To: Dravis, Samantha[dravis.samantha@epa.gov]
From: megan.berge@bakerbotts.com
Sent: Mon 5/22/2017 3:03:04 PM
Subject: CCI and C85 Comments on the Regulatory Reform Agenda
C85 Comments on Evaluation of Regulations.pdf
CCIG Comments on Evaluation of Regulations.pdf

Samantha,

Attached for your review are comments by the Class of '85 Regulatory Response Groups, which consist of more than 20 electric generating companies located throughout the country, on EPA's request for comment on regulatory reforms. We attempted to be as narrow, targeted, and specific as possible in our feedback. Please do not hesitate to contact me if you have questions or would appreciate follow up information.

Best,

Megan

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COMMENTS OF THE CLASS OF '85 REGULATORY RESPONSE GROUP

ON THE

REQUEST FOR COMMENTS ON THE "EVALUATION OF EXISTING REGULATIONS"

EPA Docket No. EPA–HQ–OA–2017–0190

I. INTRODUCTION

On April 13, 2017, the U.S. Environmental Protection Agency ("EPA" or "Agency") published in the *Federal Register*, at 82 Fed. Reg. 17,793, a notice entitled "Evaluation of Existing Regulations" ("Notice"), requesting public comment on regulatory reform issues. The Notice was published in response to Executive Order 13777 ("EO"), entitled "Enforcing the Regulatory Reform Agenda," which directs federal agencies to establish Regulatory Reform Task Forces ("Task Forces") to evaluate existing regulations and make recommendations regarding their repeal, replacement, or modification, with the goal of alleviating "unnecessary regulatory burdens."[1] The EO directs the Task Forces to seek input from entities significantly affected by federal regulations in their efforts to identify regulations for reform. EPA's Notice specifically requests comments on EPA regulations "that may be appropriate for repeal, replacement, or modification."[2]

The Class of '85 Regulatory Response Group ("Class of '85" or "Group") respectfully submits these comments in response to the Notice.[3] The Class of '85 is a voluntary ad hoc coalition of approximately 30 electric generating companies from around the country that has been actively involved in the development of Clean Air Act ("CAA") rules and guidance affecting the electric generating industry for over 25 years. Members of the Class of '85 own and operate electric generating units ("EGUs") subject to the CAA in approximately 35 states throughout the country, and will be directly affected by any CAA-related regulations pertaining to the electric generating industry that are repealed, replaced, or modified by EPA.

The Class of '85 encourages EPA to make targeted edits to certain regulatory requirements that are redundant or unnecessary.[4] The changes proposed in these comments would significantly reduce the costs and burdens associated with a number of regulatory requirements, and this streamlining would have no negative environmental impacts, and, in some cases, even positive environmental outcomes.

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[1] 82 Fed. Reg. 12,285 (Mar. 1, 2017).

[2] 82 Fed. Reg. at 17,793.

[3] Attached as Appendix A is a list of the Class of '85 members who support these comments.

[4] Brief descriptions of the numerous regulatory programs addressed in these comments are included in Appendix B.

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II. COMMENTS

A. EPA Should Streamline Recordkeeping and Reporting Requirements to Eliminate Duplicative Obligations.

EPA should revise certain provisions of the Code of Federal Regulations ("C.F.R.") to streamline recordkeeping and reporting requirements across the Agency's various regulatory programs. In numerous cases, EGUs are required to submit the same information to the Agency under multiple programs, resulting in duplicative reporting that provides no environmental benefit at the cost of increased staff time. Specific examples of duplicative reporting requirements that EPA should streamline include the following:

- **Greenhouse Gas ("GHG") Emissions Reporting.** EPA should exempt from the requirement to submit carbon dioxide ("CO_2") emissions data pursuant to the GHG Reporting Rule[5] EGUs that already submit to EPA all information needed to calculate CO_2e emissions (*e.g.*, CO_2, nitrous oxide, and methane) pursuant to other rules, such as the Acid Rain Program. For instance, 40 C.F.R. § 98.3(c)(4)(iii)(B) of the GHG Reporting Rule is duplicative of the Acid Rain Program requirement in 40 C.F.R. § 75.64 that EGUs submit to EPA CO_2 mass emissions data. For EGUs subject to these duplicative requirements, submission of this data under the GHG Reporting Rule is superfluous and unnecessary. Eliminating these duplicative requirements would streamline reporting and eliminate a regulatory burden that provides no environmental benefits.

- **Periodic Maximum Achievable Control Technology ("MACT") Reports.** EPA should streamline duplicative reporting requirements in the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Industrial, Commercial, and Institutional and Process Heaters ("Boiler MACT") and Title V regulations. Specifically, EPA should eliminate the requirement to submit annual and biennial reports under the Boiler MACT,[6] where such submissions are duplicative of Title V reports. For example, under the Boiler MACT, periodic reports must include information on whether the source experienced any deviations from an emission limit or operating limit.[7] This requirement is duplicative of the requirement to include in Title V reports information on "[a]ll instances of deviations from permit requirements."[8] The Class of '85 urges EPA to streamline these regulations to reduce the regulatory burden on industry and the administrative burden on EPA.

- **Part 60 Summary Reports.** EPA should eliminate the requirement in Part 60[9] to submit information in a summary report that already is submitted pursuant to the Part

[5] 81 Fed. Reg. 89,188 (Dec. 9, 2016).

[6] *See* 40 C.F.R. § 63.7550.

[7] 40 C.F.R. § 63.7550(d).

[8] 40 C.F.R. § 70.6(3)(iii).

[9] *See* 40 C.F.R. § 60.7(d).

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75 Electronic Data Reporting ("EDR") requirements,[10] as the submission of certain information in the summary report is unnecessary and duplicative of the EDR submissions.

- **Part 64 Compliance Assurance Monitoring ("CAM").** EPA should modify the Part 64 CAM provisions[11] to eliminate requirements that have become unnecessary and outdated in light of subsequent regulations. For example, electrostatic precipitator ("ESP") power monitoring under CAM[12] has been rendered unnecessary by continuous particulate matter ("PM") monitoring utilizing either PM Continuous Emissions Monitoring Systems ("CEMS") or PM Continuous Parametric Monitoring Systems ("CPMS"), and testing required by the Mercury and Air Toxics Standards ("MATS").[13]

B. EPA Should Eliminate Monitoring and Testing Requirements That Provide No Environmental Benefits.

The Class of '85 urges EPA to eliminate emission monitoring and equipment testing requirements that provide no environmental benefits. Elimination of these requirements would result in significant cost savings for the electric generating industry with no environmental impact. In certain situations, elimination of equipment testing requirements would actually result in *reduced* emissions. Opportunities to eliminate these environmentally unnecessary (and in some cases, environmentally detrimental) requirements exist in numerous CAA programs, including the following:

- **Monitoring Certification and Quality Assurance/Quality Control ("QA/QC") Redundancies.** EPA should eliminate redundancies between the Part 60 and Part 75 monitoring certification and QA/QC requirements by adding language to Part 60 that provides sources the option to comply only with Part 75 where requirements are duplicative. For example, where Subpart A (*e.g.*, 40 C.F.R. § 60.8 and/or § 60.13), Subpart D, or Subpart GG refer to the appendices in Part 60 for test methods, performance specifications, and QA/QC standards (*e.g.*, Appendix A, B, or F), those references would be replaced by similar references to Part 75.

- **CEMS Certifications on Bypass Stacks.** EPA should reduce the MATS requirements for CEMS certification on bypass stacks in cases where bypass stacks are rarely used (*i.e.*, where bypass stacks operate equivalent to a capacity factor of less than one percent).[14] In these cases, affected sources may be required to bypass *only* for purposes of CEMS certification. For example, one Class of '85 member installed CEMS (PM, mercury, and hydrogen chloride) on the bypass stacks for two

[10] *See* 40 C.F.R. § 75.64.

[11] *See* 40 C.F.R. §§ 64.1-10.

[12] *See* 40 C.F.R. § 64.3.

[13] Table 5 to Subpart UUUUU of Part 63.

[14] *See* 40 C.F.R. § 63.10010(a)(4).

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of its units. This company has significantly reduced the use of these bypass stacks, and, in fact, has not used the bypasses since December 2016 and expects very limited use, if any, in the future. Because the company is using the bypass stacks on a very limited basis, it cannot fulfill the CEMS certification requirement unless it runs the stacks specifically for that purpose. In situations like this, the CEMS certification requirement actually results in *increased* emissions because the stacks would not otherwise be in use. Additionally, for some EGUs, the operation of bypass stacks for the sole purpose of CEMS certification could result in emission limit violations. It is illogical that compliance with a monitoring requirement would result in noncompliance with an emission limit. Reducing the frequency of CEMS certification requirements for infrequently used bypass stacks would prevent these unnecessary emissions.

- **Opacity Monitoring Requirements.** EPA should exempt from the Part 60 opacity monitoring requirements[15] units on which a PM CPMS or PM CEMS is installed, as these systems more accurately measure PM emissions than do opacity monitors. In such cases, opacity monitors are unnecessary to assure compliance with PM emissions limits. Relatedly, EPA should edit the text of 40 C.F.R. §§ 60.45(a) and 60.48Da(o)(2) so that EGUs with wet stacks have the option to use opacity monitors as parametric monitors rather than reporting monitors. This is appropriate for EGUs with wet stacks, as opacity monitors are not reliable indicators of PM emissions for facilities with wet scrubbers, as EPA has recognized.[16] Alternatively, EPA could allow EGUs with wet stacks the option of correlating a series of PM stack testing with the opacity monitor results to establish an appropriate compliance limit for the opacity monitor in light of the wet flue gas conditions. Finally, EPA should clarify that Subpart D PM and opacity standards and monitoring requirements apply only when a boiler is operating.[17] Boilers do not generate emissions when they are not combusting fuel, so there is no need for these requirements to apply during these times.

- **Infrequently Operated Reciprocating Internal Combustion Engines ("RICE").** EPA should reduce the RICE MACT monitoring and testing requirements for non-emergency engines that operate less than 50 hours per year.[18] First, EPA should revise the requirement that testing be completed every 8,760 hours of operation or every three years, whichever comes first,[19] to allow the option that testing be completed (1) based on a reasonable number of hours of engine operation (i.e., 500 hours) or (2) every three years. Eliminating the requirement to perform testing every

[15] *See* 40 C.F.R. § 60.45(a); § 60.48Da(o)(2).

[16] *See, e.g.*, 40 C.F.R. § 75.14(b) (exempting EGUs with wet flue gas streams from opacity monitoring requirements).

[17] *See* 40 C.F.R.§ 60.45.

[18] *See* 40 C.F.R. Part 63, Subpart ZZZZ.

[19] *See* 40 C.F.R. Part 63, Subpart ZZZZ, Table 3.

8,760 hours or every three years, whichever comes first, would allow for less frequent testing that would have both economic and environmental benefits. It would avoid forcing units to run and burn a significant amount of fuel solely for the purpose of compliance testing. For example, one Class of '85 member estimates that requiring testing once every three years wastes approximately 10,000 gallons of diesel fuel, as the units are forced to run purely for the purposes of testing. Second, the requirement to continuously monitor catalyst inlet temperature and pressure drop is excessive and provides little benefit.[20] These two parameters should be recorded during periodic compliance testing to verify that they are within the allowable ranges during normal operation.

- **Relative Accuracy Test Audits ("RATA") Testing.** Part 75 requires periodic RATAs of all CEMS.[21] EPA should reduce the number of RATA runs required under Part 75 from nine to three, which would provide just as accurate results with fewer burdens. A study by RMB Consulting & Research, Inc. and the Electric Power Research Institute has found that "if the RATA criteria is [stet] met using the results from the first three, four, five or six test runs, performing additional test runs has no impact on the RATA results and consequently no benefit."[22] *See* Table 1. Accordingly, if the RATA criteria are satisfied using the results from the first three test runs, no additional test runs should be required, and the RATA should be considered complete. Sources should retain the option to perform additional test runs as necessary, pursuant to the current RATA requirements.

[20] *See* 40 C.F.R. Part 63, Subpart ZZZZ, Table 6.

[21] *See* 40 C.F.R. Part 75, Appendix B; § 75.74.

[22] Russell S. Berry and Stephen K. Norfleet, RMB Consulting & Research, Inc., and Charles E. Dene, Electric Power Research Institute, *The Evolution of Part 75 Performance Test Procedures and Specifications*, at http://www.rmb-consulting.com/newpaper/tucson/perfspec.html.

Table 1: Simulated RATA Data[23]						
Run Number	**CEMS Value**	**Reference Method Value**	**Standard Deviation**	**t-value**	**Confidence Coefficient**	**Relative Accuracy**
1	103	100				
2	97	100	4.24	12.71	38.12	38.12
3	103	100	3.46	4.303	8.61	9.61
4	92	100	5.32	3.182	8.46	9.71
5	110	100	6.82	2.776	8.47	9.47
6	88	100	8.08	2.571	8.49	9.65
7	114	100	9.35	2.447	8.64	9.64
8	84	100	10.53	2.365	8.81	9.93
9	117	100	11.56	2.306	8.89	9.77

- **Relative Accuracy Audits ("RAAs").** EPA should eliminate the requirement to perform quarterly RAAs for units that have converted from hardware CEMS to a software-based predictive emission monitoring system ("PEMS").[24] This requirement is unnecessary because, unlike a CEMS, a PEMS is a computer model that does not change over time. These units already are required to perform annual RATA testing, which is sufficient to ensure adequate functioning of the PEMS. Performing RAAs on PEMS is a resource and time-intensive process that does not yield any incremental benefit. For example, one Group member has its plant staff maintain old CEMS sample lines, stack probes, and sample pumps so that they can perform the RAA at ground level rather than climb the stacks with a portable analyzer. This effectively defeats the purpose of replacing the old CEMS system.

- **Linearity.** EPA should allow EGUs to perform CEMS linearity and calibrations under Part 75 when units are offline. It takes approximately one hour to perform a linearity, so it is difficult to complete a linearity on combustion turbines that operate for short periods of time. Performance of a linearity while a unit is offline would have no impact on test accuracy, as the CEMS is monitoring calibration gas and not stack gas. Accordingly, this revision would avoid requiring units to operate longer than they otherwise would (and therefore emitting more than they otherwise would) solely to complete a test.

[23] *Id.*

[24] *See* 40 C.F.R. Part 60, Appendix F, § 5.1.3.

- **Wall Effects Adjustment Factor.** 40 C.F.R. § 75.59(a)(7)(ii)(S) allows for the establishment of a "[c]alculated (site-specific) wall effects adjustment factor determined *during the run*" (emphasis added). However, determining wall effects adjustment factors can take hours, which requires the source owner to maintain the unit at uneconomic loads for longer periods than necessary. EPA should allow EGUs the option to establish a site-specific reference method 2H Wall-Effects adjustment factor under Part 75 so that EGUs no longer need to operate at uneconomic loads for long periods of time just to establish a wall effects adjustment factor.[25]

- **Tuning Requirements for New/Modified Units.** EPA should exempt new and modified units with best available control technology ("BACT") limits from the initial MATS nitrogen oxides ("NOx") and carbon monoxide ("CO") tuning requirements.[26] Since these limits are set based on the "best performing" controls, tuning of newly installed equipment is unnecessary.[27]

C. EPA Should Revise Maintenance Requirements That Provide No Environmental Benefits.

Numerous CAA programs contain maintenance requirements that are time-consuming and burdensome and yet yield negligible environmental benefits. The Class of '85 urges EPA to revise these unnecessary maintenance requirements to reduce the regulatory burden on the electric generating industry. Examples of provisions that should be revised include the following:

- **Emergency Engines Under the RICE MACT and New Source Performance Standards ("NSPS").** The RICE MACT and NSPS limit operation of emergency engines to 100 hours of operation per year for maintenance and readiness testing, 50 of which can be used for non-emergency operation.[28] Additionally, the RICE NSPS requires owners/operators to maintain emergency engines per the manufacturer's specifications.[29] These requirements have two significant ramifications for owners and operators of emergency engines, while providing negligible environmental benefit.

  First, owners/operators must spend an unreasonable amount of time tracking the hours of operation of these engines, as well as the reasons for which operation occurred. The time spent on this tracking is grossly disproportionate to the amount of time that these engines operate. For example, one Group member has over 80 small

[25] *See* 40 C.F.R. § 75.59(a)(7)(ii)(S).

[26] *See* 40 C.F.R. § 63.10005(e).

[27] EPA should consider extending this exemption from initial tuning requirements to existing units with controls that have been determined to be equivalent to BACT pursuant to consent decrees or other regulatory program requirements, such as a regional haze state implementation plan.

[28] 40 C.F.R. § 63.6640(f); 40 C.F.R. § 60.4211(f).

[29] 40 C.F.R. §60.4211(a)(1).

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engines (*i.e.*, under 500 horsepower) that are subject to either the RICE MACT or NSPS. On average, these engines each operate approximately 20 hours per calendar year. To document compliance with the hours of operation limit, the company spends an average of six hours per engine, each year, tracking and reporting operations. In other words, for every 20 hours of operating time, the company spends six hours on paperwork—a highly inefficient ratio. Additionally, compliance with the Engine NSPS requirement to maintain emergency engines per the manufacturer's specifications requires burdensome tracking for facilities that own dozens of certified generators from different manufacturers, all of which have different maintenance procedures and schedules.

Second, owners/operators must comply with excessive maintenance requirements for these small, infrequently operated engines. Specifically, the RICE MACT requires owners/operators to perform frequent oil changes or oil analyses,[30] which are unnecessary for infrequently run units and result in the unnecessary and environmentally burdensome disposal of oil. These unnecessary oil changes and oil analyses also are expensive; one Group member estimates that it spends approximately $700 on annual maintenance for each emergency engine (over $55,000 annually combined). Additionally, the RICE NSPS requirement to comply with manufacturer specifications can similarly result in unnecessary oil changes,[31] as well as other unnecessary maintenance procedures, on emergency engines that run infrequently.

The Group proposes three solutions to these problems, all of which would significantly reduce the tracking, reporting, and maintenance burdens discussed above, with negligible environmental impact:

- *First*, the Group urges EPA to amend the RICE MACT and NSPS to exempt emergency engines under 500 horsepower. This would (1) eliminate the excessive tracking requirements for run hours and reasons for run; and (2) eliminate the requirement for unnecessary and environmentally detrimental oil changes or oil analyses under 40 C.F.R. § 63.6625(i)-(j). Instead, oil changes would be performed as needed to properly maintain units in light of how much they have run. These changes would result in significant cost savings and drastically reduce administrative burdens, without changing the environmental benefits of the MACT, as these units are very small with low emissions. At a minimum, EPA should exempt emergency engines under 500 horsepower from tracking requirements.

- *Second*, for emergency engines over 500 horsepower that remain subject to the RICE MACT and NSPS, EPA should eliminate the limitation of non-emergency operation to 50 hours per year; instead, EPA should allow these

[30] 40 C.F.R. § 63.6625(i)-(j).

[31] 40 C.F.R. § 60.4211(a)(1). .

units to operate up to 100 hours per year for maintenance, readiness testing, *and* non-emergency operation (not to include operation as part of a financial arrangement with another entity). This would eliminate the need to track the reasons for which the units operate while ensuring that these units do not operate any more than already is permitted under the current regulatory requirements. Alternatively, EPA should at a minimum exempt these engines from tracking requirements.

- *Third*, EPA should revise the requirement under the RICE NSPS to maintain emergency engines per the manufacturer's specifications to allow EGUs the ***option*** to develop their own operation and maintenance plans that would allow them an opportunity to streamline their maintenance obligations for their small generators. Exercise of this option would have negligible environmental impact, as owners/operators must properly maintain units, including by performing oil changes or oil analyses when appropriate based on how much the engine has actually run, so that they will be available when needed during emergencies, and because these units run very infrequently.

- **Definition of "Emergency Situation" in RICE MACT and NSPS.** EPA has interpreted the definition of an "emergency situation" under the RICE MACT narrowly to mean "a sudden, unplanned and unforeseen event."[32] Because of this narrow interpretation, companies are incentivized to rent higher-emitting diesel generators rather than rely on onsite back-up generators when power is lost to a facility due to planned maintenance, such as when work on a substation that provides power to a facility must be performed. EPA should define "emergency situation" in the RICE MACT and NSPS to clarify that in situations where power is not available, the operation of on-site emergency engines to provide replacement power would be considered an emergency situation. This would result in reduced emissions, as companies would no longer need to rent high-emitting diesel generators purely to avoid exceeding the 100-hour limitation of non-emergency operation.

- **Oil Change Requirements Under the RICE MACT.** EPA should amend 40 C.F.R. § 63.6625(i) to extend the deadline for performing an oil change from two to 20 business days after receiving an adverse oil analysis result. This would allow sufficient time to resample to confirm an adverse result and avoid unnecessary oil changes, which require the environmentally burdensome disposal of oil.

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[32] *See, e.g.*, Letter from Becky Weber, Director, EPA Region 7 Air and Waste Management Division, to Floyd Gilzow, Director of Member Relations and Public Affairs, Missouri Public Utility Alliance, re: 40 CFR Part 63 National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; Final Rule Dated March 3, 2010, available at http://c.ymcdn.com/sites/www.kmunet.org/resource/resmgr/Presentations_Misc_Docs/EPA%20Response%20to%20MPUA.pdf.

- **Boiler Tune-Ups.** EPA should amend the frequency of required tune-ups under the Boiler MACT to be based on calendar years (*e.g.*, once every calendar years), instead of every 13 months.[33] From a compliance perspective, tracking compliance deadlines based on a calendar year is significantly more manageable than tracking compliance deadlines that do not occur on the same date each year.

D. Additional Recommendations to Reduce Regulatory Burdens.

The Group urges EPA to make the following revisions to its CAA-related regulations to further streamline regulatory requirements while still protecting the environment:

- **Low-Emitting EGUs Under MATS**. The Group recommends that EPA amend the MATS provisions addressing the demonstration of low-emitting EGU ("LEE") status to permit use of actual unit operating data, rather than potential maximum operating data.[34] Eligibility for LEE status requires that a source calculate potential annual mercury emissions assuming "maximum potential annual heat input to the unit"[35] or "maximum potential annual electricity generation"[36] times 8,760 hours. This approach employs unreasonable assumptions about unit operation, as using maximum potential heat input or electricity generation vastly overestimates annual mercury emissions because coal-fired EGUs do not operate at maximum capacity constantly for every hour of a calendar year. It would be more accurate to use *actual* data to calculate annual mercury emissions. The Group urges EPA to amend the MATS so that the mercury emission rate result from the 30-day test (as described at 40 C.F.R. § 63.10005(h)(3)) performed during the reporting year would be multiplied by the actual annual heat input to the unit or annual electricity generation (instead of the maximum potential) and reported as part of the semiannual compliance report. This would allow more units to qualify as LEE, which allows for reduced testing obligations but also imposes more stringent mercury emissions limits. Overall, this would alleviate testing and reporting burdens, with no increase in mercury emissions, and could even decrease emissions.

- **Clarification in the MATS Rule**. The Group urges EPA to clarify the reference value to be used in the system integrity checks ("SICs") required under the MATS.[37] EPA also should clarify or update 40 C.F.R. § 63.10023(b) regarding PM CPMS operating limits to expressly allow for the use of stack concentration or other raw data signals in addition to milliamps to determine site specific operating limits ("SSOL"). Section 63.10023(b), which provides instructions on how to calculate the SSOL from the performance test, lists only milliamps and not stack concentration or other raw

[33] *See* 40 C.F.R. § 63.7515(d).

[34] *See* 40 C.F.R. § 63.10005(h).

[35] 40 C.F.R. § 63.10005(h)(3)(iii)(C)(1).

[36] 40 C.F.R. § 63.10005(h)(3)(iii)(C)(2).

[37] *See* 40 C.F.R. Part 63, Subpart UUUUU, Appendix A, § 4.1.1.3.

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data signals. The omission of stack concentration or other raw data signals from 40 C.F.R. § 63.10023(b) appears to be an oversight. For instance, 40 C.F.R. § 63.10023(a) expressly allows the use of multiple different output values (*e.g.*, milliamps, stack concentration, or other raw data signals) from the PM CPMS during the performance test. Further, Table 7 to Subpart UUUUU lists milliamps, PM concentration, and raw data signals as acceptable outputs to monitor for compliance with the 30 day operating limit. EPA should revise 40 C.F.R. § 63.10023(b) to similarly expressly list stack concentration or other raw data signals in addition to milliamps. This would avoid the regulatory confusion that could occur if regulators view milliamps as the only acceptable output to monitor because it is the only output specifically listed in 40 C.F.R. § 63.10023(b).

- **MATS Residual Risk Review**. The Group strongly recommends that EPA complete the residual risk and technology review for coal-fired power plants covered by the MATS. Section 112(f)(2) of the CAA requires EPA to assess the risk remaining after the implementation of a specific NESHAP. Specifically, within eight years of a final NESHAP, EPA must promulgate an emission standard, if promulgation of such a standard is required in order to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Because the MATS was finalized and published in 2012, EPA is required to complete this review by 2020. EPA should undertake a rulemaking to fulfil this nondiscretionary statutory obligation.

- **Once in, Always in.** On May 16, 1995, EPA released a memorandum titled "Potential to Emit for MACT Standards-Guidance on Timing Issues."[38] This guidance document clarified that "facilities that are major sources for [hazardous air pollutants ("HAPs")] on the 'first compliance date' are required to comply permanently with the MACT standard to ensure that maximum achievable reductions in toxic emissions are achieved and maintained." This interpretation dis-incentivizes changes to major sources that would reduce emissions because these units will always be regulated as major sources. The Group urges EPA to withdraw this guidance document.

- **AP-42 Emission Factors.** EPA has been publishing a compilation of air pollutant factors (AP-42) since 1968.[39] The compilation currently contains emission factors and process information for more than 200 air pollution source categories. The Fifth Edition of AP-42 was published over 20 years ago, in January 1995. While EPA has published some supplements and updates to that edition, the Group encourages EPA to make long-overdue revisions to the AP-42 emission factors. Many of the current factors are based on outdated technology and small sample sizes, which results in

[38] John S. Seitz, *Potential to Emit for MACT Standards-Guidance on Timing Issues* (1995), https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf

[39] R.L. Duprey, *Compilation of Air Pollutant Factors* (1968), https://www3.epa.gov/ttn/chief/ap42/oldeditions/1st_edition/ap42_phs_1968.pdf

inaccurate estimation of emissions. This impacts permit application development and compliance with reporting requirements. Updating the AP-42 emission factors will increase accuracy and help streamline the permitting process.

- **Ultrasonic Flow Monitors.** The Acid Rain Program establishes requirements for the monitoring, recordkeeping, and reporting of SO_2, NOx, CO_2, volumetric flow, and opacity data from affected units.[40] These monitoring requirements are performance-based, which means they generally do not require that a source use a particular type of CEMS.[41] However, the regulatory requirements differ depending on the particular type of CEMS utilized. Ultrasonic meters, which measure volumetric natural gas flow rates, are the most accurate type of meter, but are subject to more complicated regulatory requirements. Because ultrasonic monitoring is not explicitly approved under either Appendix D or Appendix E, use of ultrasonic monitors is conditioned upon development and implementation of a QA/QC program for the systems.[42] To ensure regulatory compliance, the ultrasonic meter readings must be compared to a primary standard (AGA/ASME/NIST) meter or to an in-line reference meter that has been tested for accuracy during the previous year.[43] For the in-line reference meter approach, the entity must run three separate tests for three different load levels each with a minimum length of 20 minutes.[44] This means the entity must complete at least nine 20 minute runs within seven consecutive unit operating days.[45] For ongoing QA/QC, this testing must be repeated every four fuel flow meter operating quarters, where an operating quarter is a quarter in which the fuel flow meter has operated for at least 168 partial or full operating hours.[46] Thus, the current regulation dis-incentivizes installation of the most advanced and modern monitoring technology by imposing significantly more testing requirements. The Class of '85 urges EPA to revise these regulations to update the monitoring systems approved under Appendix D and Appendix E to address the use of ultrasonic meters. This will allow companies to install the best monitoring technology without an increased regulatory burden.

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[40] *See* 40 C.F.R. § 75.1.

[41] *See* Part 75 CEMS Field Audit Manual, EPA at 15 (July 16, 2013), https://www.epa.gov/sites/production/files/2015-05/documents/part_75_cems_field_audit_manual.pdf

[42] 40 C.F.R Part 75, Appendix B.

[43] 40 C.F.R. Part 75, Appendix D, § 2.1.5-2.1.6(b).

[44] *Id.* § 2.1.5.2.

[45] *Id.*

[46] *Id.* § 2.1.6(a).

III. CONCLUSION

The Class of '85 appreciates the opportunity to comment on existing regulations and make recommendations regarding their repeal, replacement, or modification. The Group urges EPA to follow the recommendations in these comments, which would alleviate "unnecessary regulatory burdens." Specifically, adoption of the proposed regulatory reforms in these comments would significantly reduce costs associated with recordkeeping, reporting, testing and maintenance, while maintaining, and in some cases improving, environmental protection.

Dated: May 15, 2017

Respectfully submitted,

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Appendix A

CLASS OF '85 REGULATORY RESPONSE GROUP

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Cleco Corporation
Cogentrix Energy Power Management, LLC
Dairyland Power Cooperative
Dayton Power & Light Company
Entergy Services, Inc.
Florida Municipal Electric Association
Florida Municipal Power Agency
Gainesville Regional Utilities
Great River Energy
Hawaiian Electric Company, Inc.
Indianapolis Power & Light Company
JEA
Lakeland Electric
Louisville Gas & Electric/Kentucky Utilities
National Grid
NextEra Energy, Inc.
OGE Energy Corp.
Orlando Utilities Commission
PowerSouth Energy Cooperative
Public Service Company of New Mexico
Salt River Project
Talen Energy
Tampa Electric Company
Westar Energy
Western Farmers Electric Cooperative
Xcel Energy Inc.

Appendix B

Rule	C.F.R.	*Federal Register*	Description
Acid Rain Program	40 C.F.R. Parts 72-78	58 Fed. Reg. 3,590 (Jan. 11, 1993); 58 Fed. Reg. 15,634 (Mar. 23, 1993); 62 Fed. Reg. 55,460 (Oct. 24, 1997)	The Acid Rain Program, established under Title IV of the Clean Air Act ("CAA"), requires electric generating units ("EGUs") to reduce emissions of sulfur dioxide ("SO_2") and nitrogen oxides ("NOx"), the primary precursors of acid rain.
Boiler MACT	40 C.F.R. Part 63, Subpart DDDDD	80 Fed. Reg. 72,790 (Nov. 20, 2015)	The Boiler Maximum Achievable Control Technology ("MACT") rule sets national emission standards for hazardous air pollutants ("NESHAPs") reflecting MACT for industrial boilers, commercial and institutional boilers, and process heaters that are located at major sources (*i.e.*, sources that emit or have the potential to emit above a certain threshold of hazardous air pollutants ("HAPs") per year) for various HAPs under Section 112 of the CAA.
CAM Rule	40 C.F.R. Part 64	62 Fed. Reg. 54,900 (Oct. 22, 1997)	The Compliance Assurance Monitoring ("CAM") Rule establishes enhanced monitoring and compliance certification requirements for major stationary sources that are required to obtain Title V operating permits.
GHG Reporting Rule	40 C.F.R. Part 98	74 Fed. Reg. 56,260 (Oct. 30, 2009); 81 Fed. Reg. 89,188 (Dec. 9, 2016)	The Greenhouse Gas ("GHG") Reporting Rule requires monitoring and reporting of GHG emissions from sources across multiple sectors of the economy, including EGUs, that emit above a certain threshold of carbon dioxide equivalent per year.
MATS	40 C.F.R. Part 63, Subpart	77 Fed. Reg. 9,304 (Feb.	The Mercury and Air Toxics Standards ("MATS") rule sets NESHAPs for EGUs for various HAPs, including mercury,

	UUUUU	16, 2012)	under Section 112 of the CAA.
Part 60	40 C.F.R. Part 60	36 Fed. Reg. 24,877 (Dec. 23, 1971)	Part 60 establishes standards of performance for new stationary sources, including general provisions under Subpart A; standards of performance for fossil fuel-fired steam generators under Subpart D; and standards of performance for electric utility steam generating units under Subpart Da. Part 60 also contains appendices that establish testing procedures that must be followed to establish compliance with the requirements of the various subparts.
RICE MACT	40 C.F.R. Part 63, Subpart ZZZZ	78 Fed. Reg. 6,674 (Jan. 30, 2013)	The Reciprocating Internal Combustion Engine ("RICE") MACT sets NESHAP reflecting MACT for RICE located at major or area sources for various HAPs under Section 112 of the CAA.
RICE NSPS	40 C.F.R. Part 60, Subparts IIII and JJJJ	78 Fed. Reg. 6,674 (Jan. 30, 2013)	The RICE New Source Performance Standards ("NSPS") set performance standards for emissions from new, modified, and reconstructed stationary compression ignition internal combustion engines and stationary spark ignition internal combustion engines under Section 111(b) of the CAA.
Title V Program	40 C.F.R. Parts 70 and 71	57 Fed. Reg. 32,250 (July 21, 1992)	Title V of the CAA requires major sources and some non-major sources to obtain and operate in compliance with an operating permit that contains all applicable CAA requirements for the source.