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

Re: Comments to the Department of Commerce on the Request for Information on the "Impact of Federal Regulations on Domestic Manufacturing;" 82 Fed. Reg. 12,786; March 7, 2017

The American Petroleum Institute ("API") is pleased to provide comments to the Department of Commerce on the Request for Information (RFI) on the Impact of Federal Regulations on Domestic Manufacturing.

API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly $2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

Federal regulations from numerous departments, agencies, commissions and other entities impact domestic manufacturing. The same is true of those industries that engage in refining, processing and mineral extraction such as the oil and natural gas production industry. API has supported efforts to relieve the burdens imposed by rules from the previous Administration including: BLM's waste minimization rule, EPA's New Source Performance Standards for oil and gas, EPA's Renewable Fuels Standards, EPA's Risk Management Programs, SEC's foreign payment disclosure rule for oil and mining companies (the Section 1504 rule), and rules and issues regarding the implementation of EPA's Ozone NAAQS. We hope to work with the Administration further on these and other rules as described in more detail in our comments.

The business community, including the oil and natural gas industry, relies upon a cost-effective regulatory system that promotes the certainty and predictability necessary to make the massive capital investments required to bring energy and other projects to the U.S. economy. Executive agencies should embrace and advance a regulatory system that promotes access to domestic oil and natural gas resources, streamlined permitting and cost-effective regulations. This is consistent with the Administration's stated objectives of American energy dominance and energy independence.

Many obstacles stand in the way of these objectives. Many projects are held up due to the lack of efficiency in interagency coordination. Specific agencies should play a lead role in ensuring that the permitting of energy and manufacturing projects is efficiently shepherded through the relevant agencies. Also, the process for the permitting of energy projects from beginning to end is weighed down heavily by red tape. Executive agencies should work to streamline these processes and eliminate the many unnecessary duplicative steps. Furthermore, analyses under the National Environmental Policy Act extend months and years past the expected deadlines for action, with some projects stuck in the NEPA process for well over a decade. This overall regulatory environment disincentivizes investment in U.S. energy and manufacturing projects, preventing the nation from enhanced energy security and denying the U.S. Treasury significant revenues in the forms of bonuses, rents and royalties and jobs for the communities in which we operate.

API's specific comments are attached. The current federal permitting process has many issues. However, significant improvements could be achieved by standardizing permitting processes; improving coordination among federal and state agencies, including deadlines for permit issuance; and using a dispute resolution process to resolve interagency permitting problems. Furthermore, implementation of measures similar to the Fast Act would be beneficial.

We appreciate the opportunity to comment on the RFI and look forward to working cooperatively with the Department of Commerce and other agencies to improve the manufacturing climate in the United States. Please do not hesitate to contract me via email at isakowerk@api.org or via phone at (202) 682-8314 for any clarification or supplemental information.

Sincerely,

Kyle B. Isakower
Vice President, Regulatory and Economic Policy

Comments of American Petroleum Institute to the Department of Commerce on the Request for Information on the "Impact of Federal Regulations on Domestic Manufacturing;" 82 Fed. Reg. 12,786; March 7, 2017

The American Petroleum Institute ("API") is pleased to provide comments to the Department of Commerce on the Request for Information (RFI) on the Impact of Federal Regulations on Domestic Manufacturing.

Specifically this RFI asked for information on a number of questions. API shares the same urgency as the Administration to improve the regulatory environment to allow for a healthy and growing manufacturing sector. In the short comment period afforded it is difficult to provide the quantitative measures requested. In addition to the information provided in these comments API is available to discuss aspects in more detail with the Office of Policy and Strategic Planning. Please find our input below.

Manufacturing Permitting Process

1. How many permits from a Federal agency are required to build, expand or operate your manufacturing facilities? Which Federal agencies require permits and how long does it take to obtain them?

In the example of a refinery or manufacturing complex, permits that may be required include but are not limited to:

- Air
    - PSD/NNSR Permit (preconstruction authorization)
    - Minor NSR Permit (preconstruction authorization)
    - Title V Operating Permit
    - The above may be issued by EPA, an EPA-delegated permitting authority, or a permitting authority with an EPA-approved permitting program (SIP-approved)
- Wetlands – Section 404 or Section 10 of the Clean Water Act and associated consultations
    - Endangered Species Act Section 7 Consultation (USFWS) with appropriate authorities
    - Section 106 of the National Historic Preservation Act review (SHPO)
    - Consultations with USFWS is required to satisfy the Migratory Bird Species Act
    - Coastal Zone Consistency permit, and if dredging, a Section 401 Water Quality Certification and a USACE permit to Place Dredged Material in a Federal Dredged Material Placement Area for each placement area you expect to need. In Texas and Louisiana, State agencies are delegated authority for the Coastal Zone Consistency and Water Quality certification permits.
    - If applicable, Environmental Assessment (EA) or Environmental Impact Statement (EIS)
- Water
    - NPDES discharge permit issued by EPA, or issued by an EPA-delegated permitting authority, or a permitting authority with an EPA-approved permitting program
    - Construction stormwater permit
    - Water withdrawal permit
    - Water rights permit (if applicable, as some states hold all water rights in the state)
    - Drinking water permit

In all cases, there must be an evaluation of potential environmental releases to the air, water or land. In many cases there is a federal role in the permit process.

In the case of air emissions, the Clean Air Act (CAA) requires consideration of an areas attainment with relevant National Ambient Air Quality Standards (NAAQS) as established by Environmental Protection Administration (EPA). When building or expanding a manufacturing plant or other facilities, a New Source Review (NSR) review is required. When those plants or facilities are premised to be located in areas that are "nonattainment" with one or more NAAQS, a Nonattainment New Source Review (NNSR) permit is required. When those plants or facilities are premised to be located in areas that are attainment with the NAAQS, if the potential for air emissions is large enough, a Prevention of Significant Deterioration (PSD) permit is required.

In the case of NNSR permits (nonattainment areas), emissions must be offset so that the overall air emissions are reduced once the new facility is operational. If the facility is new, these offsets much be found from others by paying for more stringent controls at other facilities either directly or indirectly with the purchase of credits, or shutting down other facilities. An NNSR permit also requires application of costly Lowest Achievable Emission Reduction (LAER) control technologies to each emission source that will emit the pollutant for which the area is nonattainment. For both NNSR and PSD permits, a detailed analysis of possible impacts to air quality are required, including rigorous air quality modeling to demonstrate the new or expanded facility will not negatively impact air quality. PSD permits also require application of Best Available Control Technology (BACT) to emission sources emitting pollutants subject to PSD review.

Any refinery or manufacturing complex is also required under the Clean Air Act to obtain a Title V permit, an operating permit. These permits contain all the air pollution control requirements that are applicable to the facility, both federal and state, and although not as onerous as some other permitting requirements discussed, facilities spend a significant amount of cost and effort complying with these permits.

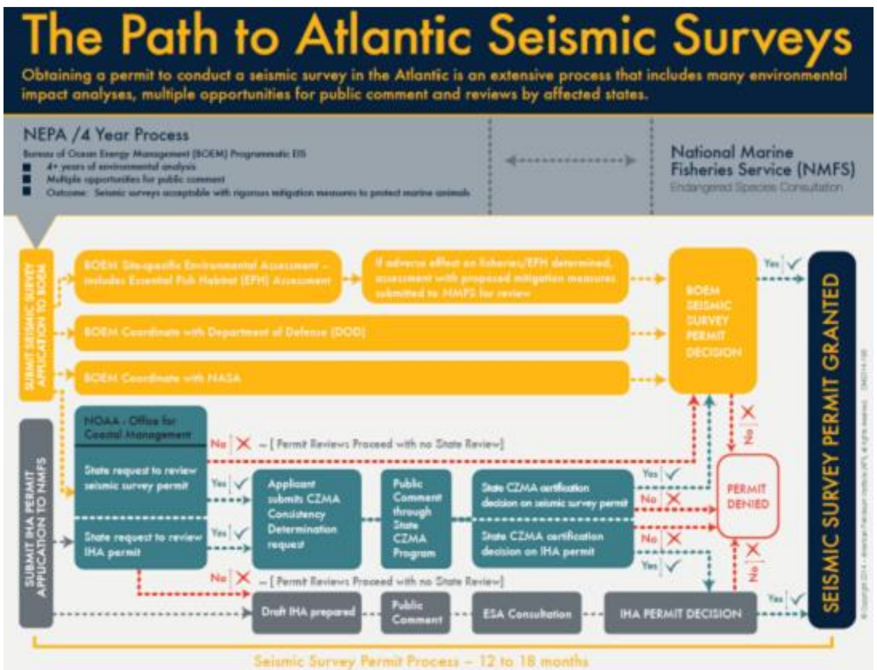
If a project will impact or require dredging and filling of jurisdictional wetlands, a wetlands permit, such as a Section 404 or Section 10 of the Clean Water Act permit, from the US Army Corps of Engineers (USACE) and associated consultations is required. These Individual permits can take years to obtain, especially if an Environmental Impact Statement (EIS) is required.

Many of the issues associated with refinery and manufacturing complex locations are also the case for oil or gas products terminals that might be employing marine transport to receive or export product.

For a natural gas import/export facility, a FERC Order is required. The FERC-led NEPA review process evaluates the risk it poses to public safety in the event of an accidental release. For an LNG Export project with a Liquefaction terminal, this evaluation is the rate-limiting step in receiving your FERC Order. The regulations which define the evaluation and the criteria that must be satisfied are administered by the USDOT (PHMSA), although FERC is heavily engaged in the process. In addition to the FERC-led NEPA process, these facilities also usually have to obtain a PSD or NNSR permit.

For oil and gas operations, even for seismic surveys, the process may be daunting. As you can see in the graphic below, the path to obtaining permits to conduct Atlantic Ocean seismic surveys is convoluted, requiring a company to await completion of an environmental analysis under the National Environmental Policy Act and consultation under the Endangered Species Act. Once those evaluations are complete, the company must then apply to the Bureau of Ocean Energy Management (BOEM) for a seismic survey permit. BOEM's decision on granting the seismic survey permit is contingent upon the company successfully obtaining a permit from the National Marine Fisheries Service (NMFS) for Incidental Harassment Authorization under the Marine Mammal Protection Act and concurrence from potentially-affected states that the seismic survey is consistent with the states' coastal zone management plans under the Coastal Zone Management Act.

This bureaucratic process was particularly costly and burdensome to companies seeking applications to run seismic surveys in the Atlantic Ocean. The inefficiencies in the process were exacerbated by a lack of cooperation and coordination between BOEM and NMFS. In the end, the Obama Administration refused to complete the process and BOEM denied permit applications based on spurious claims of potential environmental harm. As a result, new seismic data upon which to base future leasing and development decisions were not collected and any potential opening of the Atlantic to oil and gas development, and the resulting jobs that would be created, is now unnecessarily delayed.



Moreover, executive agencies should review the issues arising from the Endangered Species Act (ESA) to ensure that it is not arbitrarily used to restrict economic opportunities. State governments have successfully worked with private industry to preserve species and habitat. Executive agencies should assist and defer to state governments as it relates to the ESA. Additional opportunities for reform through legislative or regulatory means include: ending the proliferation of deadline lawsuits and ESA listing actions driven by "sue and settle"; improving the scientific basis and transparency of decisions under the ESA; ensuring greater rigor in scientific and economic/commercial analysis used in making critical habitat decisions; and strengthening incentives for voluntary conservation actions.

2. Do any of the Federal permits overlap with (or duplicate) other federal permits or those required by State or local agencies? If the answer is yes, how many permits? From which Federal agencies?

Even though responsibility for CAA permits is often delegated to the states and tribes and local air control agencies, EPA continues to play a role in reviewing and amending the permit programs as well as weighing in on NNSR/PSD permits in many cases. Even in cases where a state issues CAA permits under an EPA-approved SIP, 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. Examples of this are when the EPA requires the state to change evaluations the state has previously made regarding PSD air dispersion modeling analyses or BACT evaluations. There are also concerns with inconsistencies between the states and even the EPA regions. As mentioned, PSD permits require rigorous air quality modeling that can involve the state/local as well as EPA regional and program office staff (Office of Air Quality Planning and Standards).

There are local jurisdictions that are regulating air and water in similar ways to the federal permitting. Due to the vast number of regulations and registrations required, it is impossible to list all of the duplications that exist. For example, local ordinances can have local drinking water regulations, but the facility is also subject to the state drinking water regulations.

If a project is subject to a NEPA analysis, then there will be overlap between the requirements of the NEPA process and the requirements of certain permits. Considerations of a FERC-led NEPA review process follow.

- FERC requires placement of copies of air, wetlands and other permits (with applications) on the publicly accessible FERC docket as part of the NEPA proceeding. FERC reviews the documents and then, in some cases, requests the permittee take the analysis further, beyond the already-issued permits/approvals. For instance, a federal agency might provide their approval for the project of note, but FERC has the ability to review the letter, and request the permittee to provide more information because FERC is not convinced the previous federal authority that provided approval had been sufficiently thorough.
- In another example, a proposed source may have been issued a PSD and GHG air permit from a state with an EPA-approved permitting program. FERC has required that permittees continue analysis and modeling of the proposed facility air emissions in combination with mobile air emissions (which can take several months of additional work), but offered no guidance on how to calculate mobile emissions.

If a project is subject to CWA Section 404 permitting, the 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. For instance, in one member's recent Section 404 permitting effort, questions/concerns of seven federal/state agencies had to be addressed (USEPA, USACE, FERC, USFWS, NMFS, TPWD, TGLO), all raising issues about maintaining sufficient bird and fish habitat.

For some source categories (e.g., hazardous waste combustors), RCRA Treatment Storage and Disposal Permits have similar but often different air permit requirements for the same sources.

3. Briefly describe the most onerous part of your permitting process.

Air

The lack of certainty as to when the permit will be issued and the arbitrary inclusion of unanticipated permit requirements create significant burden, compliance difficulty, and business uncertainty for operators. Often operators cannot afford to challenge inclusion of unnecessary or unreasonable permit terms because, by the time the permit is finally issued, the project has already been delayed significantly by the agency's processing time.

Major projects that trigger PSD review in attainment areas, and even minor projects in some states, must do costly and time-consuming modeling to demonstrate the project will not cause or contribute to an exceedance of the NAAQS, resulting in a nonattainment for that area. EPA models require these proposed projects to do an overly conservative analysis that is not representative of real-world scenarios (i.e., modeling at emissions levels representing the maximum potential emissions (PTE) and including unlikely meteorological conditions that represent the worst case). This conservatism causes additional capital to install equipment that would not otherwise be required and to spend months on the modeling evaluation before an application is even submitted to the permitting authority. Even more additional time and resources are needed to interact again with the permitting authority on modeling issues. Lower NAAQS standards exacerbate the issue.

Required Best Achievable Control Technology (BACT) evaluations are more onerous than necessary. EPA policy requires an unnecessary 5-step top-down evaluation. States should have the authority and wide discretion on what should be included in a BACT evaluation, without adverse comments from EPA when the end result is likely known at the beginning of the evaluation.

Regarding US Army Corps of Engineers permitting, the most onerous burden is the time delays associated with the multiple agency concurrences that the Corps requires before the permit can be issued. Members have experienced considerable delays in acquiring Section 404 CWA permits, for instance, due to inconsistent wetlands determinations, delays in getting other federal agencies to provide concurrence, and other federal agencies asking similar/duplicative questions. Members have also experienced delays in getting jurisdictional determinations, even where they concur that no wetlands will be impacted in the proposed project, simply because the project is not tied to a Section 404 Individual Permit or when an inquiry is asked of USACE, because there is not enough staff to review all the incoming submittals in a timely manner.

For a FERC review, the most onerous part of the permitting process can be satisfying the FERC's concerns about public safety. There is no standard on how to demonstrate a safe design under FERC's requirements. In one member's project, even when the permittee met with FERC and other federal agencies at the beginning of the process to agree on a methodology and a format for results, after the agreed upon methodology was followed and the results submitted, FERC asked a significant number of additional questions which expanded the scope of the analysis well beyond what was agreed to.

4. If you could make one change to the Federal permitting process applicable to your manufacturing business or facilities, what would it be? How could the permitting process be modified to better suit your needs?

API's permit streamlining priorities include standardized permitting processes; better coordination among federal and states agencies, including deadlines for permit issuance; and a dispute resolution process to resolve interagency permitting issues.

API supports the following three recommended fixes to Clear Air Act New Source Review permits that were included in a recent article published in the Environmental Law Reporter.[1]

> "*A. A More Realistic Approach for Air Quality Modeling*
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> EPA's current modeling guidance requires deterministic air quality models using the maximum allowable emissions rate and the maximum allowable operating conditions for each averaging time. It also requires the use of modeling assumptions that yield the maximum impact on air quality in calculating background, including the effect of other sources in the area. However, sources typically operate well below their maximum allowable emission rates, and it would be highly unusual for all the sources in an area to be emitting at their highest allowable rates during a time when weather conditions would maximize the ambient impacts of their emissions. As a result, EPA's current modeling guidance substantially overstates the ambient air quality effects of a potential new source.
>
> One solution to the over-conservatism of the current approach would be to adopt a probabilistic modeling approach. Adoption of probabilistic methods would allow the use of distributions to reflect the variability in actual emissions, meteorology, and background. One common approach is to use Monte Carlo analysis to combine the information from the various probability distributions to provide an estimate (in the form of a distribution) of the effect on air quality. Thus, probabilistic analysis provides information on the variability and uncertainty in the estimated air quality effects and on the extent to which current deterministic modeling requirements overestimate the actual air quality impacts of a new source.
>
> Adoption of probabilistic air quality modeling approaches would be particularly appropriate with the statistical form adopted for the short-term NAAQS. Where a short-term NAAQS has been established to protect a sensitive subpopulation, it might also be possible to use probabilistic modeling to predict the likelihood that a member of such a subpopulation might be present and potentially exposed to peak concentrations caused by unusual circumstances related to weather or emission events.
>
> Obviously, in order for probabilistic modeling to be helpful, EPA must indicate a receptivity to such modeling. But the Agency should also provide guidance on what probabilistic cutpoint must be met when making a determination that a new source will

[1] Fraas, Arthur G., John D. Graham, and Jeff Holmstead. "EPA's New Source Review Program: Time for Reform?" *Environmental Law Reporter* 47.1 (2017): 10026-0040. *Resources for the Future*. 09 Jan. 2017. Web. 23 Mar. 2017. <http://www.rff.org/research/publications/epa-s-new-source-review-program-time-reform>.

not contribute to adverse air quality impacts. EPA is already using probabilistic modeling to various degrees in other programs, so it should be feasible to develop guidance for appropriate use of such modeling in the NSR program.

B. Reforms to the Offset Program

The statutory offset requirements for the NSR program were established in 1977 and were based on the assumption that, if an area was in NA, the problem was largely caused by local industrial sources that needed to install pollution controls. Therefore, if a company wanted to locate a new facility in that area, it could pay for pollution controls at another facility and thus obtain the emissions reduction credits it would need to offset emissions from the new facility.

Although this may be the case in some areas of the country, it is not the case in many others—especially when it comes to ozone. With the lowering of the ozone standard to 70 ppb, it appears that a number of rural areas will become NA areas, including areas that currently have no industrial facilities at all. In such areas, violations of the ozone standard are typically caused by a combination of natural background, motor vehicles that travel through the area, and pollution transported from long distances. Here, no offsets are available and, depending on how the offset program is implemented, the offset requirement may well serve as an effective prohibition on the construction of any industrial facilities.

The other scenario in which the offset requirement may effectively ban new industrial facilities arises from the fact that some areas of the country have been very aggressive over many years in their regulatory efforts to reduce ozone levels. It may be true, as some critics suggest, that some of these areas did not take aggressive regulatory action until passage of the 1990 CAA Amendments, but states with persistent ozone problems have spent the past 25 years looking for every conceivable way to reduce emissions related to ozone. In these areas, all the cost-effective emissions reductions (and some very costly ones as well) have already been mandated by regulation, and EPA does not allow such emissions reductions to be used as offsets. Where there are any offsets to be had in these areas, they are very expensive and often make it economically infeasible to locate any new industrial facility in the area, even a relatively small facility with state-of-the-art pollution controls.

Fortunately, potential administrative reforms would help address both concerns—rural areas where no offsets are available and heavily regulated areas where offsets, if they are available at all, are very costly. First, the CAA allows the developer of a proposed new facility to obtain offsets from another area (i.e., an area outside the NA area where the new facility will be located) as long as (1) the other area is also in NA and has "an equal or higher nonattainment classification" and (2) emissions from the other area contribute to NA in the area in which the new source will be located. Historically, it has been very difficult to obtain permission to use out-of-area offsets because EPA and states have required extensive modeling studies to show that emissions from the offset-producing area contribute to pollution levels that exceed NAAQS in the area in which the new facility is to be located. Industry representatives also report that, even where such modeling has been done, EPA has been reluctant to approve it.

However, advances in our understanding of air pollution have shown that ozone and fine PM (often referred to as PM2.5) are more a regional issue than a local issue, and that elevated levels of these pollutants in a particular area are caused in part by emissions from many other areas, including some that are very distant. This finding—based on EPA modeling studies showing that there is long-range transport of emissions that contribute to ozone and fine PM NA—is the basis for EPA's recent Cross-State Air Pollution Rule. The Rule required substantial emissions reductions from power plants in 28 states because EPA has found that they contribute to ozone and fine PM NA in other states.

Thus, instead of requiring case-by-case modeling studies to justify the use of out-of-area offsets, EPA and states could in many cases rely on the long-range transport studies that EPA has already done to show that emissions from 28 states contribute to ozone and fine PM NA in many other states. Even where EPA has not already done such modeling, companies seeking to rely on out-of-area offsets should be able to employ similar studies to justify the use of such offsets. This reform would not address all the concerns about current offset requirements, but it would significantly expand the pool of potential offsets in many parts of the country (especially in rural areas) while still achieving the program's environmental goals.

Unfortunately, the use of out-of-area offsets may not be an option for some heavily regulated areas such as the South Coast Air Quality Management District (SCAQMD) and the San Joaquin Valley in California because of the requirement that such offsets must come from an area that has "an equal or higher nonattainment classification." For the purposes of ozone, there are five different NA classifications— marginal, moderate, serious, severe, and extreme—and a developer who might want to build or expand a facility in an extreme area like SCAQMD would be able to use out-of-area offsets only from another extreme area, where offsets will also be very costly and may not be available.

Even in these areas, however, other reforms to the offset program may expand the pool of offsets and allow the development of some new manufacturing facilities. For example, EPA has historically insisted that emissions reductions required by regulation may not be used as offsets. This may be true when it comes to regulations promulgated by EPA, but states are also required to adopt their own sets of regulations, SIPs, to show how they will come into attainment. If an area wanted to preserve the option of attracting new manufacturing facilities, it could be allowed to set aside some of its SIP emissions reductions to be used as offsets, as long as the SIP shows that other reductions would allow the area to continue making reasonable further progress toward attainment.

As discussed above, a number of studies have shown that NA areas have lower levels of economic growth than attainment areas. This is likely caused, to a large extent, by current offset requirements, which have been developed over many years in a series of restrictive EPA policies and guidance documents. It may be time, especially in light of the new ozone standard, to revisit these requirements to ensure that they strike the right balance between improving air quality and allowing continued economic growth in NA areas.

C. Adoption of a Consistent Treatment for Pending Permit Applications

EPA has been inconsistent in its treatment of NSR permit applications that are pending when a new NAAQS comes into effect. Before 2010, it appears that such decisions were generally made on an ad hoc basis by individual state agencies. Some would require permit applicants to redo their air quality modeling to show compliance with a new standard, but others believed that this approach was not required. In their view, if an applicant had done the necessary modeling to show compliance with the standards in place when the permit application was submitted, no additional air quality modeling was required.

EPA did not address this issue when it adopted its one hour NO2 standard in 2010, but it became a point of contention between several permit applicants and environmental groups that were opposing their proposed projects. In response, EPA said that it did have authority to grandfather pending permit applications whenever a new or revised NAAQS was adopted, so applicants would not need to redo their air quality studies based on the standard. However, the Agency said, because it did not explicitly include a grandfathering provision as part of the new NO2 NAAQS, all applicants with pending permit applications were required to do another air quality study to show that emissions from their proposed projects would not cause or contribute to a violation of the new standard."

Additionally API recommends these additional NSR reform items:

- EPA should fix "netting" to allow use of projected actual emissions in lieu of Potential to Emit (PTE), as the rule allows in accordance with the "new level of actual emissions" in 40 CFR 52.21(b)(3)(v).
- The EPA models and procedures need to be updated to improve efficiency and to remove the excessive conservativism that exists in the model as discussed above.
- EPA should allow project netting not only for existing emission sources, as already allowed in the rule (but EPA has written policy memos to the contrary), but for hybrid units as well.
- "Begin actual construction" has, by policy, been extended to prohibit construction on "any installation necessary to accommodate the emissions unit". Sources should be able to conduct early work up until the piece of equipment is actually emitting. This includes laying underground piping, excavating, bringing in fill to prepare the area where the emission unit(s) will sit, and other efforts until the point prior to installing the emissions unit.
- BACT is fairly stable and well-known for most industries/sources. BACT evaluations need not be as onerous as the traditional 5-step top-down evaluation that EPA continues to insist upon. BACT for most source types is well established and a detailed analysis is not warranted. States should have the authority and wide discretion in a BACT evaluation, without adverse comments from EPA when the end result is likely known at the beginning of the evaluation. EPA should specify top-down BACT is only necessary in unique scenarios.

- EPA should re-evaluate the GHG Significant Emissions Rate and consider comments supporting de minimis thresholds above 75,000 tpy.
- EPA should revisit the 2009 proposal for debottlenecking and finalize that rule.

For projects that require an Environmental Assessment (EA) or Environmental Impact Statement, either for a FERC review, or other federal permit requirements, the applicant should complete the Environmental Impact Statement, not the federal agency. The EIS (or EA) should be filed with the "lead agency" and they can review/approve it. Members believe this approach would have greatly reduced the time it has taken to receive a FERC Order or other federal permit that required such an analysis. It would also reduce federal agency workload to a more manageable level. There should also be clear documentation which describes what the applicant needs to include in their EIS to satisfy the filing requirements. There should also be an opportunity for open dialogue through the pre-filing and post-filing (approval) process.

5. Are there Federal, State, or local agencies that you have worked with on permitting whose practices should be widely implemented? What is it you like about those practices?

Our members have had positive experiences with permits by rule, where a facility operator can simply notify the permitting agency when all requirements contained in the "rule" are met by the planned construction. General permits that again apply to a set array of conditions are useful to commence construction with a notification of use.

Regulatory Burden/Compliance:

1. Please list the top four regulations that you believe are most burdensome for your manufacturing business. Please identify the agency that issues each one. Specific citation of codes from the Code of Federal Regulations would be appreciated.

ENVIRONMENTAL PROTECTION AGENCY (40 CFR):

PART 50 - NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS (§§ 50.1 - 50.19) --- especially ozone standards

PART 51 - REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

- Subpart I - Review of New Sources and Modifications (§§ 51.160 - 51.166)
- Subpart X - Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard (§§ 51.900 - 51.919)
- Subpart Z - Provisions for Implementation of PM2.5 National Ambient Air Quality Standards (§§ 51.1000 - 51.1016)
- Subpart AA - Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards (§§ 51.1100 - 51.1119)
- Appendix S to Part 51 - Emission Offset Interpretative Ruling
- Appendix W to Part 51 - Guideline on Air Quality Models

Permitting processes contained therein are particularly burdensome.

PART 60 - STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (§§ 60.1 - 60.5880)

Ensuring that rules are cost effective and achievable is an ongoing challenge.

2. How could regulatory compliance be simplified within your industry or sector?

- Reduce the burden by minimizing the amount of redundant reporting required.
- Harmonize the limits for the same pollutants in NSPS and MACT rules for the same affected sources.
- Reduce the number of redundant LDAR regulations to which a facility may be subject.

3. Please provide any other specific recommendations, not addressed by the questions above, that you believe would help reduce unnecessary Federal agency regulation of your business.

A. Improve Advisory Boards.

EPA's Science Advisory Board or (SAB) was established in 1978 to provide scientific advice to the Administrator. Specifically, the SAB is authorized to:

- review the quality and relevance of the scientific and technical information being used by the EPA or proposed as the basis for Agency regulations;
- review EPA research programs and plans;
- provide science advice as requested by the EPA Administrator, and
- advise the agency on broad scientific matters.

Much of the work of the SAB is carried out by designated subcommittees or panels and recommendations are moved to the chartered SAB for final decision making. While the participants selected for the chartered SAB and the various subcommittees and panels – predominantly from academia – are certainly knowledgeable in their particular field of study, they are not always well versed in the technical or operational aspects of the industry that will ultimately be subject to the regulations or research program or plans under review. Expertise matters!

There are several instances where the oil and natural gas industry has offered superb candidates with the essential extensive practical and current expertise for consideration by the SAB in order to provide a proper balance to the advisory subcommittee or panel only to be turned down by the SAB Staff Office due to a perceived "disqualifying financial interest" under the Ethics in Government Act of 1978.

It is our view that a balanced panel is supported by the Federal Advisory Committee Act (FACA). Section 5(b)(2) of the FACA requires "the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." The corresponding FACA regulations reiterate this requirement at 41 CFR § 102-3.30(c), and, for discretionary committees being established, renewed, or reestablished, require agencies to provide a description of their plan to attain fairly balanced membership during the charter consultation process with the General Services Administration. *See* 41 CFR § 102-3.60(b)(3). The document created through this process is the Membership Balance Plan. The regulations further clarify that (1) the purpose of the membership balance plan is to ensure "that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee;" and (2) "[a]dvisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed." *Id*. We believe that the SAB Staff Office should follow a similar process when appointing panels to serve under the auspices of the chartered SAB.

In addition, EPA has explained that SAB members and panelists are scientific and technical experts who serve as Special Government Employees (SGEs). As SGEs they are required to abide by appropriate federal ethics laws and implementing regulations as well as other applicable laws. While the SAB is bound by these requirements in making selections, EPA has acknowledged that there is no automatic exclusion from serving on the SAB or its panels merely because a nominee may work in or for industry. API could not agree more. It is those very industry individuals, with extensive field experience and first-hand knowledge of the techniques used in drilling and completions, who are critical to a scientifically sound examination of very specialized processes, the research addressing those processes, and the real world application of these processes in the field. Industry's direct involvement adds validity to this important peer review process.

Finally, conflict of interest waivers for SGEs serving on SAB panels and other committees subject to FACA are firmly established in federal law, regulations, and EPA guidance. Under federal law, a conflict of interest waiver may be granted "when the need for the individual's services outweighs the potential conflict of interest created by the financial interest involved." 18 U.S.C. §208(b)(3).

Industry candidates can certainly serve on SAB subcommittees and panels with nothing but the utmost professionalism, impartiality, and dedication to the task at hand. We recommend that the SAB Office reconsider how it views a balanced panel and be encouraged to fairly evaluate the full suite of candidates interested in serving in this capacity.

B. Leak Detection and Repair.

Leak detection could be accomplished more cost effectively through the use infrared cameras to detect hydrocarbon leaks compared to Method 21. Historically, petrochemical facilities have been required to conduct leak detection and repair (LDAR) programs prescribed by EPA's Method 21. This laborious method requires that each valve, pump, flange, and compressors in hydrocarbon service be manually surveyed for hydrocarbon leaks. Most, if not all, refineries and chemical plants have monitoring programs that require the Method 21 monitoring activity which may require over 1million points to be surveyed annually. This requirement dictates numerous monitoring technicians' onsite crawling around process units daily with analyzers trying to detect hydrocarbon leaks. The current method captures equipment leaks of all sizes but the vast majority of the emissions actually come from a small number of components. In fact, an API study showed that 92% of reducible emissions come from only ~0.13% of components (API Publication 310).

The key to reducing emissions better than or equivalent to current methodology for LDAR, is detecting the larger "leakers" sooner and making repairs faster. If you want to reduce emissions, then you must reduce the leak duration of these larger "leakers." The current methodology has proven ineffective and inefficient at solving this dilemma. Fortunately there is a smarter way to do LDAR using optical gas imaging (OGI) cameras.

OGI technology utilizes IR detection to "see" emissions in real-time with the help of special lens developed specifically for the absorption range of hydrocarbons. It is more efficient and effective at finding leaks than traditional LDAR programs currently in place. Here's a simple analogy:

- Method 21 – Finding a leak is like looking for a needle in haystack by inspecting every straw to see if it is a needle. Hence, we are inspecting thousands of components to find one leak (or no leaks).
- OGI – finds a leak by rapid screening of components – the focus in on the "needle" rather than every straw. Similarly to using a metal detector at the beach to find coins than digging through every inch of the beach.

State and federal agencies have recognized the potential of OGI technology for some time. In the final New Source Performance Standard Subpart OOOOa, EPA finalized the use of OGI cameras in the rule to satisfy the leak monitoring and repair requirements. The agency should expand its use to allow all sources categories to satisfy their LDAR programs within their respective regulations.

C. Continuous Emission Monitor Certifications Requirements

Some federal air regulations (e.g., NSPS Subpart Ja) require annual certifications (Relative Accuracy Testing Assessment or RATA) on the continuous emission monitoring devices. The rule also requires quarterly cylinder gas audits (CGAs), which are also a form of analyzer system certification. These annual RATAs are costly and are unnecessary, especially when quarterly system assessments are required. Furthermore, some rules only require CGAs to be done after the initial RATA has been conducted for items required to have CEMS. A re-RATA is required under these regulations only in the event of a significant change in the system (e.g., change analyzer system, probe locations, etc.). Therefore, it is suggested the CGAs should be adequate to ensure that the monitoring systems are operating correctly without the increase costs of the annual RATAs.

D. Periodic Reporting.

Several rules under NSPS and NESHAPS require either quarterly or semi-annual reports for various requirements. These reports are time consuming and do not provide any environmental benefit. Therefore it is suggested any periodic report should only occur on an annual basis or at the very least, should only be required no more frequent than semi-annually. It is also suggested that the periodic report due dates be staggered throughout the year instead of at the mid or end of year timeframe.

E. Notification Requirements.

Under certain NSPS and NESHAPS, agency notifications are required for different types of equipment when commencing operations or in some cases returning a piece of equipment back into service. Specifically, operations of petroleum storage tanks require multiple types of notifications as noted: 60 days prior to refill, 60 days after initial fill, 15 days after startup, and NSPS repair extensions. These notices are time consuming, provide no environmental benefit and are unnecessary. The notifications should be significantly reduced or eliminated altogether.

The annual requirements for Greenhouse Gases (GHG) and other emissions reporting should be eliminated or perhaps reduced to once every 5 or 10 years instead of the annual reporting requirements as required today. Essentially the GHG emissions remain the same, unless there is a major change to a facility (e.g., startup/shutdown of a unit) that would alter the reported emissions. In these types of situations, the previously reported value could be updated based on the activity and the associated increased/decreased value. Also, it is suggested that use of company records, such as engineering calculations and historical samples, should be allowed to avoid expensive and unnecessary calibration and sampling activity. The GHG reporting rule requires a high degree of accuracy, which is met through onerous calibration and sampling. We suggest the GHG reporting be an emissions estimate calculation, similar to TRI, which will allow the use of company records and therefore eliminate the calibration/sampling/QA/QC processes. Furthermore, GHG reporting should be to only the estimated GHG emissions, as opposed to the inputs, feed volumes, product volumes, etc. This would also include the elimination of the data validation requirements in EPA's electronic Greenhouse Gas Reporting Tool (eGGRT) which add considerable burden to electronic reporting.

F. Army Corp CWA 404 permitting / Wetlands Jurisdictional Determination.

The primary concern with CWA 404 permitting is the duplicative, protracted permitting process. There are a number of specific issues that impact the permitting schedule. First, state agencies can provide comments that ask the permittee to address issues that are duplicative of those identified in the permit application. Secondly, the scope of the vetting / concurrence process is unnecessarily burdensome and slows the process down. Corps specialists review permit applications first and determine if non-wetlands impacts are anticipated (e.g., archeological, historical impacts, wildlife, etc.). Concurrence for routine permits with no non-wetland impacts should not be required. Lastly, the Corps is understaffed for the administrative burden under the current process. In a recent project, the public notice language was agreed upon by a member company and the Corps early in the process, but the Corps delayed issuing the notice for over a month. Efforts to streamline the process would relieve the burden on the Corps and regulated parties, as well as expedite the permitting process. It is problematic that there is no defined timeline associated with the individual permitting process; however, it is unclear how to get the agencies to comply with explicit timing requirements, even if they were set by the regulations.

Separately, the current jurisdictional determination (JD) process and lack of clear jurisdiction on marginal wetlands and water features provides uncertainty for industry and the public and bogs down USACE with unnecessary submittals. Clear and consistent guidance on jurisdiction amongst the regional offices, with a practical and understandable limit, would likely reduce the Corps workload and allow projects to move forward with more confidence and without fear of Corps enforcement. Threshold guidance could also be useful in defining the EA vs. EIS process with the individual permitting scheme. Guidance should be regionally consistent.