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Thomas J. Gibson
President and Chief Executive Officer

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The Honorable Darrell Issa, Chairman
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

On behalf of the American Iron and Steel Institute (AISI), I am pleased to respond to your inquiry regarding existing and proposed regulations that negatively impact the economy and jobs. AISI is the trade association representing U.S. and North American steelmaking companies. We are comprised of 24 member companies, including integrated and electric arc furnace steelmakers, and 140 associate and affiliate members who are suppliers to or customers of the steel industry. AISI's member companies represent approximately 80 percent of both U.S. and North American steel capacity.

Steel and other manufacturing industries are the backbone of our economy. A strong manufacturing sector creates significant benefits for society, including good-paying jobs, investment in research and development, critical materials for our national defense, and high-value exports. Both the Environmental Protection Agency (EPA) and the Occupational Health and Safety Administration (OSHA) have in place, and have proposed, multiple new regulations that will create competitive disadvantages to U.S. industry and endanger manufacturing jobs. AISI appreciates this opportunity to comment on some of the most problematic regulations to the steel industry.

EPA

AISI has long identified environmental stewardship and commitment to sustainability as part of our industry's strategic plan and our vision for the future. As a result of this commitment, we are aggressively seeking ways to reduce our environmental footprint even while producing the advanced and highly recyclable steel that our economy demands. The industry has reduced its energy intensity by 30% since 1990, while reducing its greenhouse gas (GHG) emissions by 35% over the same time period. In fact, the American steel sector is recognized as having the steepest decline of total air emissions among nine manufacturing sectors studied in EPA's 2008 Sector Performance Report.

Over the past two years, the EPA has undertaken an extensive regulatory agenda, proposing a substantial number of new regulatory initiatives in a number of program

areas, including air, water, toxic chemicals, and solid waste. AISI currently interacts with the EPA on more than 40 environmental rules that may have significant impacts on steel manufacturers. Many of these new regulations will create permitting obstacles for investment in new and renovated facilities and impose significant additional costs on domestic steel producers as well as other energy intensive industries. Even though the steel industry has a history of demonstrated leadership in meeting and exceeding environmental requirements, the simultaneous development of multiple new environmental regulatory proposals across several program areas at the federal and state levels have the potential to limit continued industry advancement, while endangering critical manufacturing jobs. Below are some of the more significant regulatory issues that threaten the restoration or preservation of manufacturing jobs.

Greenhouse Gas Regulations

EPA is moving forward this month with economically-damaging actions to regulate GHG emissions from most steel producing facilities. EPA's regulation of GHG emissions under the Clean Air Act will be very costly to the domestic steel industry, prevent it from making new investments that would allow the industry to grow and add jobs, and undermine efforts at promoting economic recovery. The unprecedented speed of EPA's efforts to regulate GHGs under the Clean Air Act threatens nationwide permitting gridlock and serious economic disruption exactly when our economy is struggling to regain its balance. Regulating GHG emissions under the Clean Air Act will create disincentives to invest, potential for new project construction delay, and increased litigation risk.

Climate change is a global problem that can only be addressed effectively on a global basis. EPA's proposal to regulate GHGs from stationary sources under the Clean Air Act will not address the global dimension of the climate change issue, but will place significant new burdens on steel manufacturers in the United States. This will unilaterally raise operating costs, which will place our American steel manufacturers at a competitive disadvantage, while allowing overseas competitors to continue to increase their emissions. The result would be limited environmental gain, but significant economic challenges, including further elimination of valuable American manufacturing jobs, especially for energy-intensive trade-sensitive industries.

In December, EPA released two documents intended to guide state regulators and industry in the implementation and compliance with these regulations: the Prevention of Significant Deterioration (PSD) and Title V Permitting Guidance for Greenhouse Gases (Guidance Document) and Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from the Iron and Steel Industry (Technical Document). Both of these documents have only heightened industry's concerns with the regulations.

These EPA documents did not reflect the true status of existing and emerging technologies for the industry. In particular, due to dramatic reductions in energy usage in recent years, iron and steel plants have limited opportunities for incremental energy

efficiency improvements until new breakthrough technologies are developed. The Technical Document states that the iron and steel industry can further reduce energy use by 27% for integrated mills and 53% for electric arc furnaces plants. These estimates are extremely unrealistic. This is primarily because several of the technologies identified in the Technical Document have already been adopted by the industry. For example, many integrated facilities already control coal moisture, utilize pulverized coal injection, and have improved blast furnace control systems. Similarly, many electric arc furnaces commonly employ foamy slag practices, oxy-fuel burners, insulation of furnaces, and walking beam furnaces. Thus most of the projected gains in efficiency have already been achieved by the steel industry. Also, as a general matter, most steel companies, whether integrated or electric arc furnace-based, employ sophisticated preventive maintenance programs and energy monitoring and management systems.

EPA's efforts to broaden PSD permitting to include GHGs and refocus Best Available Control Technology (BACT) standards on energy efficiency present not only significant challenges (as noted above), but also an opportunity. Through this process, EPA has the opportunity to address some of those challenges by streamlining the PSD permitting and BACT process. Given the agency's acknowledged interest in advancing energy efficiency projects, it should seize this opportunity to shape not only the BACT process itself, but also the PSD threshold applicability determination process to avoid ensnaring energy efficiency projects that have demonstrated environmental benefits.

Boiler MACT Proposed Rules

EPA's set of proposed rules for industrial boiler Maximum Achievable Control Technology (Boiler MACT) would not only have an adverse impact on the domestic steel industry, but would create unintended environmental harm. These EPA proposed rules are for emissions standards for: (1) area source industrial, commercial and institutional boilers (Area Source Boiler Rule); (2) major source industrial, commercial, and institutional boilers (Major Source Boiler Rule) and; (3) commercial and industrial solid waste incineration units (CISWI Rule).

Currently, iron and steel manufacturers use byproduct gases from coke ovens and blast furnaces to fuel plant boilers that produce steam, electricity, and other thermal energy. Utilization of the process gases as a fuel allows the recovery of energy otherwise wasted, and offsets consumption of fossil fuels, in particular natural gas. This entire practice increases the overall energy efficiency of steel production facilities, reduces GHG, criteria and hazardous air pollutant emissions, and is a vital tool for promoting our nation's energy independence and global competitiveness.

Unfortunately, the benefits of steel industry process gas recovery would be lost as a result of the manner in which EPA's proposed Boiler MACT rules would treat byproduct gases at steel plants. If steel industry boilers are subject to the proposed "Gas 2" standards, the industry will be incentivized to flare off the process gases to meet environmental and safety requirements and use more natural gas to run the boilers that are needed. EPA

estimates that it will cost companies \$600 million to place controls on the approximately 75 coke oven gas fired boilers that would be subject to the proposed rules. In the alternative, companies could flare the coke gas and use natural gas as a substitute which would cost \$300 million. Flaring process gases and using more natural gas will result in increased steel industry GHG and hazardous air pollutant emissions, as well as more energy consumption. These undesirable energy and environmental results run counter to the desired effect of the Boiler MACT proposed rules. AISI presented this issue to EPA and provided some workable alternatives, and we are awaiting EPA's response.

It should be noted that, in response to comments and concerns raised by both industry and Members of Congress, EPA recently requested an extension of the court-ordered deadline for implementing these new Boiler MACT rules – from January 16, 2011 to April 13, 2012 – in order to allow the agency to reconsider the proposed rules in light of the comments received. AISI, along with other industry associations, has filed a response with the court in support of EPA's request for delay in the deadline. We agree with EPA that the substantial additional time is necessary to adequately review the thousands of substantive comments that have been filed on the proposed rules and to revise the proposals accordingly. The deadline extension will provide EPA sufficient time to conclude the process with rational and defensible rules.

National Ambient Air Quality Standards (NAAQS)

The Clean Air Act requires EPA to set and periodically review NAAQS for six especially widespread pollutants, including ozone and sulfur oxides. The EPA is in various stages of reviewing all six standards, which impacts the ability of manufacturers to plan future operations and investments. In issuing a new sulfur dioxide standard, EPA outlined a new approach for designating nonattainment areas that will rely on modeling, which is a significant shift in policy and is inconsistent with the Clean Air Act. The sulfur dioxide standard is now being challenged by industry and several states in federal court and is subject to petitions to stay and reconsider the standard. With respect to the ozone standard, EPA is slated to issue a final standard in 2011. The Manufacturers Alliance recently released a study showing that setting a new 8-hour ozone ambient air standard at the bottom of the range proposed by EPA (60 ppb) would cost over \$1 trillion per year between 2020 and 2030 and decrease the GDP by more than 5% and lead to 7.3 million job losses by 2020.

Economic impact due to the NAAQS for sulfur dioxide and nitrogen dioxide and related EPA implementation and modeling guidance will be significant. The flawed modeling tools and guidance policy will lead to more portions of the country being designated "unclassifiable" or "nonattainment." In many cases air permits for new construction or facility modernization projects will be stalled or projects cancelled because of these modeling tools and guidance policy, ultimately limiting economic growth and job creation. The modeling tool is not suited to simulate atmospheric chemical reactions, nor is it capable of accurate prediction of 1-hour concentrations. In sum, the tools simply are

not capable of doing the job accurately and will be a significant impediment to economic revival.

We believe EPA should not require states to make their sulfur dioxide §107(d) designations using emission modeling. EPA should also delay implementation of the NAAQS for sulfur dioxide and nitrogen dioxide until accurate modeling tools are developed. Other NAAQS standards should not be promulgated until there is adequate public discourse, and until scientifically valid modeling tools for each pollutant are determined to be accurate for the new short term standard and implementation guidance developed.

Water Issue Regulations

AISI tracks numerous water quality rules that are in various stages of development including an impending EPA proposal to regulate cooling water intake structures for the purpose of protecting aquatic life. The rule, previously promulgated but remanded by federal court order, would have required companies to make significant investments to redesign or replace existing intake structures. AISI is working with a multi-industry group to interact with EPA to provide information that hopefully will lead to a more reasonable rule based on application of site-specific best professional judgment as opposed to stringent uniform standards.

OSHA

AISI recognizes that it is a policy priority of the federal government to ensure safety and health at industrial workplaces, a critical goal shared by the steel industry. AISI members place the highest priority on occupational health and safety (OHS) matters because it is imperative that their valuable workers remain safe and healthy. They have made substantial efforts to decrease the number and frequency of workplace incidents and continue to work through AISI to share information and best practices to meet their shared goal of improving occupational safety and health.

The Department of Labor and OSHA leadership have proposed a multifaceted regulatory agenda that includes several items of interest to the domestic steel industry. Our experience has demonstrated that cooperative efforts among company management, employees, and government can help maximize safety and health. However, regulations that are not promulgated with real transparency and stakeholder involvement or are not based on thorough cost-benefit analysis may misdirect priorities and create unnecessary costs for employers that prevent optimum workplace safety and health benefits from being realized. Furthermore, OSHA's increased enforcement measures can be counterproductive to achieving optimal benefits. Regulations should be directed to those hazards that address shared health and safety goals of the industry, employees, and OSHA, and not create unnecessary costs that prevent these benefits from being realized.

Noise Policy Reinterpretation

OSHA has proposed to change its enforcement policy on noise limitations to require use of feasible engineering controls before permitting use of personal protective equipment. The proposed change would require every steel facility to install economically “feasible” engineering and administrative controls to reduce employee noise exposure before relying on hearing protectors, a reversal of decades of agency precedent and policy. OSHA is defining “feasible” as “capable of being done without threatening the viability of the company.” Under the proposed OSHA rule, the employer would carry the burden of proof to demonstrate the economic infeasibility of controls. This is a shift in the burden of proof from previous OSHA regulations adopted pursuant to Section 6(a) of the Occupational Safety and Health Act of 1970. For capital intensive companies and industries that need capital for modernization to remain globally competitive and that are under continuous pressure to increase productivity, forcing the retrofit of engineering controls and/or decreasing productivity by requiring the use of additional person-hours through administrative controls, may threaten our global competitiveness.

Recording Musculoskeletal Disorders (MSDs)

OSHA has proposed a rule requiring employers to record musculoskeletal disorder (MSD) injuries separately from other injuries and illnesses on their OSHA 300 forms. The steel industry, as well as others in the business community, is concerned that OSHA may use the MSD data to issue general duty clause violations in the absence of a national ergonomics standard. Using this data to initiate a new rulemaking for an ergonomics standard that is substantially similar to the original would contravene the Congress’ invalidation of the original ergonomics standard pursuant to the Congressional Review Act.

Combustible Dust

OSHA continues to hold stakeholder meetings in advance of proposing regulations on workplace combustible dust management. Because of the nature of some steelmaking processes, these regulations have the potential to disrupt existing operations and force AISI members to adopt costly and unnecessary engineering controls. As such, we have proposed to OSHA that it limit the scope of its anticipated combustible dust rule to materials that are likely to explode when ignited and to consider the cost and economic feasibility of relocating existing dust collection equipment outside building structures. Doing so will result in an OSHA proposal that appropriately addresses substances of concern without creating a misrouted and costly regulatory burden on the steel industry.

Injury and Illness Prevention Program

OSHA has proposed requiring that every employer adopt a uniform federal injury and illness prevention program (I2P2) to reduce injuries and illnesses. However, the agency has also suggested that adoption of the I2P2 will allow it to support alleged violations for

conditions that are currently not subject to any specific OSHA standard or rule. Based on current injury and illness data, there is no evidence that state plans with such a rule have actually improved their injury and illness rates compared to states that have not adopted such a rule. AISI members have had effective injury illness programs for decades and are concerned that a uniform federal standard would adversely affect existing programs. They are also concerned that OSHA will use the I2P2 rule to “double dip” when proposing citations and fines for hazards both covered and not covered by a specific OSHA standard.

Permissible Exposure Limit (PEL) Update Process

OSHA has invited the public to submit candidate chemicals for consideration in expedited PEL update process. It also announced that its standards and guidance staff are considering various approaches to such an update. AISI asked OSHA to hold open tripartite meetings to develop such a process in the agency’s initial stakeholder meeting. But, to date, the agency has published only a listing of chemicals but not the organizations or individuals who made the specific recommendations. Updating PELs will affect every steel manufacturer as well as most of the manufacturing sector. As OSHA moves forward, the PEL update is clearly a process that must be transparent and involve the major affected stakeholders, viz., employers, employees and the government.

On-Site Consultation Program

OSHA has published a notice of proposed rulemaking for the agency's on-site consultation program that will give the agency greater flexibility to inspect worksites undergoing an on-site consultation visit or participating in the Safety and Health Achievement Recognition Program (SHARP). OSHA also seeks to initiate an enforcement inspection at a worksite when allegations of potential workplace hazards or violations are received from a state or local government, the media, and “other” sources. Current policy permits OSHA to terminate on-site consultation visits and to inspect SHARP sites only when an imminent danger exists, a fatality or catastrophe occurs, or pursuant to a worker complaint. OSHA is also proposing to shorten the initial exemption from programmed inspections for employers in the SHARP to one year from two years. This proposal is of concern to the steel industry, as it may discourage employers from participating in this successful program and, therefore, have a negative effect on workplace safety.

* * *

Thank you again for soliciting the domestic steel industry’s input on the critical issue of how regulations may impact the economy and jobs. As detailed above, there are a number of regulations from both EPA and OSHA that, if not implemented correctly and appropriately, could limit the steel industry’s global competitiveness, investment, and job growth in coming years.

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AISI believes that the Congress should conduct a comprehensive oversight program of environmental and occupational health and safety regulatory development activities and initiatives. In particular, such a program should examine the impact of EPA and OSHA regulatory agenda on jobs and industrial competitiveness. Included in such an effort should be greater emphasis on cost/benefit analysis of proposed regulations at the EPA and OSHA, as well as greater transparency and industry access to the regulatory development process at the agencies.

AISI looks forward to working with you and the House Committee on Oversight and Government Reform on these and other issues in the 112th Congress.

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Gibson". The signature is written in a cursive style with a large, prominent initial "T".

Thomas J. Gibson