelerate permitting decisions. Thus, the Department recommends creating an annual, open forum for regulators and industry stakeholders to evaluate progress in reducing regulatory burdens.

Expanding the Model Process in FAST-41. The FAST Act⁷ contains various provisions aimed at streamlining the environmental review process, with improved agency coordination through the creation of

⁶ National Association of Manufacturers, [“Holding US Back: Regulation of the U.S. Manufacturing Sector,”](#) prepared by Pareto Policy Solutions, LLC.

⁷ [Title 41 of the Fixing America’s Surface Transportation Act of 2015](#) (“Fast-41”, codified at [42 U.S.C. § 4370m](#)) streamlines the Federal environmental review and permitting for certain infrastructure projects. FAST-41 created an interagency Federal Permitting Improvement Council (FPISC); established new procedures for interagency consultation and coordination practices; authorized agencies to collect fees to help speed the review and permitting process; and uses the Department of Transportation’s “Permitting Dashboard” to track all covered projects.

a Coordinated Project Plan and a Permitting Dashboard. Covered projects will typically enjoy better coordination, transparency of approvals, and expedited permitting. The Department recommends that the Administration use existing authority to extend the use of streamlined permitting procedures in the FAST Act to any project that will result in a significant, immediate economic benefit to the United States. For example, consideration could be extended to funded, qualifying projects in a new “economically significant” category. Consideration should be extended to complex, funded manufacturing projects that are in late stages of development and that can demonstrate significant net direct and indirect benefits to the domestic economy. To be eligible for the current streamlining process, projects in this sector or category would still need to meet the definition of a “covered project” under FAST-41.

FAST-41 provides a model process that could be incorporated into other Federal legislation that governs Federal programs and requirements that apply to manufacturing facilities. To expand further the universe of manufacturing projects that benefit from streamlined regulatory approval processes, the Administration could work with members of Congress to both expand the definition of “covered project” under FAST-41 and to incorporate procedures similar to those found in FAST-41 in other legislation applicable to manufacturing projects.

The Department believes that these three recommendations, if executed promptly and with constant, aggressive leadership, will yield significant results. Set forth below is (i) a summary of issues raised in response to the RFI; (ii) an analysis relating to potential reforms; and (iii) specific recommendations and priority areas for reform.

Issues Raised in Response to the RFI

Regulatory and Permitting Problems — Key Themes

This section discusses priority regulatory and permitting issues that were identified from the RFI responses and related outreach.⁸ Respondents did not question the need to protect the environment, human health, or worker safety but they expressed concern about how regulations are employed to achieve those objectives, including:

- Onerous and lengthy permitting processes that increase cost, add uncertainty, and inhibit investment in new and existing manufacturing facilities;
- Inadequately designed rules that are impractical, unrealistic, inflexible, ambiguous or lack understanding of how industry operates;
- Unnecessary aspects of rules, or unnecessary stringency, not required to achieve environmental or other regulatory objectives;
- Overlap and duplication between permitting processes and agencies; and
- Overly strict or punitive interpretations of guidance, policies or regulations that are often counter to a pro-growth interpretation.

Table 1 provides some examples of these issues:

⁸ Responses to the RFI are collected under Docket ID [DOC-2017-0001](#), at www.regulations.gov. Department of Commerce officials also attended a listening session organized by the National Association of Manufacturers (NAM) during which trade association representatives highlighted multiple regulatory and permitting issues. NAM, individual companies and trade associations later submitted comments detailing these issues to the public docket. Upon request, Department of Commerce officials also agreed to meet with company or trade association representatives that had submitted comments to the docket.

Table 1. Examples of Key Issues that Were Identified by Respondents

Category	Problem	Examples from RFI Responses
Inadequate Rule Design	A regulation is written or implemented with a lack of “on the ground” knowledge about how the regulated industry operates, ⁹ is economically or technologically infeasible, or is based on unrealistic data or assumptions	National Ambient Air Quality Standards (NAAQS) — unrealistic assumptions on background levels; Crystalline Silica Exposure Standard
	There is a lack of clarity around the requirements needed to comply with the regulation	Clean Water Act (CWA) — Definition of Waters of the United States
	The regulation is inflexible or too prescriptive; overly strict interpretations of policy and guidance	New Source Review (NSR) Permitting Process — inflexibility in allowing for aggregation of emissions within a plant
	Overlap or duplication of rules	New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) — overlap
	A better regulatory approach exists to achieve the objectives or the approach actually undermines key regulatory objectives	Resource Conservation and Recovery Act (RCRA) — inappropriate classification of certain waste streams as hazardous, which has perverse effect of discouraging recycling of this waste
	The regulation is outdated	Leak Detection and Repair Rules — outdated monitoring technology options
	Regulatory over-reach — goes beyond statute or rulemaking	New Source Performance Standards (NSPS) — enforcement beyond rules
	Complex, onerous, inefficient and lengthy processes, particularly permitting processes	New Source Review (NSR) Permitting Process
	Uncertainty, particularly permitting processes	Section 404 Wetlands Permitting Process (wide variation in duration)

Cumbersome Processes — Particularly Onerous Permitting Processes	Overlap, duplication or poor coordination between agencies, rules or permits	Title V permitting decisions can be a basis for “re-litigating” decisions already made under NSR pre-construction permitting processes
	Inconsistency, among agencies or between federal and state regulatory authorities, in application or enforcement of rules	CAA permits — EPA often intervenes in state decisions

Selection of Priority Specific Regulatory and Permitting Issues

The selection of priority regulatory and permitting issues in this section was based on the following criteria:

- The volume of responses citing a particular issue (see Table 2 below).
- The number of in-depth or broad scope responses that discussed the issue.
- Comments in the responses that highlighted an issue as of particular importance in terms of regulatory burden or estimated costs; for example, NSR/PSD under the Clean Air Act was often singled out as the most significant regulatory and permitting burden, and the ozone NAAQS standard and crystalline silica exposure standard were both highlighted as resulting in very high costs.
- Issues that were discussed in sufficient detail to identify the nature of the burden and point toward potential solutions and actionable recommendations.¹⁰
- Some issues were included (or considered) because they have been longstanding challenges.

⁹ In response* to the following question: “The most challenging regulations to comply with are due to _____, the statement that most commonly represented the experience of manufacturers surveyed by NAM (41.7% of responses) was “regulatory agencies writing a final rule absent an adequate understanding of my business and my compliance challenges.” (National Association of Manufacturers, [“Holding US Back: Regulation of the U.S. Manufacturing Sector.”](#)).

¹⁰ As an example, though there were numerous concerns expressed about recent changes to the Toxic Substances Control Act (TSCA), resulting from the Lautenberg Chemical Safety Act, the responses did not coalesce around a specific set of issues or recommendations.

Table 2. Most Frequently Cited Regulatory & Permitting Issues that Impact Manufacturing			
	Federal agency	Issue area	# Commenters
1	EPA	Clean Water Act (CWA): Wetlands Permits and Waters of The United States (WOTUS)	42
2	EPA	Clean Air Act (CAA): National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS)	41
3	EPA	CAA: New Source Review and Prevention of Significant Deterioration Permits (NSR/PSD)	40
4	EPA	CWA: National Pollutant Discharge Elimination System (NPDES) Permits	31
5	EPA	CAA: Greenhouse Gas Requirements	29
6	EPA	CAA: National Ambient Air Quality Standards (NAAQS) (general)	28
7	EPA	Resource Conservation and Recovery Act (RCRA)	18
8	EPA	Risk Management Programs and Reduced Risk and Tech Review	19
9	EPA	Toxic Substances Control Act (TSCA)	18
10	Department of Labor (DOL)	Improve Tracking of Workforce Injuries and Illnesses	14
11	Departments of Interior and Commerce (DOI and DOC)	Endangered Species Act (ESA)	13
12	Securities and Exchange Commission (SEC)	Conflict Minerals Rule (Dodd-Frank)	12
13	EPA and others	National Environmental Policy Act (NEPA)	11

14	EPA	Regional Haze Requirements	10
15	DOL	Crystalline Silica Exposure	10
16	DOL	Overtime Rule	9
17	EPA	Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)	9
18	EPA	Spill Prevention, Controls, and Countermeasures	9
19	Equal Employment Opportunity Commission (EEOC)	EEO-1 Form	7
20	Department of Health and Human Services (HHS)	Food Safety Modernization Act (FSMA)	5

Priority Regulatory and Permitting Issues

This report focuses on regulatory and permitting issues that directly affect the construction, operation or expansion of manufacturing plants. While some of these regulatory issues primarily affect the manufacturing sector, others affect businesses across multiple sectors. Several issues are highlighted due to their indirect impacts on manufacturing, a perceived high level of adverse impact on economic growth, and other factors. The following are priority regulatory and permitting issues identified by respondents to the RFI. Refer to the appendix for a list of respondents that are referenced in this report.

Clean Water Act: Wetland Permits and Waters of the United States (WOTUS) Rule

As part of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) regulates discharges of pollutants into “waters of the United States.” In 2015, EPA promulgated the Clean Water Rule¹¹, which was perceived by many respondents to have expanded the definition of waters of the United States — or at least added ambiguity to its definition — in ways that extend federal authority beyond the traditional limits. Different sources describe the expanded scope in different ways. For example, NAM states that it “extend(s) federal jurisdiction of CWA programs well beyond traditional navigable waters to ephemeral tributaries, flood plains, adjacent features and vaguely defined ‘other waters’... For manufacturers, the

¹¹ [80 Fed. Reg. 37054](#) (June 29, 2015).

uncertainty of whether a pond, ditch or other low-lying or wet area near their property is now subject to federal CWA permitting requirements, can introduce new upfront costs, project delays and threats of litigation.” (146-NAM) The U.S. Chamber of Commerce (CoC) states that it includes “ditches, canals, and even land that is dry most of the year, as long as water runs over that land sometime on its way to interstate waters.” Many respondents expressed the view that the definition of “waters of the United States” set in the rule is too broad and that a narrower definition would be appropriate. (6-NFIB, 146-NAM)

The rule was stayed by the 6th Circuit Court of Appeals on October 9, 2015.¹² On February 28, 2017, the President issued Executive Order 13778 directing the EPA and the Army Corps of Engineers (Corps or USACE) to review the WOTUS rule. On March 6, 2017, the Corps and EPA published a notice announcing their intent to review the rule and seek to provide greater clarity concerning the definition of “waters of the United States.”¹³ On July 27, 2017, the EPA and the USACE published a proposed rulemaking to repeal the 2015 Clean Water Rule and reinstate the regulations in place prior to its issuance.¹⁴ As indicated in the proposed withdrawal, the agencies are implementing EO 13778 in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are taking action to maintain the legal status quo of the rule in the Code of Federal Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 Clean Water Rule. Currently, Step 1 is being implemented under the U.S. Court of Appeals for the Sixth Circuit’s stay of the rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water Rule with one that reflects the principles in EO 13778.

Clean Air Act: National Emissions Standards for Hazardous Air Pollutants and New Source Performance Standards

The National Emissions Standards for Hazardous Air Pollutants (NESHAP) of the Clean Air Act (CAA) limits emissions levels for specific pollutants from a variety of specific sources and manufacturing processes. The Air Permitting Forum (APF) provides a summary of how NESHAPs work:

The CAA Section 112 program covers the regulation of hazardous air pollutants (a defined list) for various source categories. Initially, these NESHAPs were established based on a review of currently employed air pollution control technology applied to existing and new sources (referred to as Maximum Achievable Control Technology, or MACT). Then, after eight years, the statute requires EPA to conduct residual risk and technology reviews. EPA assesses the risk remaining after application of MACT controls and determines if it is acceptable. If not acceptable, further controls must be applied. EPA is also required [every eight years] to evaluate if advances in control

¹² Ohio v. United States Army Corps of Engineers (In re EPA & DOD Final Rule), 803 F.3d 804 (6th Cir. Oct. 9, 2015).

¹³ [82 FR 12532](#) (March 6, 2017).

¹⁴ [82 FR 34899](#) (July 27, 2017).

technologies have occurred since the MACT and to determine if their application to the source category is appropriate. (170-APF).

Because the standards may apply to sources that are subject to another set of rules (the New Source Performance Standards (NSPS), discussed below) a number of respondents have suggested there are opportunities to consolidate and rationalize the requirements of these two sets of regulations. In addition, there are also a series of perceived “unnecessary burdens” specifically related to NESHAPs.

A number of respondents expressed concern about the residual risk and technology reviews (RTRs) as leading to unnecessary additional requirements with no (or limited) environmental benefit. For example, NAM provided the following illustrative example for a sandblasting operation:

For one manufacturer, this means having a dedicated employee climb on the roof of eight different manufacturing plants at the required interval (daily/weekly/monthly/quarterly) to do multiple 15-minute observations on each roof, and perform visual observations of the on-site sandblasting booth at the required interval, only to document that zero visible emissions occurred at every observed location during every monitoring event. Since 2011, this manufacturer has made over 700 visual observations consuming over 1,000 man-hours to comply with this regulation, despite having not once observed a “visible emission” at any of the plants. (146-NAM)

Another example provided was secondary aluminum production, illustrating how regulations that emerged from an RTR led to rules that did not reflect real world operating conditions. This rule required “hooding” for new “round top furnaces,” which was impractical because they were incongruent with the charging method for this type of furnace which requires an overhead crane and lifting of the lid. (101-AA)

One set of Maximum Achievable Control Technology (MACT) rulemakings for a particular source category (MACT for industrial and commercial boilers and process heaters) has received particular attention in recent literature, and in the RFI responses. The rulemakings for this source category have occurred over the last 20 years, and are being reviewed based on a 2016 court decision, which is causing the EPA to consider additional “best performing boilers.”¹⁵ The length and complexity of the rulemaking process has created uncertainty for manufacturers.¹⁶ In addition, specific requirements were identified by some respondents as burdensome, such as in the case of steel facilities:

The requirement to test/tune/test each burner of each applicable source is a burdensome exercise. At many steel making facilities there are multiple finishing lines with indirect heating furnaces that are comprised of hundreds of natural gas fired burners each below 5 MMBTU/hour. These units are considered cumulatively under the Boiler MACT and are therefore required to have annual tune-ups per 40 CFR. § 63.7515(d). The annual tune-ups require excessive line outages and man

¹⁵ See, <https://www.epa.gov/boilers>.

¹⁶ Paul R. Noe, “[Smarter Regulation for the American Manufacturing Economy](#),” American Forest and Paper Association, September 14, 2016.

hours. The annual requirement for testing and tuning of the many small burners can range up to \$100,000 for a company with the time, equipment and proper skills to conduct the tuning. For natural gas sources with burner sizes less than a certain threshold, reducing the frequency of these tune-ups to every five years would significantly reduce the cost burden. (92-AISI)

Another MACT-related issue raised by respondents relates to the “once-in-always-in” policy.¹⁷

The Clean Air Act defines emissions limits for specific types of stationary sources. These New Source Performance Standards (NSPS) are specific to approximately 90 different industries/manufacturing processes. NSPS applies to “new, modified and reconstructed” facilities. As an example, there is a NSPS standard for volatile organic compounds (VOCs) for surface coating processes for large appliances.¹⁸

For NSPS, the specific regulatory burdens cited often were not the rules themselves, but the potential for overlap and redundancy with related rules, such as National Emissions Standards for Hazardous Air Pollutants (NESHAPS, discussed above). NAM and IECA specifically suggest there are opportunities to rationalize the NSPS and NESHAP requirements, reporting and recordkeeping. (146-NAM, 89-IECA) Both sets of rules limit emissions from specific manufacturing processes, suggesting that there may be opportunities to integrate the two standards. NAM gives a specific example of the opportunity to rationalize 8 different regulations for different coatings processes. (146-NAM)

More frequently mentioned were examples of enforcement reaching beyond explicit NSPS standards. (89-IECA, 92-AISI, 112-SMA) AISI gives the example of the EPA using enforcement actions to limit fugitive emissions of particulate matter in steel making facilities that are not explicitly delineated in the NSPS. (92-AISI)

Clean Air Act: New Source Review and Prevention of Significant Deterioration Permits

The New Source Review (NSR) permitting program under the Clean Air Act was cited in many of the RFI responses as one of the most important opportunities to streamline permitting processes for manufacturers. An NSR “preconstruction” permit is required for new industrial facilities (and other new “major sources”) or for “major modifications” of existing facilities.¹⁹ The objectives of the program are to protect air quality by limiting increases in emissions and by ensuring that “advances in pollution control technology occur” as part of industrial expansion. The NSR program has different requirements depending on whether facilities are in “attainment” areas that are meeting National Ambient Air Quality Standards (NAAQS) for six specific “criteria” pollutants, or whether they are in non-attainment areas. Permits that are required to be obtained in

¹⁷ Under the “once-in-always-in” policy, EPA requires that a major source, subject to the MACT technology standard, remains subject to that standard even if “the facility undertakes pollution prevention or installs control devices to reduce emissions below the major source applicability thresholds.” (170-APF). That means a company is subject to a higher standard than is “justified” by their current emissions levels. Perversely, this creates a disincentive for companies to reduce emissions. (170-APF).

¹⁸ [New EPA NSPS for industrial surface coating for large appliances.](#)

¹⁹ For more information on NSR permitting, see www.epa.gov/NSR.

attainment areas are known as Prevention of Significant Deterioration (PSD) permits. Table 3 below outlines the broad requirements for NSR and PSD permits:

Table 3. Requirements for New Source Review and Prevention of Significant Deterioration Permits	
New Source Review (Nonattainment Area)	Prevention of Significant Deterioration (Attainment Area)
1. Installation of the Lowest Achievable Emission Rate or LAER (“meaning that the plant must install state-of-the-art pollution controls in order to match or exceed the emission rate achieved by the lowest emitting similar facility in the country”) (48-AF)	1. Installation of the Best Available Control Technology or BACT (similar to LAER, but sometimes less stringent, and assessed on a case-by-case basis) (48-AF)
2. Emissions offsets (reductions) from other plants in the same area that yield a net air quality benefit for the region	2. An air impact analysis or modeling that demonstrates that the increase in emissions: 1) “will not result in changes in ambient air quality that would cause the area to exceed NAAQS for any pollutant, and 2) even if projected emissions will not violate NAAQS, they will not result in an increase in ambient concentrations of any pollutant that exceeds the allowable PSD ‘increments’ set by the CAA”
3. Alternative Sites Analysis	3. An additional impacts analysis (which “assesses the impacts of air, ground and water pollution on soils, vegetation, and visibility caused by any increase in emissions of any regulated pollutant” from the source) ²⁰
4. Opportunities for public comment	4. Opportunities for public comment
Sources: www.epa.gov/nsr , 48-AF, 92-AISI, 136-AFPM, EPA, Webinar Slides: Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a GHG Significant Emission Rate (SER): Proposed Rule, September 20, 2016 ²¹	

²⁰ For more information on NSR permitting, see www.epa.gov/NSR.

²¹ [81 FR 68110](https://www.federalregister.gov/documents/2016/10/03/81-fr-68110) (October 3, 2016).

The NSR/PSD permitting processes are perceived by RFI respondents to be unnecessarily cumbersome and lengthy. The time required to obtain a preconstruction permit, once an application is received, can range from 9 months to as much as 2-3 years. (48-AF, 170-APF) This duration does not include the months (or even years) required to prepare the application, nor does it include potential delays that can lengthen the process or make its timing uncertain, such as the need to revise air quality modeling when a NAAQS standard is changed, or the possibility of an appeal or review by the EPA of a state decision to issue a permit. (170-APF, 10-PCBI, 89-IECA)

Respondents indicated the costs to prepare an application and construct air quality and dispersion models are significant, not to mention the costs of emissions offsets and what is sometimes perceived as “over-investment” in pollution control equipment due to the conservative assumptions built into these models. The result is that manufacturers avoid making investments to modernize facilities, improve processes or increase quality for fear of triggering an NSR/PSD requirement. (146-NAM, 10-PCBI)

A number of recommendations have been put forward to address various issues that arise under NSR/PSD:

- Turnaround Time. One proposal is to enforce reasonable turnaround times. (48-AF) According to a recent paper,²² under the CAA, “EPA and other permitting agencies are required to either grant or deny an NSR permit within one year of receiving a permit application, but there is no practical way to enforce this deadline.” In addition to setting firm deadlines, other suggestions include:
 - Limiting challenges or appeals, including limiting the ability of the EPA to review or reject the decision of a state permitting authority. (89-IECA, 170-APF, 10-PCBI)
 - Allowing some construction activities to commence that do not generate emissions, prior to receiving a permit. (146-NAM)
- Aggregation. There are also a set of rules regarding the “aggregation” of emissions (within a facility, over time within a facility, or across locations) that affect whether the need for a NSR/PSD permit process is triggered. A number of respondents made suggestions or encouraged approaches that allow flexibility for sources to aggregate emissions and thus demonstrate that total emissions are not increasing sufficiently to trigger an NSR/PSD process. (In some cases this would involve clarifying rules or “solidifying” past reforms already proposed.) These recommendations include:
 - Plant-Wide Applicability Limitations (PALs) — EPA could promote and facilitate “Plant-Wide Applicability Limitations (basically emissions limits that apply facility-wide) through a

²² Art Fraas, John D. Graham, and Jeff Holmstead, [“EPA’s New Source Review Program: Time for Reform?”](#) Environmental Law Reporter, 1-2017.

permitting process, allowing such a facility to change, modify and upgrade equipment and operations and add new equipment without triggering major modification NSR review, provided the changes do not result in exceeding the established PAL emissions limits.” (92-AISI quote, also 170-APF)

- Units that precede or follow the unit being modified should not be considered as part of emissions increases that might trigger NSR. (170-APF, 136-AFPM)
- Clarifying the rules around definition of a project, and whether separate activities can be grouped together into a project for purposes of triggering NSR/PSD. (170-APF, 136-AFPM, 146-NAM)
- Rules that Avoid Triggering NSR. There were also recommendations relating to the rules that trigger NSR, such as:
 - Revisiting and expanding the definition of activities that are defined as “routine maintenance, repair and replacement,” which are exempted from NSR/PSD requirements. (92-AISI, 170-APF)
 - Using actual emission increases versus theoretical or maximum “potential to emit” in calculations. (10-PCBI, 136-AFPM)
- Modeling. Numerous respondents identified the need to avoid delays and re-work in the application and air quality modeling process. (Note that a more general discussion of NAAQS and modeling is found in the section below.) Recommendations include:
 - Introducing guidance on modeling at the same time as NAAQS standards are revised, so there is clarity on modeling required as part of an NSR application. (92-AISI, 48-AF)
 - “Grandfathering” NSR applications that were submitted, but not yet approved, prior to a change to NAAQS standards, so companies do not have to revise the applications to conform to the new standards. (92-AISI, 48-AF)
- BACT and LAER determinations. Several respondents offered suggestions about how to improve the process of determining the required pollution control technology, which is perceived to be onerous and susceptible to delays:
 - PSD BACT determination should be based on proven, domestic technology that is in the same “industrial category” as the applicant and was in existence when the application was submitted (92-AISI, 10-PCBI) and should consider alternatives to the “top down” BACT analysis process. (170-APF)

- Emissions Credits or Offsets. Respondents also raised concerns that there can be challenges in obtaining emissions credits in non-attainment areas, and when they are available they can be very expensive. In one example, a relatively small new facility in Houston (emitting more than 100 tpy of Volatile Organic Compounds or NO₂) may need to spend between \$32 million and \$52 million for emissions offsets. (48-AF) Recommendations by respondents include:
 - Increased flexibility for buying offsets from outside the local areas where a new facility is being established. (48-AF)
 - Emission fees versus credits (which would require a statutory change). (48-AF) A recent paper on EPA’s NSR program stated: “We propose a narrow statutory reform that could address these issues while still obtaining most or perhaps even more of the environmental benefits of the current program: allow permit applicants to pay emissions fees in lieu of meeting the current offset requirements, and require the state or local environmental agency to use these fees to pay for or subsidize emissions reductions that the agency believes will do the most good in terms of reducing environmental risks.”²³ (48-AF)

The other major permit required by the CAA (beyond NSR/PSD) is the Title V operating permit for major (and some minor) sources, which incorporates all of the federal and state air pollution control requirements in one place. (170-APF). The operating permit must be renewed every 5 years.

Industry respondents suggested that it has become costly to obtain, maintain and renew operating permits. (170-APF) AISI reported “varied timelines for completing the Title V review and approval process, depending on the state regulatory agency and EPA Regional Office, taking up to three years to receive the final permit and costs of several million dollars for each operating permit needed.” (92-AISI) And according to the Air Permitting Forum, “the cost of the program today is far more than was ever anticipated...given the enormous costs of the program, it is incumbent on the government to take whatever steps it can to streamline permitting and minimize costs.” (170-APF)

Concerns were also raised that even when an NSR/PSD preconstruction permit already has been obtained, the Title V permit process provides another opportunity for NGOs or others to mount a legal challenge “on the same grounds that have already been adjudicated.” (170-APF) Moreover, “Title V petitions often sit in a long queue at EPA, and then can end up back in court—duplicating costs for industry to defend its expansive and long-evaluated permits.” (170-APF)

A related problem is the concern that the operating permit, which is intended to consolidate various regulatory requirements, is being used (e.g., by states) to add additional requirements or impede flexibility in meeting other requirements imposed by the CAA (e.g., such as using the permit language to limit the options for an appliance surface coating operation in meeting MACT standards for hazardous air pollutants

²³ Art Fraas, John D. Graham, and Jeff Holmstead, [“EPA’s New Source Review Program: Time for Reform?”](#) Environmental Law Reporter, 1-2017.

(HAPs), which otherwise would be able to meet requirements by changing materials or adopting controls). (170-APF)

In addition to an overall desire to streamline the approval process, specific recommendations include: eliminating the ability of EPA or other stakeholders to “re-litigate” preconstruction NSR/PSD permit decisions during the Title V permitting process (170-APF); extending the term of the permit from 5 to 10 years (170-APF); and citing other requirements in the permit rather than recreating or summarizing those requirements in their entirety in the permit itself. (170-APF)

Historically, the CAA has exempted Start-up, Shutdown and Malfunctions (SSM) periods from the emissions restrictions that apply under normal operating periods. However, in response to recent court decisions, the EPA has reversed course, and proposed new rules (in 2016) to eliminate these exemptions and eliminate the “affirmative defense” provision for emergencies. Numerous industry respondents have urged that the SSM exemptions be restored (89-IECA, 170-APF, 92-AISI):

“Unless EPA acts quickly, every manufacturing company in the country operating under a Title V air permit could be subjected to unnecessary citizen suits and potential civil penalties as they shut down and start-up their equipment to conduct maintenance activities and other planned and unplanned outages.” (89-IECA)

It has also been suggested that other alternative approaches could be explored, such as developing a more “judicially sound affirmative defense concept” or “re-promulgating technology based emissions standards sufficient to cover emissions associated with SSM events.” (101-AA)

Clean Water Act: National Pollutant Discharge Elimination System Permits

Section 402 of the CWA — known as a National Pollutant Discharge Elimination System (NPDES) — requires a permit to discharge pollutants from a “point source” into “waters of the United States.” “The permit will contain limits on what you can discharge, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or people's health.”²⁴ An NPDES Storm-water program also requires a permit for some storm-water discharges, which are not considered point sources. Also under the CWA, a section 404 permit may be required for the discharge of dredge or fill material into “waters of the United States.” Section 404 is managed by the EPA and US Army Corps of Engineers.

A primary concern expressed by RFI respondents was the complexity of these permitting processes, and the time required to obtain a permit. According to AISI, “[t]he 404 permitting process is currently one of the most ill-defined processes for a regulated party to understand and thus to predict permit timelines.” (92-AISI). Respondents reported that Section 404 permits can take 1-4 years or more to obtain and NPDES permits require 6 months or more. (92-AISI) In reference to wetlands (Section 404) permitting, SMA stated

²⁴ See www.epa.gov/npdes for more information on the Section 404 permitting process.

that “USACE [US Army Corps of Engineers] permitting processes are slow, antiquated and expensive.” (112-SMA) And regarding NPDES, the Aluminum Association’s assessment is that the “antiquated permitting timeline embedded in these regulations costs business money and lost opportunities for growth.” (101-AA)

Some of this long permitting cycle is driven by the complexity of the law and the permitting process, which requires permits for industrial discharges from point sources, often based on effluent guidelines for specific industrial processes (which are sometimes complicated by Total Maximum Daily Load limits on the amount of “pollutant a waterbody can receive”); a separate permit process for discharges that go into publicly owned treatment works (POTWs), for storm water, and for wetlands; a set of requirements for cooling intake water; and significant operational proscriptions and recordkeeping/reporting. (See www.epa.gov/npdes and 92-AISI; 112-SMA; 136-AFPM; 101-AA)

The recommendations by respondents generally revolve around streamlining the process, eliminating duplicative requirements, making the steps to obtain a permit more defined (with fewer open-ended steps), and shortening the process timeline. (92-AISI, 101-AA, 76-Boeing)

Clean Air Act: Greenhouse Gas Requirements

Greenhouse Gas (GHG) emissions are now regulated under the CAA, using PSD and Title V permitting processes.²⁵ The objective was to introduce “GHG emissions thresholds that define when permits under these permitting programs were required” for new or modified sources.²⁶ Litigation has caused a revision of the rules, which is still in progress.²⁷ The primary result of the decision was that the EPA “may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is required to obtain a PSD or Title V permit.”²⁸ In other words, a “BACT analysis for GHGs” is only required in cases “where another air pollutant triggers a review” and the requirement to obtain a PSD or Title V permit. (136-AFPM) A revised rule has been proposed, and final comments were due in December 2016.

Nevertheless, for major sources that require Title V and PSD permits for another pollutant, EPA can apply BACT requirements to GHGs above a specific threshold, which has been proposed at 75,000 tons per year (tpy) CO₂e Significant Emission Rate (SER). The court decision referred to above also requires a justification for this threshold level. There is concern among a number of RFI respondents that this threshold level of GHG emissions is too low, and that the benefit in terms of a reduction in GHG emissions

²⁵ The EPA’s original Greenhouse Gas Regulations consisted of the “Endangerment Finding” (74 FR 66523 (2009)), the “Triggering Rule” ([75 FR 75004](http://www.federalregister.gov/?date=2010-07-27&page=1) (2010)), the “Tailpipe Rule” ([75 FR 25324](http://www.federalregister.gov/?date=2010-07-27&page=1) (2010)), and the “Tailoring Rule” ([75 FR 31514](http://www.federalregister.gov/?date=2010-07-27&page=1) (2010)).

²⁶ EPA “[Revisions to the Prevention of Significant Deterioration \(PSD\) and Title V Greenhouse Gas \(GHG\) Permitting Regulations and Establishment of a GHG Significant Emission Rate \(SER\): Proposed Rule](http://www.epa.gov/ghg-permitting),” Webinar, Sept. 20, 2016.

²⁷ [Utility Air Regulatory Group v. EPA: Coalition for Responsible Regulation v. EPA](http://www.epa.gov/ghg-permitting).

²⁸ EPA “[Revisions to the Prevention of Significant Deterioration \(PSD\) and Title V Greenhouse Gas \(GHG\) Permitting Regulations and Establishment of a GHG Significant Emission Rate \(SER\): Proposed Rule](http://www.epa.gov/ghg-permitting),” Webinar, Sept. 20, 2016.

would not justify the additional regulatory burden. (89-IECA, 136-AFPM) Respondents, therefore, recommend the EPA prioritize an expedited and judicious review of SER thresholds for GHGs.

Clean Air Act: National Ambient Air Quality Standards

The EPA establishes National Ambient Air Quality Standards (NAAQS) for six “criteria” air pollutants (carbon monoxide, ozone, lead, nitrogen dioxide, particulate matter, and sulfur dioxide). Regions are designated as “attainment” areas (which meet the NAAQS standards), non-attainment regions, or unclassified. Non-attainment regions are considerably more restricted in allowable emissions, thus limiting the potential for new manufacturing plants and plant expansions. NAAQS standards have been continually ratcheted downward; the 2015 ozone regulation established a standard of 70 parts per billion (ppb), which revised a 2008 standard of 75 ppb that has not yet been fully implemented.²⁹ (89-IECA, 136-AFPM) At 70 ppb, respondents raised concerns that the level is approaching “background” levels of ozone. (48-AF, 146-NAM, 112-SMA) Respondents also raised concerns that the pace at which the standard has been revised has not allowed sufficient time for implementation, and is further complicated by measurement and (again) air quality modeling issues — in particular accounting for ozone transported from international sources. (112-SMA, 107-COC) As noted in a recent paper:

Recent research has found that stratospheric intrusions and long-range transport—particularly in western states—have resulted in daily maximum eight-hour ozone levels of 70 ppb or more. With the ozone NAAQS at or below background, sources will find it impossible to show that they will not “contribute to” a violation of the standard. (48-AF)

Some observers recommended that implementation be delayed.³⁰

Because of this increasingly restrictive standard, respondents specifically raised concerns that the current NAAQS standard for ozone is not practicable to implement, will shift numerous areas into a non-attainment designation, and will severely restrict the ability of manufacturing companies to establish new facilities or expand existing facilities in those regions. (136-AFPM, 112-SMA, 89-IECA)

Because of this narrow margin, numerous respondents identified the need for EPA to improve air quality and dispersion models. For example, one respondent stated:

In conducting an analysis for the PSD program, facilities must use EPA-approved models to demonstrate that a project will not cause a violation of a NAAQS standard. The models’ overly conservative algorithms and assumptions, however, can create a modeling result that rarely represents and often significantly overestimates monitored concentrations around the facility.

²⁹ A NAM-NERA 2014 report assessed the impact of a more stringent 60ppb standard that was contemplated at the time, and the analysis suggested the economic impact would be enormous: “...the potential emissions control costs would reduce U.S. Gross Domestic Product (GDP) by \$270 billion per year on average over the period from 2017 through 2040... The potential labor market impacts represent an average annual loss of 2.9 million job-equivalents.” (NERA Economic Consulting, “[Assessing Economic Impacts of a Stricter National Ambient Air Quality Standard for Ozone](#),” Prepared for NAM, July 2014). In contrast, the EPA estimated costs of \$560M for what appears to be the final rule of 70ppb. (OMB, “2016 Draft Report”).

³⁰ 146-NAM, Letter to National Economic Council, regarding regulations of concern, Business Roundtable, February 22, 2017.

Reliance on modeling that over-predicts ambient concentrations can result in additional unwarranted costs by causing facilities to install beyond-BACT pollution control equipment, even though the assumptions used in the models and the predicted concentrations are not representative of real-world conditions. (170-APF)

Some of the specific suggestions to improve the approach involved re-examining assumptions about background concentration levels, the treatment of fugitive emissions, use of actual emissions rather than theoretical or maximum operating rates, employing probabilistic models, and reconsidering inappropriate “ambient air receptor” locations where individuals will not generally be exposed to emissions. (89-IECA, 92-AISI, 170-APF, 112-SMA, 136-AFPM)

Others recommended that changing the timetable for mandatory NAAQS reviews from every five years to every ten years would allow more time to meet the previous standard. (107-COC, 136-AFPM, 10 PA) In addition, the CoC notes that these “five-year deadlines are regularly exceeded by the EPA and inevitably result in ‘sue-and-settle’ agreements.” Five-year review cycles have the potential to result in over regulation and constant changes requiring capital outlays from the private sector. Implementing the respondent’s recommendation would require Congress to update the NAAQS review schedule to reflect a 10-year cycle. This update would allow for complete realization of environmental improvements, and would bring greater certainty to regulated operators.

Another frequent recommendation raised by respondents is to re-examine and clarify how to account for international and long-range transport of ozone, and for exceptional events. For example, the EPA has a policy which would allow it to “disregard exceedances of a NAAQS caused by certain types of exceptional events,” such as stratospheric intrusions. However, it was suggested that in practice it is difficult to obtain EPA “recognition” of exceptional events in an NSR application. (48-AF) In light of this phenomenon, where meteorological conditions play a role in transporting extra-jurisdictional emissions, EPA should exclude those emissions from regulatory consideration, classifying them as “exceptional events.” Respondents recommend that EPA employ all tools available to discount for “background” conditions and allow the maximum degree of flexibility afforded by statute.

Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) is a set of laws, regulations and policies that govern management and cleanup of solid, liquid, and gaseous hazardous waste.³¹ Manufacturers are affected by RCRA because of the generation of waste streams in their factories. An issue identified by several respondents is the inappropriate classification of certain waste streams as hazardous, which impose burdensome additional requirements, and have the effect of discouraging recycling, reuse or reclamation. (146-NAM) For example, AISI has proposed that baghouse dust from electric arc furnaces (EAFs) be delisted as hazardous, which would open up additional recycling or reuse opportunities (without always employing an RCRA-permitted recycling operator). SMA similarly suggested that by-products from EAFs

³¹ For more information, see <https://www.epa.gov/rcra>.

are sometimes classified as hazardous, resulting in more complex and burdensome management requirements, which again undermine the goal of recycling. (112-SMA) In 2015, EPA has added a restrictive criterion for “legitimacy” which results in unnecessary treatment and disposal of material that could be reused or recycled for other purposes.³² Respondents recommend updating the rule to allow for more beneficial uses of substances where reuse or recycling can be justified by industry. Additionally, another respondent proposed an aggressive approach to delisting waste as “hazardous,” where appropriate, which would reduce regulatory burden. (76-Boeing)

On November 28, 2016, the EPA published the Hazardous Waste Generators Improvement Rule.³³ According to 89-IECA it “causes waste generators who violate even one ‘Condition for Exemption’ from permitting to be treated as [full-fledged] waste treatment, storage, and disposal facilities requiring RCRA permits. Violation of a single minor condition can, therefore, mean that an otherwise exempt facility must obtain a RCRA permit and can be cited for violations of numerous regulations and permit conditions” (136-AFPM) or be subject to more onerous regulations. (89-IECA) It is recommended the rule be revised to allow some leeway on conditions of exemption and associated violations.

Risk Management Programs

Section 112(r) of the Clean Air Act addresses the prevention of accidental releases of hazardous substances. Respondents raised concerns that EPA’s recently issued Risk Management Plan (RMP) rule (40 CFR, Part 68, finalized in 2017), which would add unnecessary or unreasonable additional burden for affected facilities.

For example, there is significant concern about duplication and conflicting requirements under the rule with Occupational Safety and Health Administration (OSHA) Process Safety Management standard. (136-AFPM, 43-Mosaic, 133-PIA) In addition, several elements of the new requirements were perceived as unnecessary or inflexible. One such area is the requirement for third party audits in certain circumstances (such as chemical release or instance of non-compliance). (136-AFPM, 109-Valero) One respondent suggested appropriately trained internal staff could perform audits, and also suggested the qualifications for third party auditors outlined in the regulations were too restrictive. (158-CKRC) An additional requirement highlighted was the need for a “resource-intensive inherently safer technology analysis” that according to one respondent “provides little value after a facility is already built” (136-AFPM), and which another respondent said will “increase compliance costs without improving safety.” (109-Valero) Finally, several respondents expressed concern about reporting requirements that would release sensitive information that could be used for lawsuits or potentially even terrorist attacks. (146-NAM, 109-Valero, 136-AFPM) Legal action has been taken seeking reconsideration of the rule. (136-AFPM) On March 13, 2017, the EPA convened a proceeding to reconsider RMP Rule.³⁴ On June 14, 2017, the EPA published a final rule to

³² 80 Fed. Reg. 1693-1814 (Jan. 13, 2015), revising 40 CFR. Parts 260 & 261.

³³ [81 FR 85732](#) (November 28, 2016).

³⁴ [82 Fed. Reg. 13968](#) (March 16, 2017).

further delay the effective date of the RMP Rule for 20 months until February 19, 2019, to allow adequate time for the reconsideration.³⁵

Toxic Substances Control Act

The Toxic Substances Control Act of 1976 (TSCA) provides EPA with authority to require reporting, record-keeping and testing requirements, and to impose restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides. The types of chemicals regulated by TSCA fall into existing (chemicals on the TSCA Inventory) and new, which is an important distinction as TSCA regulates each category differently. For new chemicals, manufacturers must submit a pre-manufacturing notification to EPA prior to manufacturing or importing new chemicals for commerce. TSCA also specifically addresses the production, importation, use, and disposal of specific chemicals including polychlorinated biphenyls (PCBs), asbestos, radon and lead-based paint. The most common issue with TSCA expressed by the respondents was the restrictions imposed on manufacturing and use of chemicals that have the potential to drastically and unnecessarily impact profit, productivity, competition and jobs. (37-ILMA, 39-IPC, 51-NSSGA, 56-CPA, 101-AA, 115-HSIA, 116-NAFO, 141-ACC, 151-PESA, 155-PMPA) It should be noted, however, that on June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended TSCA, was signed into law, addressing some of the shortcomings in the original law and adding a mandatory duty to evaluate chemicals and a new risk-based safety standard.

Improve Tracking of Workforce Injuries and Illnesses

In May 2016, the Occupational Safety and Health Administration (OSHA) published its final rule to “Improve Tracking of Workplace Injuries and Illnesses.”³⁶ However, manufacturers are concerned that this rule requires them to submit electronic records of workplace injuries and illnesses, which OSHA is planning to post on a public website. (92-AISI, 146-NAM, 107-COC) RFI respondents have voiced two objections to making the data publicly available: 1) the information may be used by union organizing campaigns, or as the basis of litigation on safety issues; 2) privacy concerns exist, as there may be identifying information included in the reporting that could expose sensitive, proprietary information. (92-AISI, 146-NAM, 107-COC) Also, there are requirements for establishing a reasonable system for workers to report injury or illness, along with provisions that prevent employers from retaliating against whistleblowers or in other ways discouraging injury or illness reporting.

Guidance issued on how to comply with the rules included language that suggested some safety performance incentives and drug testing programs might be construed as in violation of the rule, as they might deter reporting (to improve safety performance measures or to avoid post-accident drug testing).

³⁵ 82 Fed. Reg. 27133 (June 14, 2017).

³⁶ [81 FR 29623](#) (May 12, 2016).

(107-COC; 92-AISI; 39-IPC) Respondents would like the plan to post safety data online to be reconsidered, and to clarify the guidance so that it does not undermine safety incentive and drug testing programs.

Endangered Species Act

Specific concerns raised relating to the Endangered Species Act (ESA) fall primarily into three categories. First, federal agencies issuing permits must consult with the U.S. Fish and Wildlife Service when construction may affect an endangered or threatened species; this consultation adds considerably to permit time and complexity. (51-NSSGA, 84-Ameren, 114-AGC, 136-AFPM) Second, due to high volume, ESA rules such as the 2016 Critical Habitat Designations, have become “unreasonable.” (86-IPAA, 114-AGC, 144-AFPA, 146-NAM, 152-AWC) Finally, concerns were raised that the ESA is being exploited by project opponents as a means of blocking permits. (75-SLMA, 107-COC, 126-API)

Conflict Minerals and Dodd-Frank

Section 1502 of the Dodd-Frank Act³⁷ mandates that the U.S. Securities and Exchange Commission (SEC) create rules³⁸ that require public companies that use conflict minerals (tantalum, tin, gold or tungsten) in the manufacture of their products to “undertake ‘due diligence’ on the source and chain of custody of its conflict minerals and file a Conflict Minerals Report” and publicly disclose this information.³⁹ The concern is that the mineral may have come from or near the Democratic Republic of the Congo and its use, therefore, is contributing to a humanitarian crisis. A significant issue is that the due diligence requirement is directed back on to suppliers, which are often small to medium sized manufacturers who cannot easily comply with this burden. (53-ACMA, 120-NTMA/PMA, 137-MEMA, 146-NAM) One respondent noted that both the Department of Commerce and the SEC stated they lacked the expertise in this type of back-to-the-mine-of-origin investigation, and given this, asks how small firms can be asked to do these types of investigations. (120-NTMA/PMA)

According to NAM, the “SEC estimates that it will take the average manufacturer 480 hours annually to comply with this regulation.”⁴⁰ Another association stated, “a large Tier 1 supplier estimated that their expenditures have totaled about \$3 million since the annual reporting requirements took effect. These costs include tracking the supply chains and processes of over 7,000 lower tier suppliers, evaluating the minerals tracking efforts of all suppliers, and categorizing the likelihood that a supplier’s products contain conflict minerals. Additional costs are incurred because all findings from the company’s suppliers must be manually entered into a database and categorized so that the information provided may be utilized by the Tier 1

³⁷ PL 111-203, [Dodd-Frank Wall Street Reform and Consumer Protection Act](#), July 21, 2010.

³⁸ [17 CFR 240 and 249b](#).

³⁹ SEC Fact Sheet, <https://www.sec.gov/opa/Article/2012-2012-163htm---related-materials.html>.

⁴⁰ National Association of Manufacturers, “[Holding US Back: Regulation of the U.S. Manufacturing Sector](#),” prepared by Pareto Policy Solutions, LLC.

supplier in preparing filings.”(137-MEMA) Many respondents suggested that the rule be suspended. (14-Chromaflo, 39-IPC, 53-ACMA, 71-Whirlpool, 107-COC, 120-NTMA/PMA, 137-MEMA; 146-NAM)

A second SEC issue was the CEO pay ratio disclosure provision required by Section 953(b) of the Dodd-Frank Act. This provision calls for public companies to disclose the ratio of employees’ median pay to the compensation of a company’s chief executive officer. The SEC finalized a rule for this provision in August 2015, and it becomes effective in 2018. NAM notes that this ratio is a “false and overly simplistic” metric of company compensation practices and it is burdensome due to the costs associated with calculating median pay. (146-NAM) The U.S. Chamber echoes those concerns and notes that some municipalities are “enacting a new tax based upon this ratio.” (107-COC) NAM asks that the SEC reconsider the rule entirely.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires that federal agencies consider significant environmental impacts in their decision-making, and established the President's Council on Environmental Quality (CEQ). Federal law requires permits for many kinds of industrial and commercial activity, and the issuance of such permits often triggers a requirement for NEPA analysis. This process can quickly become extremely lengthy and costly. For example, according to NAM:

It (the NEPA) is often the largest, costliest, most time-consuming regulatory hurdle that project sponsors, developers, construction managers and engineers face before they can build. Philip Howard’s 2015 report, “Two Years, Not Ten Years: Redefining Agency Approvals” explains that public project costs are increased by more [than] \$3.7 trillion because of red tape. It is also a common target for abuse, as there are countless ways for federal and state agencies and external actors to throw a wrench in the process and delay completion of the review. The longer the delay, the more likely the developer walks away. Project opponents do not often need a [court] judgment on the merits of NEPA to win; the delay can be enough... A 2014 GAO report made several startling findings with respect to the administration of NEPA. [GAO found that the] Administration had no idea how long a typical NEPA review takes. GAO’s best guess was an analysis by the National Association of Environmental Professionals (NAEP), which estimates that the average environmental impact statement (EIS) under NEPA takes 4.6 years, the highest it has ever been. NAEP also estimated that the time to complete an EIS increased by 34.2 days each year from 2000 to 2012. (146-NAM)

Another respondent wrote that, with respect to individual permits under CWA Section 404 for dredge and fill activities, this “process can take 4 years even if a full Environmental Impact Analysis is not required.” (43-Mosaic) Other respondents also discussed the increased costs and significant manufacturing and construction delays as a result of NEPA. (10-PCBI, 42-Novelis, 43-Mosaic, 46-ATT, 71-Whirlpool, 83-TM, 86-IPAA, 96-NMA, 101-AA, 114-AGC, 115-HSIA, 125-BP, 136-AFPM, 146-NAM, 159-VI, 172-VI)

Regional Haze Requirements

In 1999, the EPA announced a major effort to improve air quality in national parks and wilderness areas. The Regional Haze Rule (RHR) calls on states, in coordination with the EPA, the National Park Service, U.S. Fish and Wildlife Service, the U.S. Forest Service, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment. In 156 national parks and wilderness areas such as the Grand Canyon, Yosemite, the Great Smoky Mountains and Shenandoah National Park.

One of the most significant concerns with the RHR is that the requirement to reach “natural conditions” in visibility (defined as visibility in pre-industrial America) in the National Parks by 2064 may be unreasonable given the global nature of air quality and current operation and needs of our society. (148-TSGTA; see also 69-Domtar, 86-IPAA, 89-IECA, 100-ACA, 101-AA, 102-Renfro, 123-3M, 125-BP, 170-APF) To reach natural conditions, the EPA has been implementing restrictions in NOx emissions and emissions from electric generators, and forcing states to impose high cost, low benefit pollution controls. In doing this concerns were raised that EPA is interfering with implementation of this rule, for which States have the primary role in determining how best to make emissions reductions and define their own 'glide-path' to achieving the goal.

Crystalline Silica Standard

Silica can be found in a number of manufacturing operations, including foundries, glass making, paint manufacturing, porcelain manufacturing, and brick manufacturing. (107-COC) In 2016, an OSHA rule was finalized⁴¹ which cut in half the permissible exposure to crystalline silica (for general industry and maritime) from 100 to 50 micrograms per cubic meter.⁴² Compliance is required within 2 years after the effective date (2018).

Industry respondents suggest the standard is simply too stringent and will be difficult, costly or impossible with which to comply. According to NAM the rule requires “extensive and costly engineering controls...exposure monitoring, medical surveillance, work area restrictions, clean rooms and recordkeeping” (146-NAM) Respondents also state that the standard “could force manufacturers to shut their doors” or “could potentially cause several types of manufacturing to leave the United States.” (146-NAM, 107-COC) The U.S. Chamber of Commerce indicates that the previous standard was highly effective, reducing deaths from exposure to silica by over 93% since 1968, and this new standard is being challenged in court (to determine if OSHA demonstrated “significant risk,” and whether compliance with the rule “is technologically and economically feasible” — a “statutory requirement for an OSHA standard.”) (107-COC) Respondents have suggested that the rule should be rescinded or reviewed.⁴³ (146-NAM, 107-COC)

⁴¹ [81 FR 162885](#) (March 25, 2016).

⁴² Paul R. Noe, “[Smarter Regulation for the American Manufacturing Economy](#),” American Forest and Paper Association, September 14, 2016.

⁴³ 146-NAM, 107-CoC, NFIB, Problem Regulations, January 24, 2017.

Department of Labor Overtime Rule

The new overtime rule raises the salary level required for exemption from overtime pay of salaried white collar employees from \$23,660 to \$47,476.⁴⁴ A number of respondents suggested that the salary level for this exemption was too high, the rule exceeded statutory authority, and the automatic escalation of this salary threshold over time would be too rapid. (146-NAM, 6-NFIB, 39-IPC, 107-COC, 120-NTMA/PMA) The rule has been preliminarily enjoined by a district court, and the federal government has appealed this decision.⁴⁵

Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act's (CERCLA) major emphasis is on the cleanup of inactive hazardous waste sites. CERCLA gives the President authority to clean up or ensure the cleanup of these sites through "removal" and/or "remedial" actions, generally referred to as "response" actions, to address threats to human health and environment. CERCLA provides for cost recovery from potentially responsible parties, including current and former owners and operators of the facility, along with parties that arranged for or transported hazardous substances to the facility. Agencies provide oversight when the cleanup is pursuant to an agency order or a federal consent decree. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) outlines CERCLA's implementing regulations. Agencies follow the procedures and standards detailed in the NCP when remediating these sites.

RFI respondents raise concerns that CERCLA requirements can be extremely expensive and duplicative with other regulations. (84-Ameren, 92-AISI, 96-NMA, 101-AA, 110-Freeport, 111-GAC, 131-NMMA, 159-VI, 160-TCC) As a separate point, one respondent further stated, "under this policy, EPA routinely requires cooperating private parties to pay for duplicative and unnecessary expenses that the Agency incurs—in addition to the substantial expenditures the private parties are already undertaking in order to remediate the site. EPA's duplicative oversight activities not only increase costs, but also impede the pace of remediation by adding layers of unnecessary review. In 2015, EPA billed private parties \$106.4 million for agency oversight—a substantial amount of overhead costs and resources that are better spent directly on cleanup activities."⁴⁶

Spill Prevention, Control, and Countermeasures

EPA, within the CWA, requires non-exempt facilities to prepare Spill Prevention, Control and Countermeasure (SPCC) plans to prevent the discharge of oil from non-transportation related onshore and offshore facilities into U.S. navigable waters or adjoining shorelines. The SPCC rule applies to owners or operators of non-transportation related facilities who drill, produce, store, process, refine, transfer,

⁴⁴ For more information, see <https://www.dol.gov/whd/overtime/final2016/>.

⁴⁵ *Nevada v. DOL, E.D. Tex., No. 4:16-cv-00731*, motion granted 11/22/15.

⁴⁶ U.S. Environmental Protection Agency, Superfund Remedial Annual Accomplishments, "[Fiscal Year 2016 Superfund Remedial Program Accomplishments Report](#)."

distribute, use or consume oil or oil products that meet at least one of the capacity thresholds and have the potential to discharge oil to U.S. navigable waters or adjoining shorelines.

One primary concern with SPCC is the overlap with other federal regulations. The most frequently raised overlap mentioned was the duplication of the SPCC with the Stormwater Pollution Prevention Plan (SWPPP). The duplicative effort required by these two regulations adds costs to the manufacturer and delays construction and operations. (37-ILMA, 76-Boeing, 101-AA, 106-AFS, 107-CoC, 114-AGC, 127-PCA) According to one respondent, “construction site operators are required to develop plans for preventing, containing, and cleaning up oil spills under the NPDES and SCPP regulations. If a construction site operator has a SWPPP that addresses oil storage and spill control, containment and cleanup measures, then EPA should allow the jobsite SWPPP to also satisfy the agency’s SPCC requirements. Otherwise, this is double regulation — and each plan carries significant costs for the contractor to develop. The list of overlapping requirements includes documentation, management certification, site maps and diagrams, inspection and maintenance, recordkeeping, training, designated employees, notification procedures and response obligations. The U.S. Coast Guard also is involved in spill plans if the project is on/over water, which add further delays.”

Equal Employment Opportunity Commission Reporting Requirements

The Equal Employment Opportunity Commission (EEOC) recently revised its EEO-1 reporting requirements so that beginning in 2018 employers must submit more comprehensive and detailed information that will be used to enforce prohibitions against employment discrimination and address discriminatory pay practices. Employers with 100 or more employees (both private industry and federal contractors) will be required to submit data on employees’ W-2 earnings and hours worked by ethnicity, race, and sex, sorted into 10 job categories. Responding organizations are concerned with the additional time and resources that they will need to spend on this form and estimate that the number of reported entries will increase from less than 200 data points to over 3,000. (107-COC, 137-MEMA, 119-AGC, 77-CIRT, 66-ARTBA, 37-ILMA) Furthermore, responding organizations do not believe that the expanded data collection will provide useful information needed to enforce discriminatory pay practices. (107-COC, 137-MEMA, 119-AGC, 77-CIRT, 66-ARTBA, 37-ILMA) Finally, the additional reporting may put a company at risk of publicly disclosing employees’ private information and/or proprietary company information. (146-NAM, 66-ARTBA, 37-ILMA)

Food Safety Modernization Act

Over the last several years, the Food and Drug Administration (FDA), part of the Department of Health and Human Services (HHS), has issued several regulations to implement the Food Safety Modernization Act (FSMA). Some portions of the new regulations are complex, and a misinterpretation could cause potentially negative consequences for a company. One such regulation, Mitigation Strategies to Protect Food Against Intentional Adulteration (IA rule), is aimed at preventing intentional adulteration of food

intended to cause wide-scale harm to public health, including acts of terrorism targeting the food supply.⁴⁷ The regulation imposes significant new requirements on manufacturers of human food, including maintaining certain records. FDA should delay the compliance dates for the IA rule until it has revised the regulation to provide for more flexibility and greater focus on risk-based methods of preventing intentional adulteration of the food system. (98-IDFA)

As manufacturing and agricultural processing continually evolves, the FDA should ensure that regulatory requirements are flexible and able to adapt to science and innovation. Many agriculture processing companies sell secondary products (e.g., germ, feed, meal) from facilities which were not designed to handle these ingredients using the same standards for ingredients intended for human consumption. In the new FSMA foundational regulations, “manufacturing/processing” has been broadly defined around different activities conducted on food. The “farm” has a narrower definition. As a result, numerous activities that farms normally use to prepare a food crop for trade as Raw Agricultural Commodities (RAC) can be considered activities that transform the crop into a “processed food.” A farm conducting these activities could be considered a manufacturer/processor and would be subject to food facility registration and to new requirements for “good manufacturing practices” and preventive controls. Current regulations will require some manufacturers to update facilities or adjust business practices to comply with good manufacturing requirements. There is a concern that such requirements are unnecessary and will result in lost jobs and lost opportunities for manufacturers. (146-NAM, 122-AHPA)

Additionally, the FSMA requires sellers (farmers and food processors) to obtain from their customers (downstream food processors and distributors) certain “written assurances” on an annual basis. With these written assurances in place, the sellers are provided a certain amount of regulatory relief — relief which in many cases is essential to the continued existence of their business, since according to respondents it is nearly impossible (not just inefficient or uneconomical) for the firm otherwise to comply with the applicable regulations. An analysis by the Grocery Manufacturers Association (GMA) determined that just the provisions in 21 CFR § 117.136 would require individual firms to obtain thousands or even millions of assurances every year. Therefore, the FDA should remove these unnecessary and burdensome provisions from the regulations. (70-GMA)

Commenters raised other concerns about FDA regulations, such as the Nutrition Labelling Standards. To provide consumers with clearer nutritional content information for food, based on updated nutrition research and public health information, the FDA issued a regulation in May 2016⁴⁸ that would require changes to the Nutrition Labeling, 21 CFR. §101.9 and Reference Amounts Customarily Consumed Per Eating Occasion (serving size) regulations, 21 CFR. § 101.12. These changes represent the first major update to the Nutrition Facts label in over 20 years and would require a massive overhaul to the food package label and information provided to consumers. FDA provided food manufacturers until July 26, 2018 to make this change even though FDA's own Regulatory Impact Analysis for this change estimated the cost to industry to comply in two years would be \$4.6 billion, whereas the cost to comply in four years would be \$2.8 billion.

⁴⁷ [81 FR 34165](#) (May 27, 2016).

⁴⁸ [81 FR 33741](#) (May 27, 2016).

In other words, just extending the compliance deadline from two to four years saves \$1.8 billion. The challenge of compliance is compounded because FDA has yet to issue final guidance on the types of dietary fiber it considers to meet the new definition, 21 CFR §101.9(c)(6)(i), and information on calculating added sugars for some types of food, 21 CFR § 101.9(c)(6)(iii), which must be listed in the new label format. Additionally, the USDA is mandated by law to issue a regulation requiring the disclosure of the content of genetically modified ingredients in all foods by July 29, 2018, three days after the compliance deadline for the Nutrition Facts updates. FDA should extend the compliance date for this labeling update until May 2021 to ease the regulatory burden. Additional compliance time would allow companies to coordinate labeling updates, provide consumers with clear information to help them make healthy choices and avoid wasteful spending on duplicate relabeling schemes that would be required during the next four years. Additionally, USDA and FDA should work together on timing of compliance with these required changes so that manufacturers will only be required to make one label change. (98-IDFA, 146-NAM, 122-AHPA, 70-GMA, 74-Knouse) Other regulatory redundancies should also be eliminated between FDA, USDA, EPA, and other federal agencies. (53-ACMA, 74-Knouse, 64-TFI, 85-NOPA)

Overview of Regulatory Reform

Over the years, much effort has been spent on regulatory reform by think tanks, industry associations, and government agencies. Yet, for several reasons, the burden for manufacturers continues to grow. Through the process of writing this report it became clear to the Department that at the manufacturing plant level, there are significant opportunities for burden reduction. Respondents provided numerous examples of impractical, unrealistic, or onerous requirements and of processes that make permitting unnecessarily complex and time consuming.

Regulators and manufacturers working together can eliminate unnecessary regulatory burdens. These unnecessary burdens can be eliminated if regulators work with industry to apply commonsense and practicality to regulations and requirements to more closely reflect real world operating conditions. Responses revealed the need to reform the permitting process and existing rules and to reduce the current compliance burden without impacting benefits. Responses to the RFI revealed the need to also reform the process for new rulemakings.

Past Attempts at Regulatory and Permitting Reform

Over the years there have been many regulatory reform efforts. Prior reform efforts have prescribed principles for effective rulemaking, including the use of cost-benefit analysis (CBA), examining alternatives to regulations, and retrospective reviews. Yet the regulatory burden has only grown more onerous.

Factors that have undermined prior reform efforts include: indeterminate and underdeveloped cost-benefit models, methodologies and assumptions; a lack of agency effort to comply fully with all rulemaking requirements; and a lack of power and resources in oversight organizations to compel compliance with these principles.

Agency cost-benefit analyses sometimes lack transparency and make self-serving assumptions regarding important direct and readily quantifiable costs. Moreover, technically challenging and resource-intensive intangible, indirect, and cumulative impacts are often not meaningfully addressed. This includes opportunity costs such as impacts on innovation and productivity, despite the potentially far-reaching benefits.

Regulatory reforms also have required the consideration of alternatives — including market-based incentives (rather than a command and control approach). Despite these efforts, agencies tend to make assumptions that cast the politically preferred alternative in a favorable light. As a result of these factors, the cost-benefit models often fail in certain circumstances to capture the true costs of implementing regulation. For some important federal regulations (e.g., listing a species under the Endangered Species Act), a cost-benefit analysis is not required at all.⁴⁹

Moreover, current application of principles of regulation often results in unnecessary, unreasonable, outdated, and impractical requirements that are of concern to manufacturers. Agencies frequently attempt

⁴⁹ Independent regulatory agencies are not required to provide a cost-benefit analysis.

to skirt the federal requirement to “maximize net benefits” prescribed in EO 12866¹ by over-weighting of qualitative benefits to justify quantitative costs. “Real-world” impacts of regulatory burdens are in many cases not adequately addressed. Regulatory agencies too often are not sensitive to concerns from manufacturers about overly cumbersome constraints and costs, a failure of agency culture and leadership.

The Need for Collaboration between Regulators and Manufacturers

Respondents provided a multitude of examples of unnecessary compliance burdens. Our review is not able to evaluate the substance of all the complaints or the soundness of all recommended solutions, but the large number of examples suggests there is a significant opportunity for regulatory reform.

Rather than consider the retrospective review process as a re-confirmation of the validity of a regulation, agencies should adopt the practice of working together with the regulated community — manufacturers, in this case — to understand real world burdens (including unintended ones) and to devise potential alternative, commonsense solutions collaboratively. Given the myriad challenges in creating a good rule, lookbacks with stakeholders could give agencies another opportunity to work toward the goal of avoiding regulations that impose unwarranted burdens.⁵⁰

This suggestion fits with EO 13777⁵¹: “In performing the evaluation [of existing regulations], each Regulatory Reform Task Force shall seek input and other assistance... from entities significantly affected by Federal regulations...” In addition, former Office of Information and Regulatory Affairs (OIRA) head Cass Sunstein recently wrote: “Because the White House itself lacks the capacity to scrutinize the stock of existing regulations, the Trump administration was smart to call for task forces within each agency to do that — and to require them to engage with the public to see which regulations are really causing trouble.”⁵²

This is also very much in line with other nations’ reform policies in which government works with the regulated community to identify unnecessary burdens. As one former UK government official said, “In the UK, by focusing on how we regulated, rather than just what we regulated, we were able to drive enormous cost reductions without sacrificing protections. By simplifying forms and processes, compliance became much less costly without any underlying regulatory changes or compromising mission.”⁵³ This official also observes that the cultural change required to accomplish this reform should not be underestimated: “Those who work in regulatory policy often focus on designing new regulatory ideas. Typically, they don’t systematically look for ways to reduce the costs of regulations that are already on the books.”

RFI respondents also call for agencies to review existing regulations with stakeholders.⁵⁴ One association suggested that a better relationship with manufacturers may help agencies to reduce regulatory burden

⁵⁰ [EO 12866](#): “Each agency shall tailor its regulations to impose the least burden on society...”, September 30, 1993.

⁵¹ [EO 13777](#) (March 1, 2017).

⁵² Cass R. Sunstein, "[Trump's Safe and Sane 'Regulatory Reform' Idea](#)," *Bloomberg*, March 3, 2017.

⁵³ Jitinder Kohli, "[What President Trump Can Learn From The UK About Reducing Regulations](#)," *Forbes*, January 27, 2017.

⁵⁴ For example, note the following RFI responses: 48-RFF with regard to EPA and NAAQS; 133- PIA with regard to EPA and flexible air permitting; and 53- ACMA with regard to EPA emission modeling (see Docket ID "[DOC-2017-0001](#)," at www.regulations.gov).

without sacrificing their missions: “state regulators [in Indiana, Louisiana, Ohio, and Texas are] more knowledgeable about ... steel manufacturing, or more willing to take the time to become knowledgeable... Armed with superior knowledge, state personnel often understand the impracticability or inapplicability of certain controls or requirements, and are more often open to allowing alternate compliance options that reach the same goal through the use of less burdensome means.” (112-SMA)

Examples from RFI responses of commonsense suggestions for reform (that might surface during a collaborative lookback) include the following (organized by category):

Lack of Knowledge about How Industry Operates

- “EPA’s Risk Management Program rule and other regulations require manufacturers to interact with Local Emergency Planning Committees (LEPCs). [But] there are no LEPCs in many areas. Of the 100 counties in North Carolina, for example, only 40 have functioning LEPCs.” (53-ACMA)
- [Regarding OSHA’s Hazardous Air Contaminants Standards; for employers seeking to meet through an engineering calculation or evaluation they conduct] “Powered ventilation is generally the most effective and widely used technology to limit exposures to hazardous airborne substances in composites manufacturing workplaces. PPE [personal protective equipment] is also employed when the nature of the work limits the ability of employers to achieve safe exposure levels via ventilation alone. However, several industry employers have been cited by OSHA for using PPE when they have not “proven” that engineering control would not be sufficiently effective....” (53-ACMA)
- “FDA regulatory provisions implementing the Food Safety Modernization Act (FSMA) require sellers (farmers and food processors) to obtain from their customers (downstream food processors and distributors) certain “written assurances” [re food safety hazards] on an annual basis... An analysis by the Grocery Manufacturers Association determined that just the provisions in [one of several specific regulations] would require individual firms to obtain thousands or even millions of assurances every year....” (122-AHPA)
- [Regarding Non-Complying Lots -- 40 CFR. § 770.20(f), which requires fabricators that received notification from a producer of panels that failed an emissions test, to inform customers that their finished products contained these panels.] “First, by the time the fabricator receives the panel producer’s notification, the panels almost certainly no longer exist as panels. Instead, the fabricator will almost certainly have cut up the affected panels it received into component parts, incorporated those component parts into finished goods, and shipped those finished goods. Second, the affected panels are untraceable once they are incorporated into finished goods. A fabricator does not track which panels go into which finished goods... Third, in the fabrication process the panels are covered with veneers or other coatings. This means that it is no longer feasible to test the panels accurately for compliance with the emissions limits. Fourth, the fabricator’s notification is very likely to be completely unnecessary, because by the time the customer receives its

notification, the affected panels will probably have aged to the point that they now meet the emissions limits.” (67-AHFA)

- [Regarding CWA §316(b)- Cooling Water Intake Structures (CWIS) -- Entrainment “Best Technology Available” (BTA) for facilities withdrawing less than 125 MGD] “Facilities withdrawing less than 125 MGD are not required to submit entrainment information however the permitting authority is still required to make a determination about the BTA to minimize entrainment... Permitting authorities generally lack the technical expertise in such areas, so it requires the permittees to provide the permitting authority with adequate technical information to support the BTA determination. A 52-week entrainment study can range from \$140,000 to \$410,000.” (147-US Steel)
- “[Regarding] Toxic Substances Control Act (TSCA) regulation... Chemical Data Reporting (CDR) regulations require exceptionally detailed monitoring, recording, and reporting of the chemical make-up of our members’ steel and steel coatings, raw materials...) It is overly burdensome to the steel industry to report on the general safety of a product that has been widely produced for several centuries and whose chemical makeup is well known and that poses little risk from exposure.” (92-AISI)
- “EPA should ensure remediation cleanup standards are reasonably achievable... for example cleanup standards may be set below background concentrations that can never be achieved at a cleanup site until sources in the wider area are controlled....” (76-Boeing)
- “FDA has formally acknowledged under various circumstances that reliance on batch records is an accurate and practical method for assuring that finished food products meet required compositional specifications for ingredients that are chemically complex or for which no validated test method exists... [But] during inspections of firms under 21 CFR Part 111, FDA often pushes firms to implement expensive chemical testing for such ingredients (which would cost at least hundreds and potentially thousands of dollars per batch of product) — or to prove that no such chemical test method exists (an exercise that is expensive and pointless, since it’s impossible to prove a negative and it is very rare for valid test methods to exist for chemically complex food ingredients, especially in a chemically complex matrix).” (122-AHPA)

Inconsistent Enforcement

- “Differential enforcement of a regulatory requirement across geographies (i.e., inspectors interpreting a regulation differently in two different manufacturing locations) is so troubling to compliance officials.”⁵⁵

⁵⁵ National Association of Manufacturers, [“Holding US Back: Regulation of the U.S. Manufacturing Sector,”](#) prepared by Pareto Policy Solutions, LLC.

- “Inconsistent Federal implementation of the RCRA Corrective Action process from region to region and site to site... causes... increased cost and lost opportunities due to unpredictable or longer time periods for addressing impacts to the environment.” (147-US Steel)

Antiquated Rules

- “The current Leak Detection and Repair (LDAR) rules require point-by-point monitoring for leaks (Method 21) for every LDAR component (valves, pumps, compressor seals, pressure relief devices, etc.). This is very time consuming and inefficient. Infrared cameras (IR camera) are now voluntarily used in manufacturing to detect leaks much more quickly and efficiently. The use of these IR cameras should be a technology option to replace the current antiquated LDAR rules.” (89-IECA)

Technology Requirement is Too Expensive or Unproven (Unrealistic Assumptions or Cost is Too High)

- “FDA regulation 21 CFR 111, Current Good Manufacturing Practice (cGMP) in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, includes Section 111.605 (a) and (b) ... requires that all electronic records comply with 21 CFR 11, a burdensome and complex requirement to validate computer systems that was developed for drug manufacturers. The software and hardware validation requirements are costly, difficult to maintain, and fail to provide added security... Small and midsize dietary supplement manufacturers that lack the resources to validate computer systems are burdened with maintaining hard copies and using hand-written records, which is a costly, inefficient, and unnecessary clerical obligation....” (63-CRN)
- “The PSD BACT evaluation process, spelled out through EPA guidance, should not include unproven technologies employed in other countries that have not been demonstrated as commercially feasible or effective at controlling emission in the U.S. Requiring domestic facilities to conduct technology reviews and costly feasibility analyses of technologies utilized in countries that do not have the same rigorous air pollution control and permitting requirements, places unreasonable permitting demands and delays on the already lengthy U.S. permitting process.” (92-AISI)

Complex, Onerous Processes, e.g., Unnecessary Recordkeeping

- “In past years we dedicated the majority of our environmental resources to emission reduction equipment that has dramatically reduced our impact on the environment. In more recent years, the majority of our environmental resources have been dedicated to monitoring and record keeping. Reducing the frequency of monitoring, and reducing the amount of recordkeeping and reporting would be very beneficial. We believe that we can adequately demonstrate ongoing and continuous compliance with reduced levels of monitoring and recordkeeping.” (112-SMA)

- “For permitting projects... USEPA and States ask for endless pieces of information that are not necessary to issue a permit or approve a submittal; and are beyond what is required by statute and the implementing regulations. Frequently, the agencies indicate the information is needed to address questions or concerns from third parties—‘we need this information because somebody may ask about it or because it would be nice to know.’” (147-US Steel)
- “Review and streamline data requirements to ensure that only data that is required for a permit decision is required to be submitted.” (79-Northrup Grumman)
- “Record Keeping Mandate on EPA Air Permitted Standby Engines: 40 CFR Part 51 (Subpart A) ... Standby engines rarely operate but companies, by law, are required to report emissions data... in 2016, a company reported total emissions from emergency engines (generators and fire pumps) as follows. [Table shows emissions sum= 0.005716 tons per year] The company estimates that it takes \$500 (5 times \$100 per engine) per year to monitor, report, and do maintenance as EPA instructs them to do. Given the costs and given the emission volume, it cost about \$90,000 per ton of emissions.” (89-IECA)

Review of Existing Regulations

Reducing the existing regulatory burden is perceived by some respondents to be more critical than reforming the process of creating new regulations.⁵⁶ Retrospective reviews of existing regulations have been required since the Carter administration, but like reforms for rulemaking processes, retrospective reviews often do not receive appropriate emphasis.

The need for retrospective review is straightforward. Although public engagement is critical before rules are written, retrospective reviews give agencies and the regulated community an opportunity to assess a regulation’s actual impact — costs and benefits — using real numbers and experiences. “Lookbacks” would allow agencies to examine unintended costs as well as identify (and ameliorate) unnecessarily burdensome compliance requirements.

There are many reasons why meaningful retrospective reviews are rare. The overriding reason is probably the same as for new rules (above): there are “insufficient incentives”⁵⁷ to overcome the strain on resources required to conduct these reviews. Some sources suggest that agencies are biased and that “External funds must be provided to give disinterested researchers an incentive to conduct unbiased and independent studies.”⁵⁸

⁵⁶ National Association of Manufacturers, “[Holding US Back: Regulation of the U.S. Manufacturing Sector](#),” prepared by Pareto Policy Solutions, LLC and NERA Economic Consulting, “[Macroeconomic Impacts of Federal Regulation of the Manufacturing Sector](#).” Prepared for the Manufacturers Alliance for Productivity and Innovation (MAPI), August 21, 2012.

⁵⁷ Winston Harrington, “Grading Estimates of the Benefits and Costs of Federal Regulations: A Review of Reviews,” Resources for the Future (RFF) Discussion Paper, September 2006.

⁵⁸ Ibid.

Several models were suggested such as creating another non-partisan entity like the Congressional Budget Office (CBO) which avoids making policy recommendations and focuses on unbiased analysis; and, in this case, the new entity would identify regulations that are in need of reform or elimination.⁵⁹ Regulatory Reform Task Forces (RRTFs) have been formed (via EO 13777) within each agency and they can help play this role if members are given sufficient autonomy and capacity to focus primarily on regulatory reform activities. Because of the limited resources historically made available for reviewing existing regulations, and the tendency for agencies to be biased in favor of their respective regulatory authorities, constant attention and oversight of their efforts will be required in order to make sufficient progress.

President Trump's Executive Order 13771 also provides the forum and structure for an ongoing retrospective review by requiring agencies to implement a "2 for 1" (also known as "one-in, two-out," or Cut-Go) mandate that requires the elimination of regulations or costs of existing regulations to offset the burdens of a new regulation. Countries such as the United Kingdom, Canada, the Netherlands, and Australia have implemented a version of this program.⁶⁰ In Senate testimony, Senator Mark Warner claimed that the United Kingdom went from being the epitome of regulatory oppression to surpassing the United States in international competitiveness in part because of its ongoing PAYGO-type policies.⁶¹

Reforming the Permitting Process

According to respondents, "permitting requirements are numerous and quite onerous." (112-SMA) Permitting — particularly related to the Clean Air Act and Clean Water Acts — was the most frequently cited concern, and often identified as a top priority regulatory burden. The Clean Air Act New Source Review (NSR) program was described by many as the most significant permitting challenge and impediment to construction of new manufacturing plants and modernization of existing facilities.

Beyond the reforms to specific regulations and permitting processes called for in this report, there are two overarching problems that must be addressed throughout federal permitting. The first is overlap, duplication and lack of coordination among agencies, permitting processes, and reporting requirements. The second is uncertainty in the permitting processes.

Overlap, Duplication and Coordination

Many RFI respondents raised concerns that EPA "second-guesses" state decisions. (170-APF) "Even in cases where a state issues CAA permits under an EPA-approved [state implementation plan], there are instances when decisions made by the permitting authority are re-evaluated and revisited by EPA, duplicating the efforts of the agencies and adding uncertainty for the permittee." (126-API)

⁵⁹ Philip A. Wallach, "[An Opportune Moment for Regulatory Reform](#)", Brookings, April 2014.

⁶⁰ All 4 nations focus on cutting costs not number of regulations; Australia, Canada, and the Netherlands focus on red-tape or administrative costs; the United Kingdom's definition is broader but focuses heavily on red-tape.

⁶¹ How Best to Advance the Public Interest: Hearing before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, 112th Congress, (2011)

In addition, there were examples cited of “overlapping jurisdiction of federal agencies and programs” (146-NAM) such as:

- “Aspects of RCRA and CAA permits” (158-CKRC)
- “NSR and Title V permits can have significant overlap...” (109-Valero)
- “EPA and the U.S. Army Corps of Engineers: Water and wetlands.” (146-NAM)
- “EPA’s Integrated Risk Information System, EPA’s risk evaluation programs under the Toxic Substances Control Act, the CDC’s Agency for Toxic Substances and Disease Registry Toxicological Profiles program, and NIH’s National Toxicology Program Office of Report on Carcinogens have largely redundant missions.” (53-ACMA)

In some cases, multiple regulations or agencies require the same information: “Companies are often required to separately report the same information to multiple regulatory offices and programs, including at the federal, state and local level. For example, data on air emissions are typically reported as part of permit compliance reports, to state air emission inventories, and to EPA’s Toxic Release Inventory program.” (152-AWC)

A related issue is the lack of coordination of the review process when more than one agency is involved: “US Army Corps of Engineers has authority for Section 404 permitting. However, in order to get the permit, review and consultation is required for multiple other federal agencies... all raising issues about maintaining sufficient bird and fish habitat.” (126-API)

Overlap, Duplication and Coordination — Potential Solutions. Many respondents suggested that federal agencies (primarily EPA) should defer to states in order to: “...reduce, if not eliminate, federal second-guessing. Substitute individual permit oversight with federal programmatic overview of state adherence to permitting requirements. States should be evaluated on how their program is performing, not micromanaged on each and every permit decision.” (170-APF)

In other cases, where multiple agencies must be involved, many respondents suggested something similar to FAST-41 type provisions:

- “Designate Lead Agency to coordinate responsibilities among multiple agencies involved in project reviews.”
- “Provide for concurrent reviews by agencies, rather than sequential reviews.”⁶² (107-COC)

⁶² [The Water Resources Reform and Development Act of 2014](#) is another FAST-41 type model for permitting reform according to 109-Valero: “...overhauled the Corps’ planning process by creating a strict three-year deadline and \$3 million federal cost limit for feasibility studies. It required different levels of Corps review to occur concurrently and eliminated duplicative requirements, such as multiple cost-estimates and a reconnaissance study. [Also] designated the Corps to be the lead agency coordinating reviews for civil works projects...”

Respondents also offered the following best practice examples:

- “Ohio EPA piloted a program in which it took normally sequential steps in permit processing and executed them in parallel, significantly reducing overall permit processing time.” (170-APF)
- “Indiana Department of Environmental Management’s air program processes construction permit applications and associated Title V permit modification for projects concurrently....” (147-US Steel)
- “The California Unified Program Agency (CUPA) consolidates hazardous waste and hazardous materials requirements of multiple programs into a single regulatory entity. The result is simplified permitting, reduced regulatory complexities and reduced management burden.” (79-Northrup Grumman)

One association suggested a “reporting portal” to be created by EPA with state and local regulators to “allow manufacturers to report information needed by regulatory programs only once.” (152-AWC)

Several RFI respondents suggested that a specific coordinator is needed, such as a federal office responsible for permit coordination (106-AFS), or an EPA ombudsman: “This supervisory body could [provide] the regulated community with a means for coordination across various environmental media (water, air, etc.) and across various agencies (e.g., EPA, Army Corps of Engineers, Fish & Wildlife), perhaps even including state and local agencies or authorities.” (76-Boeing)

Uncertainty Related to Permit Processes

Permitting challenges are exacerbated by uncertainty, as addressed in many of the RFI respondents complaints. Uncertainty comes from inter-related issues driven by complexity such as “case-by-case” or “one-off” reviews, which often “reinvent the wheel.” There is also a general lack of consistency, which then contributes to uncertain timelines, which itself is exacerbated by the threat of delay driven by public protest/litigation. This complex situation is then made more uncertain by lack of transparency/poor communication. While uncertainty is also a problem in non-permitting regulations (discussed above), it appears to be a significant and systemic problem in environment-related permitting: “Environmental permitting has many sources of uncertainty, including ... timing, procedures, the roles of various agencies in multi-agency review projects, and the data that the permitting authorities use and rely upon in making permitting decisions. Often, this variability is based on the views and expectations of a particular regional office or specific employee or office within EPA. Other times, the requirements can apply Agency-wide yet still create uncertainty. EPA, for example, is inconsistent in its data demands and the procedures by which it approves projects....” (112-SMA)

Environmental permitting is so complex that respondents described having to hire several consultants and lawyers to help “navigate” the “elaborate mazes” that permit regulations have become. (170-APF) Moreover, this appears to be true of “even simple modifications” to regulations. (112-SMA) One association wrote, “Obtaining a permit for just one CAA program alone (the NSR program) can require the permittee to

review nearly 700 posted guidance documents....” (170-APF) For manufacturing firms, the uncertainty of the permitting duration, which can take years, may be the greatest challenge. “The lack of certainty as to when the permit will be issued... create(s) significant burden, compliance difficulty, and business uncertainty....” (126-API) Permitting delays are partly driven by complexity and lack of coordination as discussed above. But some respondents blamed agency staff for contributing to the problem, claiming staff can “sit on an application until their allotted time is almost up before looking at it regardless of how minor or simple the task.” (114-AGC) On the other hand, other respondents claimed that delays are sometimes due to insufficient staffing resources at permitting agencies. (79-Northrup Grumman; 126-API; 123-3M)

Delays are not only driven by the agency or agencies. Lawsuits or “not-in-my-backyard activism” (107-COC) are a significant permitting issue: “Even where a permit remains valid pending resolution of the litigation, significant uncertainty can be introduced into the process of building or expanding a facility and it can take years to resolve all issues.” (136-AFPM) While this is not under the control of regulatory agencies, it does increase the uncertainty for manufacturers in making investment decisions.

Lastly, according to respondents, EPA’s lack of straightforward communication adds to manufacturers’ burden: “EPA does not provide clarity on its procedures and information requirements. These transparency problems are significantly compounded when EPA changes its requirements through Agency-generated guidance without notice to the applicants or the ability to comment on, or ask questions about, the guidance.” (112-SMA) As one example, an association explained that a Congressional requirement that EPA publish all state implementation plans (SIPs) was put in place “because it was virtually impossible to determine which regulations were currently approved as part of the SIP. This lack of transparency serves to delay projects simply because discerning what regulations apply presents its own challenge.”⁶³

Uncertainty — Potential Solutions. FAST-41 is often praised as a step in the right direction for permitting reform. Established under Title 41 of the Fixing America’s Surface Transportation (FAST) Act (42 U.S.C. § 4370m), FAST-41 was designed to improve the timeliness, predictability, and transparency of the federal environmental review and authorization process for “covered” infrastructure projects.⁶⁴

FAST-41 created a new Federal Permitting Improvement Steering Council (FPISC), with representation from Deputy Secretary-level members and led by a presidentially-appointed Executive Director. It also created agency Chief Environmental Review and Permitting Officers (CERPOs). Covered projects voluntarily gain access to improved authorization and environmental review processes such as early consultation, coordinated projects plans, project timetables, public Dashboard tracking,⁶⁵ and dispute resolution procedures.

⁶³ [CAA Section 110\(h\)\(1\)](#), requires “EPA to assemble and publish all” SIPs; but EPA is not complying. (170-APF).

⁶⁴ For more information, see <https://www.permits.performance.gov/about/fast-41>.

⁶⁵ For more information, see <https://www.permits.performance.gov/projects>.

Covered projects are defined as any activity in the United States that requires authorization or environmental review by a federal agency involving:

- Construction of infrastructure in a designated sector
- That is subject to NEPA, and
 - Does not qualify for an abbreviated review process and is likely to cost more than \$200M; or
 - Is of a size/complexity likely to benefit from enhanced oversight/coordination in the opinion of the Council, including:
 - Projects likely to require an Environmental Impact Statement
 - Projects likely to require reviews from more than two federal agencies.

Infrastructure includes (with some exemptions): manufacturing projects as well as renewable energy production, conventional energy productions, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, aviation, and any other sector determined by a majority vote of the FPISC.

The initiative is new, with the inventory of existing covered projects just added to the Dashboard in September 2016. For that reason, one commenter recommended “revisit[ing] lessons learned from FAST 41 (sic) permit streamlining later when the FAST 41 program is more mature.” (128-Pugh) At the same time, the U.S. Chamber of Commerce directly asked that “the administration’s permit streamlining efforts are consistent with FAST-41 activities already being administered by the Office of Management and Budget.” (107-COC). NAM noted the potential value of implementing in concert Executive Order 13766, “Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects,” and FAST-41. (146-NAM)

Although manufacturing is a covered sector under FAST-41, given the short history of FAST-41 and the strict definition of covered projects, the manufacturing community has yet to share in its benefits. Several of FAST-41’s key provisions (107-COC) would be extremely beneficial if they were to be applied to manufacturing industry permitting:

- “Establish a permitting timetable, including intermediate and final completion dates”;
- “Require that agencies involve themselves in the [permitting review] process early and comment early, avoiding eleventh-hour objections that can restart the entire review timetable”; and
- “Reduce the statute of limitations to challenge a project review from six years to two years.”

RFI respondents echoed these types of recommendations. Florida offers a best practice model, illustrating that an efficient permitting process is possible: “The SNAP (Simplified Nimble Accelerated Permitting) process, used by state and municipal agencies in central Florida engages in streamlined, efficient and rapid construction permitting... transform[ing] an onerous and time consuming process into a reasonably straightforward and user friendly permit acquisition process.” (79-Northrup Grumman).

A frequently discussed provision of FAST-41 — the “searchable, online ‘dashboard’ to track the status of projects during the environmental review and permitting process” (107-COC) — addresses transparency. In addition, a respondent cited a similar best practice in this area by a federal agency: “The FCC has most of its experimental license application process available on-line. It is easy to see that an application is in the system, and any comments or requests are also visible. The history of most experimental licenses is available, going back several years.” (79-Northrup Grumman)

To address over-complexity respondents suggested various types of permitting standardization as well as best practice examples:

- “Replace uncertain case-by-case permit review programs with standardized regulatory decisions that are periodically updated through rulemaking after public notice and comment.” (112-SMA)
- “Develop pre-approved specifications for permits to simplify and shorten the permit process.” (79-Northrup Grumman)
- Offer “general permits that companies can opt into for standard pieces of equipment...” (170-APF)
- “U.S. EPA should promote and directly facilitate issuance of innovative air quality permits by state/regional permitting authorities, especially permits that “advance- approve” changes at manufacturing facilities.” (123-3M)
- Streamlined permitting for “minor” projects are offered by the Pennsylvania Department of Environmental Protection (online self-registration forms using templates) and the State of Texas (permit-by-rule program). (158-CKRC)

In addition, one respondent suggested that “Federal agencies should implement Lean [Six Sigma] practices to streamline permitting” and noted that EPA regional offices are attempting to do this. The respondent goes on to say Lean practices can help agencies reduce uncertainty and inefficiency and shorten schedules and points to the Arizona Department of Environmental Quality as having had success with Lean efforts. (76-Boeing)

In addition to reducing the time limit for challenging a permit from 6 years to 2 years as described above, there were a few other recommendations as to how to improve the processes by which permitting decisions and projects can be opposed. One association related a case where a firm settled a lawsuit brought by an environmental group even though the regulatory agency had found that the facility had done nothing wrong. The association suggested: “The applicable provisions of the major environmental statutes must be revised

to introduce reasonable but tough thresholds to control the right of third parties to unreasonably intervene resulting in delays and expenses to industry. The thresholds must be based on local agency negligence, fraudulent/unlawful behavior or inappropriate influence.” (89-IECA)

Also, because of the potential of a lengthy permitting process, lack of “grandfather” protection can be exploited by objectors and is a recommended reform: “Without [grandfather] protection, project opponents will have an incentive to delay the permitting process as long as possible in the hope that the area will be designated NA [nonattainment] before a final permit can be issued. A more consistent grandfathering approach would ensure that companies do not spend years trying to obtain a PSD permit, only to reach the end of the process and find they now need to get an NA NSR permit (with offsets that may not be available) rather than a PSD permit.” (48-AF)

New Rules: Improving the Rulemaking Process

The Office of Information and Regulatory Affairs (OIRA) review of agency rules should be reaffirmed in a number of ways.

- Cost benefit analysis methods should be refined, and made more rigorous and enforced by OIRA, with a view toward continual improvement, including development of new methods and more thorough evidence bases.
- Cumulative costs should be rigorously weighed where appropriate.
- Regulations should not impede innovation.
- There should be meaningful public engagement prior to issuing significant proposed rules.
- Regulations should be more sensitive to the impact on small business.
- Regulations should only be enacted and enforced when there are adequate resources available for review, implementation and oversight.

Recommendations and Priority Areas for Reform

Through submitted comments, industry expressed clear support for the need to protect the environment, human health, and worker safety, but shared concrete, detailed concerns with how the federal government has set out to achieve those objectives through regulation, guidance documents, and other means. They identified numerous regulatory and permitting problems that include:

- Onerous and lengthy permitting processes that increase cost, add uncertainty, and inhibit investment in and expansion of manufacturing facilities;
- Inadequately designed rules that are impractical, unrealistic, inflexible, ambiguous or lack understanding of how industry operates;
- Unnecessary aspects of rules, or unnecessary stringency, that are not required to achieve environmental or other regulatory objectives;
- Overlap and duplication between permitting processes and agencies; and
- Overly strict or punitive interpretations of guidance, policies or regulations that are often counter to a pro-growth interpretation.

The Department identified twenty sets of regulations and permitting reform issues from the respondents as being a top priority for immediate consideration. Consistent with previous studies on the costs of federal regulations, comments on Environmental Protection Agency (EPA) rules dominated the responses from industry, and constitute the bulk of the Department's recommended Priority Areas for Reform.

Priority Areas for Reform

Clean Air Act

1. New Source Review (NSR) or Prevention of Significant Deterioration (PSD) permits:
 - a. Enforce the one-year turnaround time on NSR/PSD permit applications.⁶⁶
 - b. Reduce statute of limitations on challenges or appeals to one year.⁶⁷
 - c. Allow non-emitting construction activities to commence prior to receiving a permit.⁶⁸
 - d. Consider options to revise the definition of Routine Maintenance, Repair & Replacement (RMRR) to provide more flexibility.⁶⁹
 - e. Promote and facilitate use of flexible permitting mechanisms associated with PSD and Title V including, but not limited to, plant-wide applicability limits (PALs) and alternative operating scenarios. As part of this, consider any regulatory or other changes (e.g., guidance) that could facilitate more widespread use of these flexible permitting tools.⁷⁰
 - f. Develop opportunities to streamline NSR applicability determinations and/or to reduce the number of facilities and projects that may be subject to NSR through evaluating and pursuing regulatory and guidance options for addressing aggregation, project netting, debottlenecking, and the methodology by which pre and post construction emissions are calculated.⁷¹

⁶⁶ EPA will coordinate with state and local air agencies, as well as EPA regional offices, to develop best practices, guidance, or regulatory revisions necessary to ensure that NSR permits are issued consistent with the 12-month timeline described in the CAA.

⁶⁷ EPA is pursuing regulatory action intended to streamline the Title V process. Congressional action would be required to reduce statute of limitations.

⁶⁸ EPA would need to review existing regulations and guidance and identify situations for which it would be appropriate to provide additional clarity and/or opportunities to begin construction without an NSR/PSD permit.

⁶⁹ Legislation would be required for a change to the statutory definition. Respondents recommended considering potential regulatory actions to provide clarification and flexibility.

⁷⁰ EPA could conduct outreach to educate sources and permitting agencies on the benefits of flexible permitting tools and also consider minor changes to PAL provisions to provide more incentives for sources to use PALs. The EPA intends to highlight and encourage use of flexible air permitting options.

⁷¹ EPA should review existing regulations and guidance to identify opportunities to address these issues and provide more flexibility through regulatory actions. Litigation is pending over EPA's 2009 aggregation and project netting rule; this litigation is pending resolution of EPA's reconsideration process.

- g. Issue guidance on modeling concurrent with promulgation of revised National Ambient Air Quality Standards (NAAQS), to ensure timely clarification on modeling required as part of a NSR application.⁷²
 - h. Consider opportunities to "grandfather" NSR applications following revision of a NAAQS.⁷³
 - i. Consider opportunities to emphasize key aspects of the Best Available Control Technology (BACT) analysis including, but not limited to, expectations regarding technology determinations.⁷⁴
 - j. Consider opportunities to expand the purchasing offsets outside of the local areas as well as other offset related revisions which would provide increased flexibility and burden reduction.
2. Title V Operating Permits (incorporates all of the federal and state air pollution control requirements): Extend the term of the permit from 5 to 10 years.⁷⁵
 3. National Emissions Standards for Hazardous Air Pollutants (NESHAP):
 - a. EPA should increase efforts to reduce costs and avoid duplicative requirements in conducting reviews of NESHAP standards.
 - b. EPA should take steps to ensure that any new requirements considered under Residual Risk and Technology Reviews (RTRs) would not be redundant or unreasonably costly.⁷⁶
 4. Consider options to provide relief for facilities through affirmative defenses or other avenues to account for unforeseeable and uncontrollable emissions during periods of startup, shutdown, and malfunction (SSM). The EPA previously adopted an interpretation which exempted SSM periods from the emissions restrictions that apply under normal operating periods.⁷⁷
 5. National Ambient Air Quality Standards (NAAQS):

⁷² EPA has committed to timely issuance of guidance.

⁷³ Existing regulations provide some opportunities for "grandfathering" NSR applications.

⁷⁴ EPA would need to evaluate what could be provided to streamline BACT determinations.

⁷⁵ The EPA is completing the petitions rulemaking that will revise part 70 to clarify and streamline the process by which EPA receives and reviews Title V petitions, thereby increasing transparency and efficiency for regulated entities and environmental agencies. This action will address how EPA intends to review Title V petitions in an effort to reduce opportunities to raise NSR issues in the context of Title V.

⁷⁶ Under its existing authorities EPA is taking action to harmonize NESHAP and NSPS obligations.

⁷⁷ Pending litigation in *Walter Coke, Inc., et al. v. EPA*, No. 15-1166 (D.C. Cir.) (challenge to SSM SIP) and in *American Municipal Power v. EPA* (Sup. Ct.). Whether such exemptions and affirmative defenses can be allowed under the CAA is central to the litigation.

- a. EPA should develop options that consider "real-world measurements" instead of "probabilistic models" for the PSD program.⁷⁸
 - b. Extend NAAQS reviews from 5 to 10 years.⁷⁹
 - c. Ozone: Delay implementation of the 70 parts per billion (ppb) standard or retain the earlier 75 ppb standard. Observers stated the 70 ppb level is approaching "background" levels of ozone in certain areas.⁸⁰ The pace at which the standard is being tightened seems hurried; implementation is further complicated by measurement and air quality modeling issues, in particular accounting for ozone transported from international sources.
6. Consistent with its authorities under section 111 of the CAA, EPA should consider adding exemptions for research and development (R&D) related activities or otherwise streamline requirements for R&D activities for New Source Performance Standards.⁸¹
 7. EPA should issue a Unified Coating Rule (UCR) that facilities could choose to meet (replacing the eight overlapping NSPS and NESHAP regulations that apply to coatings).⁸²

Clean Water Act

8. Waters of the United States Rule: Reconsider the rule to define more narrowly "waters of the US" to exclude ephemeral tributaries. EPA and the U.S. Army Corps of Engineers (USACE) are reviewing the existing Clean Water Rule and its definitions of "navigable waters" as directed by Executive Order 13778. // On July 27, 2017, the EPA and the USACE published a proposed rulemaking to repeal the 2015 Clean Water Rule and reinstate the regulations in place prior to its issuance.⁸³ As indicated in the proposed withdrawal, the agencies are implementing EO 13778 in two steps to provide as much certainty as possible as quickly as possible to the regulated community and the public during the development of the ultimate replacement rule. In Step 1, the agencies are taking action to maintain the legal status quo of the rule in the Code of Federal

⁷⁸ The EPA is concerned that this approach would result in a directive that would impose greater costs on regulated facilities. This issue is similar to many raised in the NSR/PSD suggestion.

⁷⁹ Altering the NAAQS timeframe would require congressional action. EPA should consider opportunities to ensure that any forthcoming reviews are not redundant and are completed expeditiously.

⁸⁰ On-going litigation: Murray Energy Corporation et al. v. EPA, No. 15-1385 (and consolidated cases), (D.C. Cir.) (challenge to the 2015 ozone NAAQS).

⁸¹ See 40 CFR sections 60.40(c) and (d); 60.292(d); and 60.332(h). EPA is evaluating its authority to exempt R&D related activities under section 111. The EPA has routinely considered adding exemptions for R&D related activities and has added specific R&D exemptions in the past.

⁸² There is ongoing litigation regarding several NESHAP. EPA cannot provide specifics. EPA has court ordered deadlines to complete risk and technology reviews for several NESHAP that apply to certain coatings. EPA should consider options with an UCR to provide flexibility that encourages facilities to meet the rule by using pollution prevention approaches.

⁸³ 82 FR 34899 (July 27, 2017)

Regulations, by recodifying the regulation that was in place prior to issuance of the 2015 Clean Water Rule. Currently, Step 1 is being implemented under the U.S. Court of Appeals for the Sixth Circuit's stay of the rule. In Step 2, the agencies plan to propose a new definition that would replace the approach in the 2015 Clean Water rule with one that reflects the principles in EO 13778.

9. Section 404⁸⁴ and National Pollutant Discharge Elimination System (NPDES) permits: Provide permit applicants with clear descriptions of required steps and additional tools to assist them in completing the permitting process.⁸⁵

Other

10. Resource Conservation and Recovery Act (RCRA): Inappropriate classifications of waste streams as "hazardous" prevent or discourage recycling, reuse or reclamation. Aggressively review lists of hazardous waste to consider delisting certain compounds/materials/liquids that could easily be reused or recycled, but for this classification.⁸⁶
11. Revise the Crystalline Silica Standard. A 2016 Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) rule was finalized which cut in half the permissible exposure to crystalline silica (for general industry and maritime) from 100 to 50 micrograms per cubic meter. Recommendation is to keep allowed level at 100 micrograms per cubic meter.⁸⁷ // DOL announced on April 6, 2017 that it would delay enforcement of the respirable crystalline silica standard for construction until September 23, 2017, to conduct additional outreach and provide educational materials and guidance for employers.
12. Revise the OSHA rule to Improve Tracking of Workplace Injuries and Illnesses by removing requirement to disclose records of workplace injuries and illnesses and to alleviate the duplicative nature of work-related injury information collection. Clarify in guidance that this rule should not undermine safety incentives and drug testing programs.⁸⁸ // DOL has proposed delaying until December 1, 2017 the initial reporting of data on workplace injuries and illnesses (Form 300A) in order to give the administration an opportunity to review the new electronic reporting requirements. The proposed five-month delay would be effective on the date of publication of a final rule in the

⁸⁴ Section 404 Permits are under the purview of the US Army Corps of Engineers.

⁸⁵ EPA and USACE should explore opportunities to truncate the permitting processes and elevate any barriers, such as needed regulatory changes, to senior leadership for consideration.

⁸⁶ In 2015 EPA published a comprehensive revision to its rules governing the recycling, reuse and reclamation of hazardous secondary materials, where these materials would otherwise become listed or characteristic hazardous wastes if discarded rather than recycled.

⁸⁷ Pending litigation. Could be modified or repealed by agency notice-and-comment rulemaking, but must remain consistent with underlying statutory provisions in the Occupational and Safety and Health Act, 29 U.S.C. § 655(b)(5).

⁸⁸ Could be modified through further notice-and-comment rulemaking (underlying statutory requirement that companies maintain certain injury records). This issue is pending litigation.

Federal Register. Furthermore, DOL has announced its intention to issue a proposal to reconsider, revise, or remove other provisions of the Improve Tracking of Workplace Injuries and Illnesses final rule, 81 FR 29624 (May 12, 2016).

13. Revise Section 1502 of Dodd-Frank Act. Remove the Securities and Exchange Commission (SEC) requirement on manufacturers to “undertake ‘due diligence’ on the source and chain of custody of its conflict minerals and file a Conflict Minerals Report” and to disclose publicly this information.⁸⁹ // On April 28, 2017, the SEC suspended enforcement of the rule until ongoing litigation [Nat’l Ass’n of Mfgs v. SEC, No. 13-5252 (D.C. Cir. Apr. 14, 2014)] has concluded.
14. Rescind Section 953(b) of Dodd Frank Act which requires CEO pay ratio disclosure.⁹⁰ // On February 6, 2017, the SEC opened a 45-day comment period on unexpected challenges for compliance with the rule. Acting Chairman Michael Piwowar directed staff to reconsider the implementation of the rule based on any comments submitted and to determine as promptly as possible whether additional guidance or relief may be appropriate.
15. Do not implement Equal Employment Opportunity Commission’s (EEOC) expanded requirements for hours and earnings data on EEO-1 forms. // On August 29, 2017, OMB issued a memo to the EEOC announcing a review and immediate stay of the effectiveness of those aspect of the EEO-1 form that were revised on September 29, 2016.⁹¹
16. Delay compliance dates for the Intentional Adulteration rule required by the Food Safety Modernization Act (FSMA). The Department of Health and Human Services, Food and Drug Administration (HHS, FDA) should rescind requirements to obtain written assurances from downstream customers on an annual basis, or alternatively consider revision of requirement to reduce frequency and burden.⁹²
17. Extend compliance deadline on nutrition labeling standards from 2018/2019 to 2021. This will allow further time for the FDA to further clarify rules⁹³ and definitions regarding “dietary fiber” and “added sugar” required by the new label format. // On June 13, 2017, the FDA announced that the

⁸⁹ This would require a statutory change.

⁹⁰ This would require a statutory change.

⁹¹ See https://www.reginfo.gov/public/jsp/Utilities/Review_and_Stay_Memo_for_EEOC.pdf.

⁹² The current compliance dates are 3,4 or 5 years after the date of publication of the rule (May 27, 2016), depending on the size of the business. Administrative action would be required to effect a delay in the compliance dates for the Intentional Adulteration rule. Although FSMA required that FDA promulgate a final rule to protect food against intentional adulteration within 18 months of enactment of FSMA, the statute does not appear to specify compliance dates. Delaying compliance would require publishing a final rule; rescinding or revising the written assurance provisions would require rulemaking.

⁹³ The rule was promulgated pursuant to section 403(q) of the Federal Food, Drug, and Cosmetic Act, which requires certain nutrients to be included in nutrition labeling and authorizes the Health and Human Services Secretary to require other nutrients to be included if the Secretary determines that the information will assist consumers in maintaining healthy dietary practices.

compliance dates for the Nutrition Facts Label Final Rules will be extended. The FDA has not specified the length of the extension, but will announce new compliance dates in a future Federal Register Notices. FDA explained that additional time would provide manufacturers covered by the rule with necessary guidance from FDA, and would help them be able to complete and print updated nutrition facts panels for their products before they are expected to be in compliance.

Recommendations

The Department makes three broad recommendations.

Agency “Action Plans.” Each agency’s Regulatory Reform Taskforce (RRTF) should deliver to the President no later than December 31, 2017, an “Action Plan” to address the regulatory burden and permitting reform issues highlighted in the responses to the RFI. The relevant agencies should review all comments received in response to the Department’s RFI, and particularly address the issues detailed in the section on “Priority Areas for Reform.” RRTFs should prioritize a response to these particular items and should include in their action plan a description of specific actions that could be taken to lessen the burden created by the regulations mentioned in the RFI comments. In the first year, agency leadership should update the President regularly on the status of their efforts regarding these tasks. While the “Priority Areas for Reform” list is by no means comprehensive, it represents a targeted first step to quickly address the problem of over regulation.

Annual Regulatory Reduction Forum. The Department recommends creating an annual, open forum for regulators and industry stakeholders to evaluate progress in reducing regulatory burdens. There is a long-standing need for consultations with industry to identify specific actions the federal government can take to reduce unduly burdensome regulations and accelerate permitting decisions. Industry has repeatedly expressed its appreciation of the Trump Administration’s regulatory reform effort and the trust it has in the Department of Commerce to listen and bring the voice of business to this effort. Because of this, the Department of Commerce recommends that it, along with other regulatory agencies, continually evaluate progress and re-attack the problem areas. Similar to Kentucky’s “Red Tape Reduction Initiative,” federal agencies should collect, review, and act on recommendations from industry. Input from these annual “check-ins” will guide the continuing burden reduction efforts of RRTFs and ensure regulators are moving in the right direction while allowing for policy changes as needed.

Expand the Model Process of FAST-41. The Department recommends further implementation of the streamlined permitting process created by “FAST-41.”⁹⁴ The FAST Act contains various provisions aimed at streamlining the environmental review process, with improved agency coordination through creation of a Coordinated Project Plan and a Permitting Dashboard which serves as a centralized information page for pending projects, as well as opportunities to better coordinate with state environmental documentation.

⁹⁴ Title 41 of the Fixing America’s Surface Transportation Act of 2015 (“Fast-41”, codified at 42 U.S.C. § 4370m) streamlines the Federal environmental review and permitting for certain infrastructure projects. FAST-41 created an interagency Federal Permitting Improvement Steering Council (FPISC); established new procedures for interagency consultation and coordination practices; authorized agencies to collect fees to help speed the review and permitting process; and uses the Department of Transportation’s “Permitting Dashboard” to track all covered projects.

The Federal Permitting Improvement Steering Council should consider including projects in an “economically significant” category. Those projects resulting in significant, immediate economic benefit to the United States should be considered for inclusion under this new category. Consideration should be extended to complex funded manufacturing projects that can demonstrate direct and indirect benefits to the domestic economy of significant value. To be eligible for the current streamlining process, projects in this sector or category would still need to meet the definition of covered project under FAST-41.

FAST-41 provides a model process that could be incorporated into other Federal legislation that governs Federal programs and requirements that apply to manufacturing facilities. To expand further the universe of manufacturing projects that benefit from streamlined regulatory approval processes, the Administration could work with members of Congress to both expand the definition of “covered project” under FAST-41 and to incorporate procedures similar to those found in FAST-41 in other legislation applicable to manufacturing projects. Expansion of the definition of covered projects to include those which result in immediate economic benefit to the United States would help to further goals of expanding the domestic economy and lessening permitting burdens for manufacturers seeking domestic expansion of their operations.

Conclusion

The domestic manufacturing sector and our broader economy are in desperate need of regulatory reforms in order to jump-start economic growth and create jobs, innovation and prosperity for all Americans. During the process of gathering information related to this report it has become apparent that we must make significant progress in improving the way government regulates the manufacturing sector. While environmental protections are of critical importance, many regulations are being enforced in a way that is limiting the growth of our economy and our global economic leadership, while in some cases regulations are providing no meaningful environmental or public health benefits. We believe prudent actions are advisable in order to return balance to regulatory procedures.

The Department believes that the recommendations contained in this report will provide a foundational base from which government can begin to approach this monumental task. These recommendations are consistent with all ongoing regulatory reform efforts, including those outlined in Executive Orders 13777⁹⁵ and 13766.⁹⁶ Working through their RRTFs, agencies must continue to shape more focused strategies for re-forming rules, guidance and policy to address the numerous challenges cited throughout this report. We hope that through highlighting these challenges it will become easier for regulatory agencies to clearly see contentious areas and work with the regulated community to resolve them in ways that unlock our economy’s potential and advance the goal of job creation. Agencies must be willing to work with those subject to their rules, guidance and policy to find methods to implement existing statutes in ways that are less cumbersome and restrictive.

⁹⁵ [EO 13777](#) (March 1, 2017).

⁹⁶ [EO 13766](#) (January 24, 2017).

The Department looks forward to partnering with other federal agencies to continue this endeavor in the future. We are optimistic that with continued emphasis the federal government can make progress towards these goals.

Appendix

Abbreviations Used in References to RFI Responses		
RFI #	Abbreviation	Respondent
6	NFIB	Nat'l Federation of Independent Business
10	PCBI	Pennsylvania Chamber of Business and Industry
14	Chromaflo	Chromaflo Technologies
37	ILMA	Independent Lubricant Manufacturers Association
39	IPC	Association Connecting Electronics Industries
42	Novelis	Novelis
43	Mosaic	Mosaic Fertilizer
46	ATT	AT&T Services
48	AF	NSR Program paper: Art Frass, John Graham, Jeff Holmstead
51	NSSGA	National Stone, Sand and Gravel Association
53	ACMA	American Composites Manufacturers Association
56	CPA	Composite Panel Association
63	CRN	Council for Responsible Nutrition
64	TFI	The Fertilizer Institute
66	ARTBA	American Road and Transportation Builders Association
67	AHFA	Am. Home Furnishings Alliance, Kitchen Cabinet Intl. Assoc., Intl Wood Prods Assocs., Rec. Vehicle Ind. Assoc., Natl Retail Federation, Retail Industry Leaders Assoc.
69	Domtar	Domtar - Nekoosa Mill
70	GMA	Grocery Manufacturers Association
71	Whirlpool	Whirlpool
74	Knouse	Knouse Foods Cooperative Inc.
75	SLMA	Southeastern Lumber Manufacturers Association
76	Boeing	Boeing
77	CIRT	Construction Industry Roundtable
79	Northrup Grumman	Northrop Grumman Corporation
83	TM	Twin Metals

RFI #	Abbreviation	Respondent
84	Ameren	Ameren Corp
85	NOPA	National Oilseed Processors Association
86	IPAA	Independent Petroleum Association of America
89	IECA	Industrial Energy Consumers of America
92	AISI	American Iron and Steel Institute
96	NMA	National Mining Association
98	IDFA	International Dairy Foods Association
100	ACA	American Coatings Association
101	AA	Aluminum Association
102	Renfro	Renfro
106	AFS	American Foundry Society
107	COC	US Chamber of Commerce
109	Valero	Valero Companies
110	Freeport	Freeport-McMoRan
111	GAC	Graphic Arts Coalition
112	SMA	Steel Manufacturers Association; Specialty Steel Industry of North America
114	AGC	Associated General Contractors of America
115	HSIA	Halogenated Solvents Industry Alliance
116	HAFO	National Alliance of Forest Owners
119	AGC	Associated General Contractors of America
120	NTMA/PMA	National Tooling and Machining Association; Precision Metalforming Association
122	AHPA	American Herbal Products Association
123	3M	3M
125	BP	BP America
126	API	American Petroleum Institute
127	PCA	Portland Cement Association
128	Pugh	Theresa Pugh Consulting

RFI #	Abbreviation	Respondent
131	NMMA	National Marine Manufacturers Association
133	PIA	Plastics Industry Association
136	AFPM	American Fuel & Petrochemical Manufacturers
137	MEMA	Motor & Equipment Manufacturers Association
141	ACC	American Chemistry Council - Chemical Products and Technology Division
144	AFPA	American Forest & Paper Association
146	NAM	National Association of Manufacturers
147	US Steel	United States Steel Corporation
148	TSGTA	Tri-State Generation and Transmission Association
151	PESA	Petroleum Equipment and Services Association
152	AWC	American Wood Council
155	PMPA	Precision Machined Products Association
158	CKRC	Cement Kiln Recycling Coalition
159	VI	The Vinyl Institute
160	TCC	Troy Chemical Corporation
170	APF	Air Permitting Forum
172	VI	The Vinyl Institute

Note: The number associated with the respondents are the RFI ID# and can be used to access the responses, see Docket ID “[DOC-2017-0001](#)” at www.regulations.gov.

A complete list of respondents can be found at: <https://www.commerce.gov/reducingburden>