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May 2, 2014

Office of Information and Regulatory Affairs
Office of Management and Budget
Attn: Desk Officer for EPA
735 17th Street NW
Washington, DC 20503

Re: Paperwork Reduction Act Comments of Hearth Patio & Barbecue Association,
Docket No. EPA-HQ-OAR-2009-0734; ICR Numbers 1176.10, 2442.01, 2443.01.

To Whom It May Concern:

On behalf of the Hearth, Patio and Barbeque Association ("HPBA"), please find enclosed our Comments on the Paperwork Reduction Act Implications of EPA's Proposed Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters, Docket No. EPA-HQ-OAR-2009-0734; ICR Numbers 1176.10, 2442.01, 2443.01.

A courtesy copy of HPBA's forthcoming comments to EPA on the proposed rulemaking, which will be docketed at EPA-HQ-OAR-2009-0734-****, will follow by mail next week.

Sincerely,

A handwritten signature in black ink that reads "Sherrie A. Armstrong". The signature is written in a cursive, flowing style.

Sherrie A. Armstrong
Counsel for Hearth, Patio and Barbeque Association

Encl. (1)



**COMMENTS OF HEARTH, PATIO & BARBECUE ASSOCIATION SUBMITTED TO
OMB ON THE PAPERWORK REDUCTION ACT IMPLICATIONS OF
EPA'S PROPOSED STANDARDS OF PERFORMANCE FOR NEW RESIDENTIAL
WOOD HEATERS, NEW RESIDENTIAL HYDRONIC HEATERS AND FORCED-AIR
FURNACES, AND NEW RESIDENTIAL MASONRY HEATERS**

Docket ID No. EPA-HQ-OAR-2009-0734

RIN 2060-AP93

ICR Numbers 1176.10, 2442.01, 2443.01

79 Fed. Reg. 6,330 (Feb. 3, 2014)

May 2, 2014

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I. INTRODUCTION

The Hearth, Patio & Barbecue Association (“HPBA”) submits these comments to the U.S. General Services Administration, Office of Information and Regulatory Affairs (“OIRA”), Office of Management and Budget (“OMB”) under the Paperwork Reduction Act (“PRA”), 44 U.S.C. § 3501, *et seq.*, regarding the proposed information collection provisions in the U.S. Environmental Protection Agency’s (“EPA’s”) proposed rulemaking to expand and revise new source performance standards (“NSPS”) for new Residential Home Heating appliances under Section 111 of the Clean Air Act.

Based in Arlington, Virginia, HPBA is the principal national industry association representing manufacturers, retailers, distributors, representatives, service firms, and allied associates for all types of hearth, barbecue and patio appliances, fuels, and accessories, including solid fuel-fired home heating appliances, including woodstoves, pellet stoves, hydronic heaters, and warm air furnaces. The 2500-member association provides professional member services and industry support in education, statistics, government relations, marketing, advertising, and consumer education.

The proposed rule, “Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces, and New Residential Masonry Heaters,” consists of proposed modifications to the existing Part 60, Subpart AAA (covering room heaters), and proposals for two new Subparts (covering central heating systems and masonry heaters). *See* 79 Fed. Reg. 6,330 (Feb. 3, 2014). The proposed rule would impose many information collection requirements on manufacturers and test laboratories, including three wholly unnecessary information collections that HPBA highlights in these comments: (i) the requirement that, for the first compliance step in a phased NSPS scheme, manufacturers must run emissions tests with two different types of fuels, even though testing with only one fuel type is required to obtain certification of compliance; (ii) EPA’s proposed use of emissions testing as a quality assurance/quality control (“QA/QC”) tool despite the fact that such emissions testing is a wholly unsuitable QA/QC tool because of the imprecision of the test methods; and (iii) EPA’s proposal to implement equally unnecessary compliance audit testing, beyond those rare cases where there is reason to believe fraudulent activity has occurred. HPBA also has identified some general deficiencies in EPA’s burden analyses in its Information Collection Requests (“ICRs”), including cost information for collection requirements under the current NSPS that EPA proposes to discontinue.

EPA has submitted two ICRs to OMB relevant to these comments. For its proposed changes to Subpart AAA, EPA has submitted ICR number 1176.10, which is intended to revise the current EPA ICR 1176.09 for the existing NSPS Subpart AAA. Proposed Subpart QQQQ is a new ICR, which has been assigned EPA ICR number 2442.01.¹ OMB has not yet issued a Notice of Action for Subpart AAA, ICR 1176.10, which was only submitted to OIRA on March 11, 2014. OMB has, however, submitted a comment on the proposed rule regarding Subpart

¹ These comments do not address the ICR submitted for proposed Subpart RRRR, ICR number 2443.01.

QQQQ, ICR 2442.01.² That comment indicates that OMB has withheld its approval of the Subpart QQQQ ICR and indicates that OMB may already believe that EPA has not correctly estimated the information collection burdens imposed by proposed Subpart QQQQ. Specifically, prior to promulgating the final rule, OMB has directed EPA to provide OMB with a summary of any comments related to the proposed information collection along with the agency's response, including any changes to the ICR as a result of those comments.³ In addition, OMB has directed EPA to "enter the correct burden estimates," although it did not explain why it apparently believes that the existing burden estimates may not be correct.⁴

HPBA urges OMB to inform EPA that the unnecessary and duplicative collections contained in the proposed rule must be eliminated in order for EPA to appropriately certify its compliance with Paperwork Reduction Act ("PRA") requirements. HPBA asks the Director of OMB to withhold her approval of the proposed collections contingent on those changes.

These comments are organized as follows. Section I is this Introduction. In Section II, HPBA provides a brief summary of the PRA, the legal framework for these comments. Section III contains an overview of the proposed rule, its information collection requirements, and EPA's analysis of the information collection burdens that the proposed rule would impose on the regulated community. HPBA then discusses its concerns about the unnecessary collection requirements imposed by EPA's proposal and with the accuracy of EPA's burden certifications. In Section IV, HPBA discusses the unnecessary burdens imposed by EPA's proposal to require manufacturers to conduct two emissions tests using different kinds of fuel and to report those results to EPA, even though manufactures will seek NSPS certification using only one of those tests. In Section V, HPBA comments on the unnecessary burdens imposed by EPA's proposal to use testing as a QA/QC tool. In Section VI, HPBA analyzes the costs imposed by EPA's proposed audit testing program, which is overbroad in part because of the inappropriate proposed use of emissions testing as a QA/QC control tool. Finally, in Section VII, HPBA touches on some of the general weaknesses in EPA's burden estimates in its ICRs, which, for example, include cost estimates for information collections that EPA proposes to discontinue.⁵

² See Office of Management and Budget, Notice of Office of Management and Budget Action, available at <http://www.reginfo.gov/public/do/DownloadNOA?requestID=256041>.

³ See *id.*

⁴ *Id.*

⁵ In these comments, HPBA cross-references its forthcoming comments to EPA on the substance and administration of the proposed rule. See COMMENTS OF HEARTH, PATIO & BARBECUE ASSOCIATION ON EPA'S PROPOSED STANDARDS OF PERFORMANCE FOR NEW RESIDENTIAL WOOD HEATERS, NEW RESIDENTIAL HYDRONIC HEATERS AND FORCED-AIR FURNACES, AND NEW RESIDENTIAL MASONRY HEATERS [to be docketed at EPA-HQ-OAR-2009-0734-****] (hereinafter "HPBA's Comments"). HPBA will provide a courtesy copy of those comments to OMB under separate cover.

II. LEGAL FRAMEWORK: THE PAPERWORK REDUCTION ACT

Congress passed the PRA in response to increasing complaints from the public about duplicative and burdensome federal data collections. The PRA, 44 U.S.C. § 3501, *et seq.*, is intended, *inter alia*, to minimize the paperwork burden for individuals, small businesses, and other persons resulting from federal information collection and to ensure the greatest possible benefit from and utility of information collected by the federal government.⁶ It requires each agency to manage information resources to reduce the information collection burdens on the public, to increase program efficiency and effectiveness, and to improve the integrity, quality, and utility of that information while preserving privacy and security.⁷

The PRA requires that, for any proposed collection of information contained in a proposed rule, an agency must certify, and provide support for such certification, that each collection of information is (in relevant part) necessary, has practical utility, is not unnecessarily duplicative, reduces the collection burden on the regulated public “to the extent practicable and appropriate,” is understandable, and is consistent and compatible with existing reporting and recordkeeping practices.⁸ There also must be an opportunity for public comment on the proposed collection of information and the agency’s certification, including whether that collection is necessary for the proper performance of the agency; whether such information has any practical utility; whether the agency’s estimate of the burden that would be imposed is accurate; whether the quality, utility, and clarity of the information collected could be enhanced; and whether the burden of collection could be minimized.⁹

The Director of the OMB must approve federally sponsored data collections and may comment on the agency’s proposed information collection along with members of the public.¹⁰ If the Director determines that the agency’s response to the Director’s comments regarding the proposed collection of information was unreasonable, the Director may disapprove that collection.¹¹ The Director also may instruct the agency to make substantive or material changes to a collection of information under the PRA.¹²

⁶ 44 U.S.C. § 3501(1)-(2).

⁷ *Id.* § 3506(b).

⁸ *Id.* § 3506(c)(3).

⁹ *Id.* § 3506(c)(2).

¹⁰ *Id.* § 3507. Approval may be explicit, or inferred in certain circumstances. *Id.*

¹¹ *Id.* §3507(d)(4)(D).

¹² *Id.* § 3507(e)(1).

III. THE PROPOSED RULE.

A. OVERVIEW OF THE PROPOSED RULE'S INFORMATION COLLECTION REQUIREMENTS.

The proposed rule imposes various information collection requirements on manufacturers and laboratories that conduct testing to determine compliance with the NSPS. Generally, for manufacturers of new residential wood heating devices, the proposed rule would require them to submit applications for model line certifications,¹³ to submit emission test results to demonstrate compliance, and to produce certified units that rigorously implement the certified design, accurately reflecting emission-critical components of the model line design, as assured by a quality assurance plan approved and administered by an independent third party certifying body.¹⁴ Manufacturers must submit the initial emission test results as well as biennial reports to EPA to assure the agency that the certified model line remains unchanged. Manufacturers must maintain records of all certification data, maintain results of all QA/QC inspections and emissions test data, and seal and store the tested appliance.¹⁵ EPA also proposes to require permanent labeling for each affected appliance that would contain compliance information useful for enforcement purposes.

In order for test laboratories to conduct NSPS certification testing, they must apply for accreditation, conduct initial and biennial proficiency testing, and report the results of all testing, performed in conformance with specified test method procedures set forth in the proposed rule. Under the proposed rule, they also must participate in an audit compliance program and must maintain records of all certification tests, proficiency tests, and audit data.¹⁶ Independent third party certification bodies (which may also be test laboratories) also must be accredited by EPA.

B. EPA'S PRA FINDINGS AND CERTIFICATIONS

EPA's ICR submission under Subpart AAA projects that the proposed rule's paperwork burdens would affect 66 manufacturers and 6 certification laboratories.¹⁷ EPA's estimates for the changed burdens and costs associated with its ICR are unclear and conflicting. According to summary information posted on OIRA's website, EPA has requested approval for imposing increased paperwork burdens and costs on covered entities (manufacturers and laboratories) as compared with the current Subpart AAA (in total, an additional 2,020 hours of work and

¹³ Because the appliances that EPA proposes to regulate are installed and operated in residences, as opposed to industrial or commercial facilities, EPA proposes that manufacturers participate in a model line certification program. One representative heater would be tested for each model line. *See* 79 Fed. Reg. at 6,332.

¹⁴ *Id.* at 6,367, 6,378.

¹⁵ *Id.* at 6,367.

¹⁶ *See id.* at 6,368.

¹⁷ http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201403-2060-004#section7_anchor (last visited Apr. 21, 2014) ("Subpart AAA ICR Submission").

\$388,075 per year).¹⁸ EPA’s Supporting Statement, however, does not precisely match up with that summary.¹⁹ Both the summary discussion and Supporting Statement do, however, confirm that the proposed rule increases the number of affected appliances, but assert that streamlined quality assurance, recordkeeping, and reporting requirements would reduce burdens in various areas.

EPA’s ICR submission for proposed Subpart QQQQ projects that the proposed rule’s new requirements would apply to 30 hydronic heater manufacturers, 7 warm air furnace manufacturers, and 4 certification laboratories.²⁰ Because proposed Subpart QQQQ will impose NSPS paperwork burdens and costs on central heater manufacturers for the first time, Subpart QQQQ will necessarily increase burdens and costs. EPA has requested approval for 2,349 hours work and \$829,129 per year in annualized capital/start-up costs.²¹

With respect to three key areas of concern identified by HPBA, EPA estimated per manufacturer/laboratory capital and operations and maintenance (“O&M”) costs as follows for proposed revised Subpart AAA and Subpart QQQQ requirements:²²

Area of Information Collection	SUBPART AAA		SUBPART QQQQ	
	Capital/Start-Up for One Respondent/Unit	Number of New Respondents/Units	Capital/Start-Up for One Respondent/Unit	Number of New Respondents/Units
Certification Test	\$27,727 per respondent	66 respondents	\$52,432 per respondent	37
QA Emissions Test	\$10,000 per respondent	63 respondents	\$20,000 per respondent	10 respondents
Random Audit Compliance Tests	\$2,629 per respondent	6 respondents	\$18,129 per respondent	0 respondents

In the aggregate, EPA has determined that the burdens and costs associated with its collections are needed to confirm compliance with NSPS under Subparts AAA and QQQQ.²³

¹⁸ See *id.* According to the ICR, OMB previously granted approval for 11,749 annual hours and \$1,736,075 in annual costs under the current Subpart AAA. *Id.*

¹⁹ See Subpart AAA ICR Supporting Statement, § 6(f), *available at* http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201403-2060-004.

²⁰ http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201402-2060-002 (last visited Apr. 21, 2014) (“Subpart QQQQ ICR Submission”).

²¹ See *id.*; see also Subpart QQQQ ICR Supporting Statement, § 6(e)(i).

²² See Subpart AAA and Subpart QQQQ ICR Supporting Statements, Table 5.

EPA has concluded that requirements under each of the NSPS Subparts at issue are not duplicative of each other or other requirements.²⁴ EPA has made each of the required certifications under 5 C.F.R. §§ 1320.9 and 1320.8(b)(3), including, *inter alia*, that its information collections: are “necessary for the proper performance of agency functions”; avoid unnecessary duplication; reduce small entity burdens; use “plain, coherent, and unambiguous language that is understandable to respondents”; and inform respondents of information including burden estimates.²⁵

HPBA does not agree that all of the information collection requirements are necessary, as explained below.

IV. REQUIRING REGULATED MANUFACTURERS TO CONDUCT TESTS USING DIFFERENT FUELS, WHEN ONLY ONE FUEL IS NECESSARY FOR CERTIFICATION, IS COSTLY AND UNJUSTIFIED.

EPA’s preferred approach to implement the proposed new emission limits for appliances subject to Subparts AAA and QQQQ is a two-phased compliance approach, including initial “Step 1” standards, followed by more stringent “Step 2” standards effective some period of time thereafter.²⁶ In certifying compliance with proposed Step 1 standards, the proposed rule would require manufacturers to conduct separate testing with each of two different fuels (cordwood and dimensional lumber cribs – hereinafter “cribs”). The manufacturer would then have the option of certifying compliance on the basis of either set of tests.²⁷

Even *if* EPA’s proposed testing requirements could be supported as a general matter,²⁸ HPBA opposes EPA’s proposal to require manufacturers to conduct emission testing with both

²³ *See id.*, § 2(a)-(b).

²⁴ *Id.* § 3(a).

²⁵ *See* Subpart AAA and Subpart QQQQ ICR Submissions.

²⁶ *See* 79 Fed. Reg. at 6,332. EPA is also considering a three-phased compliance approach, with a third intermediate compliance standard. EPA does not appear to have considered the distinct paperwork burdens and costs associated with implementing a three-phased compliance approach.

²⁷ *See, e.g., id.* at 6,340, 6,343. For more explanation about EPA’s phased implementation approach and HPBA’s comments on that approach, *see* Parts VI and VII to HPBA’s Comments.

²⁸ As discussed in Part V of HPBA’s Comments, EPA’s proposed test methods for conducting certification testing under both Subpart AAA and Subpart QQQQ fail to satisfy EPA’s obligations to comply with the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), which requires agencies to use voluntary consensus standards developed by voluntary consensus standards bodies. Here, because EPA has improperly ignored or “Christmas-treed” relevant voluntary consensus-based methods for testing appliances covered under Subparts AAA and QQQQ, without any demonstration that those methods are either contrary to law or otherwise impractical, finalization of the rule as proposed would violate (Continued...)

cribwood and cordwood testing at Step 1, when compliance is to be demonstrated with only one fuel. As discussed in HPBA's substantive comments submitted to EPA,²⁹ the dual testing requirement imposes redundant and onerous burdens and costs that EPA simply cannot justify. For example, if a manufacturer elects to certify compliance based on testing with cribs, cordwood test data is entirely irrelevant and unnecessary to the manufacturer's compliance demonstration. The same holds true for manufacturers who, under the rule as proposed, might choose to certify with cordwood, rendering any cribwood testing unnecessary and irrelevant.³⁰ In either case, the cost of testing is at least doubled.³¹

EPA's ICRs, however, fail to inform manufacturers, laboratories, and OMB of these substantial additional costs. For example, as indicated above, EPA estimated costs of \$27,727 per respondent for certification testing required under proposed Subpart AAA. In reaching this estimate, EPA assumed that 66 manufacturers would pay \$10,000 for testing per model line, for a total of 183 model lines.³² That number appears to be derived from multiplying \$10,000 times 183 model lines, divided by the number of manufacturers, for a total of \$27,727 per manufacturer. Even assuming *arguendo* that \$10,000 per model line is a fair estimate of the costs of a single test series, which HPBA does not concede,³³ this estimate cannot possibly take into account a second round of testing with an additional fuel, which would add at least another \$10,000 per model line (in other words, another \$27,727 per respondent, for a total cost of at least \$55,454 per respondent).

And this is just the first place where EPA's certification estimates are wrong. In addition to omitting the extra costs of testing with an additional fuel, EPA's estimate of \$10,000 in certification costs per model line does not appear to account for the significant failure rate for first-time certification testing of a model line. In many cases, a model line will not meet certification requirements the first time around, and the manufacturer must therefore go back and

NTTAA. Because the various testing provisions proposed would violate NTTAA, they certainly cannot be said to be "necessary" for purposes of the PRA.

²⁹ See Parts VI(A) and VII(A) to HPBA's Comments.

³⁰ For the reasons discussed in Parts VI(A) and VII(A) to HPBA's Comments, cordwood-based certification is also unwarranted more generally, in light of the limited cordwood test data and legal issues implicated under *Portland Cement Ass'n v. Ruckelshaus*, 486 F.2d 375, 396 (D.C. Cir. 1973).

³¹ HPBA also opposes the dual testing requirement because it would impose a further strain on the test laboratories, which are already overburdened, and exacerbate "log jam" problems which already are a concern, in light of the number of additional appliance categories that EPA proposes to regulate. HPBA discusses these issues further in its comments to EPA. See Part VI to HPBA's Comments.

³² Subpart AAA ICR Supporting Statement, § 6(b)(ii) & Table 5, n. a.

³³ HPBA would estimate the costs as closer to \$13,000 to \$15,000 per round of certification testing, assuming all goes perfectly and no additional tests or modifications to an appliance are needed.

refine its product design and begin the certification process anew.³⁴ This would mean repeated test series with *both* fuels all over again. Thus, the true costs of certification testing under the proposed rule – including the costs of more than one round of testing under the proposed rule, plus the costs of testing with an additional fuel – are likely to be at least \$30,000 to \$40,000 per respondent. Even at the low end of this range, this means that EPA’s estimate of \$27,727 per respondent is off by some \$55,000 (*i.e.*, at \$30,000 in certification costs per model line, with 183 model lines and 66 respondents, total costs per respondent would equal approximately \$83,181).³⁵

EPA must account for and justify all of these costs, consistent with its PRA obligations. Here, it is clear that EPA has not done so. EPA’s burden estimates are skewed for having failed to account for various considerations, including the dual testing requirements. Thus, EPA’s certification testing costs, and in particular its dual testing provisions, are even more burdensome, even less justified, and even more duplicative than already would be the case based on EPA’s submissions.

Ultimately, the excess costs of EPA’s dual testing proposal do nothing to confirm or otherwise further an entity’s compliance with promulgated emissions limits.³⁶ And contrary to EPA’s certifications, they are certainly not “necessary” and do not minimize burdens on small entities. They are duplicative requirements with burdens that far outweigh any possible utility.³⁷ As such, OMB must at a minimum call for EPA to reconsider and revise its current cost estimates. However, because the dual testing requirement is unnecessary to obtain certification under the NSPS, OMB should withhold approval of any final rule containing the proposed unsupported dual testing provisions.

³⁴ Indeed, given likely difficulty in demonstrating compliance under EPA’s proposed new compliance algorithm, the rule as proposed may be even more likely to result in repeated trips to the certification lab. *See* Part V(C)(3) to HPBA’s Comments.

³⁵ The same problems plague EPA’s cost estimates for certification testing under Subpart QQQQ. For appliances covered under this Subpart, EPA assumes \$20,000 in certification testing costs per model line, for a total of 37 manufacturers and 97 model lines. *See* Subpart QQQQ ICR Supporting Statement, § 6(b)(ii) & Table 5, n. a. Even assuming that EPA’s estimate of \$20,000 reasonably approximates the cost of one round of certification testing using one test fuel (in fact, this number likely would be significantly higher), this estimate certainly does not account for the costs of testing an additional fuel, or for the costs of repeated testing where initial certification tests do not meet NSPS standards.

³⁶ *See* Subpart AAA and Subpart QQQQ ICR Supporting Statements, § 2(a)-(b).

³⁷ In its comments to EPA, HPBA has proposed more measured and cost-effective ways moving toward a cordwood-based testing and certification scheme, such as issuing CAA Section 111(j) waivers. *See* Part VI(C)(b) to HPBA’s Comments. Under such an approach, any cordwood-based testing would not impose unnecessary and duplicative dual testing burdens; manufacturers would test and certify using just one fuel. Even EPA’s approach of allowing manufacturers to certify with either fuel will generate adequate data on cordwood performance to inform future NSPS revisions (though testing with both fuels remains unwarranted).

V. EMISSIONS TESTING IS NOT AN EFFECTIVE QA/QC TOOL, AND IS THEREFORE UNNECESSARY AND LACKS PRACTICAL UTILITY.

Under the proposed rule, manufacturers must prepare and implement a QA/QC plan for each certified model line. Each plan must include inspection and testing requirements, purportedly meant to ensure that individual units within a model line accurately reflect emission-critical components of the model line design – in other words, are “clones” of the model that was demonstrated through emissions testing to comply with applicable emission standards.³⁸ The proposed rule does not identify any specific triggering events for a requirement to conduct quality assurance emissions testing, but has requested comment on potential triggering events.³⁹ The independent third party certifying entity must submit inspection reports to EPA identifying deviations from the manufacturer’s QA/QC plan and specifying corrective actions that the manufacturer must undertake. The manufacturer must, in turn, report to EPA and the certifying entity regarding its responses to any deficiencies identified in a given inspection report. While EPA generally supports the revised, streamlined QA/QC requirements included in the proposed rule, HPBA strongly objects to any requirement for QA/QC emissions testing as unnecessary, lacking in practical utility, and overly burdensome.

As HPBA has demonstrated in its comments to EPA, emissions testing is a hopelessly blunt tool for ensuring manufacturers’ ongoing compliance with its obligations to manufacture units within a model line that are effectively “clones” of the certified design.⁴⁰ Once a model line has been certified as being in compliance with EPA’s NSPS limits, there is no need for or utility in additional emissions testing. This is particularly so given the significant test method imprecision in measuring wood heater emissions performance, which allows for little confidence that a given test result is indeed indicative of any compliance problem with the appliance, much less the whole model line, rather than simply reflective of the inherent variability of wood burning.⁴¹

The lack of precision in measuring wood heater emissions has long been recognized. As discussed in Part VI(B)(1) to HPBA’s Comments, EPA expressly considered the imprecision of woodstove test methods in developing the current NSPS, assuming at the time that variability in an appliance’s emissions performance after repeated testing in the same lab (*i.e.*, intra-laboratory repeatability) was +/- 1 g/h.⁴² Meanwhile, EPA recognized the need to conduct future study determine variability in test results observed from lab to lab (*i.e.*, inter-laboratory reproducibility), also assumed to be +/- 1 g/h during the regulatory negotiations.⁴³ EPA never performed that study. However, based on over 17 years of EPA proficiency test data under the

³⁸ See Proposed 40 C.F.R. § 60.533(m)(1)(i).

³⁹ 79 Fed. Reg. at 6,366.

⁴⁰ See Part IV(C) to HPBA’s Comments.

⁴¹ See *id.*

⁴² 52 Fed. Reg. 4,994, 5,010 (Feb. 18, 1987).

⁴³ 53 Fed. Reg. 5,860, 5,871, 5,878 (Feb. 26, 1988).

current NSPS, two engineers with significant experience with EPA's wood heater test methods conducted a study to better determine the precision of wood heater test methods.⁴⁴ The study showed that even the best intra-lab precision measure was 2.9 g/h (at a 95% confidence level), and the average intra-lab precision was approximately 3.5 to 5.4 g/h.⁴⁵ Average inter-lab precision ranged from 4.5 to 6.4 g/h (at a 95% confidence level).⁴⁶ Thus, there is no way to meaningfully distinguish between test scores within the range of observed variability.⁴⁷ It follows that the best means of ensuring quality control is simply to ensure that the appliance conforms with certified product design specifications – not repeated, imprecise emissions testing.

Fortunately, EPA's proposal already includes a far more effective way to ensure quality assurance/control: independent third party certifying entities will regularly audit manufacturers' operations to ensure that each individual appliance from a certified model line accurately reflects emission-critical components of the model-line design. Manufacturers must then take corrective action in response to any deficiencies identified by the certifying entity. That requirement is a far better way to conduct QA/QC than audit emissions testing – and one that is already working effectively for the same appliances, to assure compliance with safety standards.⁴⁸

Unless EPA abandons its proposal to continue emissions testing as a QA/QC tool, EPA cannot support its certifications that the proposed rule's requirements are necessary and minimally burdensome. Whatever the cost of QA/QC testing under the proposed rule (which EPA has estimated per respondent costs of \$10,000 and \$20,000 under Subparts AAA and QQQQ respectively), the costs cannot be justified as either beneficial or necessary.⁴⁹ OMB,

⁴⁴ See Rick Curkeet and Robert Ferguson, EPA WOOD HEATER TEST METHOD VARIABILITY STUDY: ANALYSIS OF UNCERTAINTY, REPEATABILITY AND REPRODUCIBILITY BASED ON THE EPA ACCREDITED LABORATORY PROFICIENCY TEST DATABASE (2010) [EPA-HQ-OAR-2009-0734-0284] (“Curkeet Ferguson”).

⁴⁵ *Id.* at 14.

⁴⁶ *Id.*

⁴⁷ See generally Part VI(B)(1)(a) to HPBA's Comments for more detailed discussion of these issues. The problems with and needlessly costly nature of QA/QC emissions testing requirements are addressed in further detail in HPBA's substantive comments on needed revisions to the proposed audit testing provisions, which are problematic for many of the same reasons. See Part IV(E) to HPBA's Comments.

⁴⁸ See Part IV(E)(2) to HPBA's Comments.

⁴⁹ While EPA has estimated costs of \$10,000 and \$20,000 per respondent, based on an assumption that each manufacturer will test one model line under the QA/QC provisions over the course of the three-year ICR period, there is absolutely no way to know how great the costs truly would be. As discussed above, the proposed rule does not identify any specific events that would trigger the need for QA/QC testing, but requests comment on what these triggers should be. Without knowing what events might trigger a requirement to test, there is no way to know whether a given manufacturer might have to test a given model line never, one time, three times, or more. Thus, the costs could well exceed EPA's estimates.

thus, should ensure that these costs and requirements are revisited and abandoned by EPA in the final rule.

VI. THE COSTS AND BURDENS ASSOCIATED WITH COMPLIANCE AUDIT TESTING ARE ALSO UNNECESSARY AND LACK PRACTICAL UTILITY.

For reasons similar to those addressed in Section V above, EPA's proposed compliance audit testing scheme likewise is unsupported as a matter of PRA compliance. As discussed in Part IV(E) to HPBA's Comments, EPA has proposed revised audit testing provisions that vest with EPA broad discretion to conduct audit testing, to whatever extent deemed appropriate by the Agency.⁵⁰ To the extent that any such audit testing would have a QA/QC purpose,⁵¹ such compliance audit testing is no more justified than EPA's proposed requirement for retesting under a QA/QC framework. Use of audit testing for this purpose must be disavowed, if EPA is to accurately certify as to the need for and burdens of the final rule.

First, as discussed above, the precision issues with wood heater test methods render emissions testing far too blunt a tool to be appropriately used under a QA/QC or compliance audit framework for evaluating whether production models are effectively "clones" of the certified design.⁵² The only meaningful use for compliance audit testing is under the rare circumstance where EPA reasonably suspects fraudulent or otherwise invalid certification testing. Outside of this narrow context, compliance audit tests serve no legitimate purpose, rendering their costs needless, unduly burdensome, and ultimately unwarranted.

Second, to the extent that the proposed audit testing provisions would be used as a QA/QC tool, they are duplicative of the effective and workable components of EPA's proposed QA/QC framework.⁵³ EPA's proposed QA/QC provisions, including requirements for QA/QC plan approval, inspections, and oversight by independent third party certifying entities, provide ample, highly effective and efficient means of ensuring manufacturers' ongoing compliance with its obligations to produce units within a certified model line that are within design requirements for emission critical components. Reliance on independent third-party certifying entities is not only a more effective tool for systematically identifying production line shortcomings for particular model lines, but it also facilitates action to remedy any problems (or revoke certification, if necessary) far more quickly. (By contrast, EPA must adhere to lengthy and cumbersome supplemental review procedures to suspend or revoke certification, and lacks the resources to conduct broadly sweeping compliance audits).

⁵⁰ See Proposed 40 C.F.R. § 60.533(n).

⁵¹ See 53 Fed. Reg. at 5,861 (describing audit testing "to ensure that the model line meets emission limits").

⁵² See Section V of these comments, *supra*.

⁵³ Section V of these comments, *supra*, explains why the proposal to incorporate emissions testing as part of the proposed QA/QC framework is not supportable. See also Part IV(E) to HPBA's Comments.

These and other issues with compliance audit testing are discussed in further detail in Part IV(E) to HPBA's Comments. While EPA's ICRs appear to contemplate only limited use of audit testing (two model lines per year under Subpart AAA, at a cost of \$2,629 per respondent, and one model line per year under Subpart QQQQ after the three-year ICR period, at a cost of \$18,129 per respondent),⁵⁴ even these apparently modest costs are unjustified. These costs are unnecessary and lack practical utility as a quality assurance tool; they are duplicative of the practical and effective components of EPA's proposed QA/QC framework; and they fail to minimize the burdens to the extent practicable and appropriate on covered manufacturers. As such, EPA's PRA certifications are unsupported and erroneous, and EPA's proposed compliance audit provisions should be revised prior to any approval for a final rule.

Beyond this, EPA's cost estimates, in fact, significantly understate the costs of even the modest audit program that it forecasts. EPA understates the cost of the first series of audit tests, assuming that most of the costs for that test will be paid for by the "escrow" accounts maintained by accredited labs under the current Subpart AAA.⁵⁵ First of all, the sums in question (which aren't in fact in "escrow" accounts) are earmarked for woodstove testing, not for testing other appliance categories. Beyond that, for the future, any attempt to rely on the audit test prepayment scheme in the proposal is hopelessly flawed. This scheme is a modification of the funding scheme for first tests in the Random Compliance Audit program in current Subpart AAA. That funding approach has never worked, and can never work, especially in light of the changes to the audit program that EPA has proposed, as pointed out in HPBA's comments and the Lab Coalition Comments,⁵⁶ and therefore must be abandoned. If the costs of that first test are estimated without that scheme, they would be significantly higher. Indeed, audit testing costs for a single round of testing are likely to approximate the costs of a single round of certification testing, which EPA has estimated to be \$10,000 per model line. And if four more tests need to be conducted, the costs for those tests would be four times this amount, for a total of (at least) \$40,000. And this would not be the total costs of an audit test; other costs not accounted for would be for travel expenses and the time of manufacturer personnel. In short, EPA's cost estimates and certifications are clearly deficient, deficiencies that would have to be remedied before even an ICR with a significantly narrowed scope could be appropriately considered.

VII. EPA'S PROPOSED ICRS ARE GENERALLY INADEQUATE.

In addition to the above major concerns, HPBA stresses that there are many other problems with EPA's proposed information collections associate with the proposed rule. As is

⁵⁴ Subpart AAA and Subpart QQQQ ICR Supporting Statements, Table 5 & n. e.

⁵⁵ See Subpart AAA ICR Supporting Statement, § 6(b)(i) (asserting that "test labs have collected a large amount of funds in escrow accounts to pay for [audit] testing," and reasoning that "[t]he labs will use the escrow amounts to pay for the cost of testing, so no testing costs will be incurred" beyond manufacturers' costs to supply units for testing).

⁵⁶ See Part IV(E)(3) to HPBA's Comments; see also EPA Accredited Wood Burning Appliance Emissions Testing Laboratory Coalition, RE: EPA'S PROPOSED HEARTH APPLIANCE NEW SOURCE PERFORMANCE STANDARDS (Apr. 30, 2014) [to be docketed at EPA-HQ-OAR-2009-0734-****] ("Lab Coalition Comments").

the case with the proposed rule itself, the ICRs are full of ambiguities and inconsistencies that render it impossible for an interested manufacturer, laboratory, or OMB to meaningfully and accurately understand the information collection requirements at issue, or their burdens and costs.

One example can be seen in the Supporting Statement for the Subpart AAA ICR. Section 1(b) of the Supporting Statement refers to Attachment 1, a list of information collection requirements for sources subject to EPA's rulemaking. Yet when you turn to Attachment 1 of the Supporting Statement, the requirements listed include requirements under provisions that would be discontinued under the proposed rule, and replaced with entirely new provisions (for example, current Subpart AAA's removable label requirement, and emissions testing and quality assurance provisions currently located at § 60.533(o)). It is possible that Attachment 1 is merely meant as a list of current existing information collection requirements, but this interpretation is undermined by the appearance of a similar list under the same heading in the Subpart QQQQ Supporting Statement, identifying newly proposed provisions in the list of requirements. EPA needs to remedy these ambiguities

Other aspects of EPA's Subpart AAA ICR create similar confusion. Section 5(c) of the AAA Supporting Statement identifies small entity flexibilities included in the proposed rule, including a proposal "to allow up to an additional 2 years for recertifying [] existing model lines that meet the proposed standards." However, while related transitional provisions appear in the proposed rule, this provision does not. Similarly, both the Subpart AAA and Subpart QQQQ Supporting Statements characterize the proposed rule's audit testing provisions as "Random Audit Compliance Tests," yet the proposed rule does away with this terminology in its revised compliance audit testing provisions, effectively merging the two audit programs in Subpart AAA (Random Compliance Audits and Selective Enforcement Audits) into one.⁵⁷ Absent more specific detail on the provisions EPA considered when drafting its ICR, it remains uncertain how many other similar discrepancies exist between the proposed rule and the ICR. Under such circumstances, it is impossible for manufacturers, laboratories, or OMB to have any confidence in EPA's burden estimates, and whether they are in any way predictive of the costs implicated by the actual provisions in the proposed rule.

However unintended, all of this confusion renders the information collection requests at issue impossible to address appropriately by industry and other stakeholders. The PRA expressly requires that agencies ensure that their information collection requests identify the reason and use for each information collection, estimate the burdens of the information collection, and certify that each collection has used "plain, coherent, and unambiguous terminology and is understandable to those who are to respond."⁵⁸ Accordingly, before finalizing the proposed rule, EPA must closely revisit all of its PRA certifications, and ensure that it has coherently and accurately represented the burdens and costs associated with each of the proposed rule's relevant

⁵⁷ Compare Subpart AAA and Subpart QQQQ ICR Supporting Statements, Table 5, with 79 Fed. Reg. at 6,341 (among other changes, compliance audit tests "do not have to be statistically random").

⁵⁸ 44 U.S.C. §§ 3506(c)(1)(B)(iii), 3506(c)(3)(D).

requirements.⁵⁹ Until that occurs, HPBA requests that OMB withhold approval of the proposed information collection requirements.

⁵⁹ *See also* Office of Management and Budget, Notice of Office of Management and Budget Action, *available at* <http://www.reginfo.gov/public/do/DownloadNOA?requestID=256041> (commenting on EPA’s Subpart QQQQ ICR, withholding approval of the proposed information collection, and notifying EPA that it “must enter the correct burden estimates.”).