

May 15, 2017

Mr. Ryan Jackson, Chief of Staff and Chairman, Regulatory Reform Task Force
Ms. Samantha K. Dravis, Associate Administrator, Office of Policy, and Regulatory Reform Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Docket ID: EPA-HQ-OA-2017-0190; *Evaluation of Existing Regulations*

Dear Chairman Jackson and Associate Administrator Dravis:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates the opportunity to provide input during the U.S. Environmental Protection Agency's (EPA) regulatory reform process involving the evaluation of existing regulations. While many AAPCA member agencies will be providing detailed comments to help inform the process and identify issues related to regulations of concern, this letter provides information on the Association's consensus comments, compilations of air agency feedback on recent U.S. EPA regulatory actions, and a member-generated list of regulations that may be appropriate for repeal, replacement, or modification, pursuant to Executive Order (EO) 13777 on Enforcing the Regulatory Reform Agenda.²

Based upon consensus feedback from its more than 40 state and local air quality agencies, AAPCA has recently commented on a variety of U.S. EPA regulatory actions, including: U.S. EPA's *Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard*,³ *Protection of Visibility: Amendments to Requirements for State Plans*,⁴ *Revision to the Near-Road NO₂ Minimum Monitoring Requirements*,⁵ and *Treatment of Data Influenced by Exceptional Events* and the draft *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone*.⁶ AAPCA has also conducted surveys of state agency perspectives on timely implementation tools for national ambient air quality standards (NAAQS) and background ozone.⁷

AAPCA also regularly tracks state and local environmental agency comments on EPA rulemakings and Clean Air Act issues. AAPCA has recently compiled feedback, including comments by member agencies, on the following regulations and topics: EPA actions related to ozone and interstate

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>. In addition, more information on AAPCA agencies can be found in the recently released report, *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*.

² 82 FR 12285.

³ Docket ID No. EPA-HQ-OAR-2016-0751; See AAPCA's March 13, 2017 comments [here](#).

⁴ Docket ID No. EPA-HQ-OAR-2015-0531; See AAPCA's August 10, 2016 comments [here](#).

⁵ Docket ID No. EPA-HQ-OAR-2015-0486; See AAPCA's June 28, 2016 comments [here](#).

⁶ Docket ID No. EPA-HQ-OAR-2013-0572; and No. EPA-HQ-OAR-2015-0229; See AAPCA's February 3, 2016 comments [here](#).

⁷ AAPCA, [State Environmental Agency Perspectives on Timely NAAQS Implementation](#), September 2015; AAPCA, [State Environmental Agency Perspectives on Background Ozone & Regulatory Relief](#), June 2015.

transport;⁸ regional haze;⁹ exceptional events;¹⁰ EPA’s startup, shutdown, and malfunction state implementation call (“SSM SIP Call”);¹¹ and, permitting.¹²

In addition to the comments and resources mentioned above, AAPCA sought member agency feedback on EPA regulatory reform and EO 13777 via an electronic survey conducted from April 19 to 28. Included below is a list of regulatory actions of concern, along with a short description of key issues, each of which was provided by at least one of AAPCA’s state and local air agency members. This is not a comprehensive list, is in no particular order, and suggested regulations and issues were only edited for clarity. As such, AAPCA does not suggest any specific action (repeal, replacement, or modification) for these regulations or policies, but rather refers to specific comments submitted by an individual member agency. This list includes all suggestions from any individual AAPCA agency and does not imply endorsement from all members.

The regulations identified in this letter may also be relevant to EO 13783 on Promoting Energy Independence and Economic Growth¹³ as well as EO 13563 on Improving Regulation and Regulatory Review.¹⁴ The May 8, 2017 Office of Information and Regulatory Affairs memorandum providing guidance regarding Section 2 of EO 13783 states that “[a]gencies are encouraged to coordinate their compliance with Section 2 of EO 13783 with their compliance with EO 13777,” and, as part of EO 13777 outreach, “agencies should seek input specifically regarding existing agency actions that potentially burden the development or use of domestically produced energy resources, and recommendations for actions the agency may take to alleviate or eliminate such burden.”¹⁵

Name/Title of Regulation/Policy	Key Issues
Nitrogen Oxides State Implementation Plan Call (“NO _x SIP Call”) ¹⁶	Overly burdensome with costly monitoring requirements for non-electric generating units that provide no additional benefits.
Cross-Media Electronic Reporting Rule (CROMERR) ¹⁷	Contains marginal value in relation to rule requirements, particularly elements of the Compliance and Emissions Data Reporting Interface (CEDRI) ¹⁸ and Central Data Exchange (CDX). ¹⁹

⁸ Comments have been compiled on: EPA’s proposed [Response to December 9, 2013 CAA Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont](#); EPA’s [Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard \(NAAQS\)](#); [Implementation of the 2015 NAAQS for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements](#); [Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards](#); and the proposed [2015 Ozone NAAQS](#).

⁹ State and local air agency comments on [Protection of Visibility: Amendments to Requirements for State Plans](#).

¹⁰ State and local agency comments on [Proposed Exceptional Events Rule Revisions & Draft Wildfire Guidance](#).

¹¹ A compilation of state and local agency comments on the SSM SIP Call can be found [here](#).

¹² State and local agency [comments](#) on EPA’s proposed Revisions to the Title V Permitting Program Regulations to Improve the Petitions Process and proposed Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs.

¹³ <https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economy-1>.

¹⁴ [76 FR 3821](#) (1/21/2011).

¹⁵ <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-24.pdf>.

¹⁶ [63 FR 57356](#) (10/27/1998). More information available [here](#).

¹⁷ [70 FR 59848](#) (10/13/2005). More information: <https://www.epa.gov/cromerr>.

2015 Ozone National Ambient Air Quality Standard ²⁰	For some states, the NAAQS approaches background ozone levels, and limited regulatory relief exists for controlling concentrations originating from outside the state.
Implementation of the 2008 NAAQS for Ozone: State Implementation Plan Requirements ²¹	EPA's interpretation of Reasonable Further Progress requirements is flawed and unreasonable.
Protection of Visibility: Amendments to Requirements for State Plans ²²	Rule maintains the outdated Reasonably Attributable Visibility Impairment (RAVI) and requires five-year progress reports, seen as unnecessary by states.
Federal Implementation Plans for Regional Haze ²³	Benefits cannot be justified by cost associated with implementing. For example, the relative reduction in regional haze at particular Class I area is not considered when evaluating the implementation of additional controls at specific facilities in areas under a Federal Implementation Plan.
Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills ²⁴	Air agencies raised a number of concerns in comments on the proposed Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills, including about wellhead monitoring, design capacity thresholds, and EPA's ability to reopen standards under Section 111(d) of the Clean Air Act. ²⁵
Treatment of Data Influenced by Exceptional Events ²⁶	Overly complex and costly rule for demonstrating an exceptional event outside of agency control. For example, the rule requires that smoke management must be binding.
Startup, Shutdown, and Malfunction State Implementation Plan Call ("SSM SIP Call") ²⁷	EPA provided no information to support determination that several state implementation plans (SIPs) were substantially inadequate.

¹⁸ More information from EPA on CEDRI available [here](#).

¹⁹ More information from EPA on CDX available [here](#).

²⁰ [80 FR 65292](#) (10/26/2015). More information: <https://www.epa.gov/ozone-pollution/2015-national-ambient-air-quality-standards-naaqs-ozone>.

²¹ "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements," [80 FR 12264](#) (03/06/2015).

²² [82 FR 3078](#) (01/10/2017). More information on Regional Haze available at: <https://www.epa.gov/visibility>.

²³ For example, see EPA's [Regional Haze Federal Implementation Plan for Arkansas](#).

²⁴ [81 FR 59276](#) (08/26/16). More information, including related rules, is available at: <https://www.epa.gov/stationary-sources-air-pollution/municipal-solid-waste-landfills-new-source-performance-standards>.

²⁵ State and local air agency comments are available [here](#).

²⁶ [81 FR 68216](#). More information: <https://www.epa.gov/air-quality-analysis/treatment-air-quality-data-influenced-exceptional-events>.

²⁷ "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," [80 FR 33840](#) (06/12/2015). More

Guidance Documents	Too often used as a rule or enforcement mechanism, rather than as guidance. Documents should be promulgated into rules if that was the intent.
Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs ²⁸	Air agencies provided comment on this proposal, and there may be other areas in which EPA should explore electronic notice options. ²⁹
EPA’s “Once In, Always In” Policy for hazardous air pollutants (HAPs), per the memorandum “Potential to Emit for MACT [maximum achievable control technology] Standards -- Guidance on Timing Issues” (“Seitz Memo”) ³⁰	EPA is encouraged to provide clarity and national consistency through rulemaking. The current policy requires sources that are subject to a major source MACT to always be subject to that MACT standard, even if their emissions are later reduced below major source levels of HAPs, limiting the incentive for industry to reduce emissions or find alternative materials. Also, as the applicability for a major source MACT is a facility wide determination, this interpretation can unfairly limit the abilities of subject sources to make modifications or operate in a competitive market.
EPA’s “Potential to Emit” Policy ³¹	EPA has some regulations that state unless there is a federal restriction on potential to emit then the source is subject to certain regulations. For example, the Part 63 Subpart WWWW was effective April 2006; if you were a Reinforced Plastic manufacturer after that date without a federal operating restriction then the rule is applicable to your operation.
Title V permitting requirements, ³² as found in 40 CFR 70.3 and the National Emissions Standards for Hazardous Air Pollutants for Source Categories (40 CFR 63)	Overly burdensome and costly for area sources that are required to obtain and maintain Title V operating permits.
Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO ₂) Primary National Ambient Air Quality Standard (NAAQS) ³³	Air agencies raised a number of concerns in comments on the Data Requirements Rule, including about resource-intensive modeling and monitoring activities. ³⁴
Title V permitting requirements for wood burning air curtain incinerators ³⁵	Regulation with unnecessarily burdensome requirements for owners/operators.

information: <https://www.epa.gov/air-quality-implementation-plans/startup-shutdown-malfunction-ssm-emissions-industrial-facilities>.

²⁸ 80 FR 81234 (12/29/2015).

²⁹ State and local air agency comments can be found [here](#).

³⁰ Memorandum can be found [here](#).

³¹ More information can be found [here](#), and a policy memorandum from 1998 can be found [here](#).

³² Information and resources related to Title V permitting can be found [here](#).

³³ 80 FR 51052 (08/21/2015). More information: <https://www.epa.gov/so2-pollution/final-data-requirements-rule-2010-1-hour-sulfur-dioxide-so2-primary-national-ambient>.

³⁴ State and local air agency comments are available [here](#).

Regulations relating to Standards of Performance for New Stationary Sources – Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Wastewater (“SOCMI NSPS”) ³⁶	Multiple regulations containing similar requirements. EPA should consider consolidating these into a single rule. Replace specific overlap provisions with a single overlap. For example, sources complying with 40 CFR 63 Subpart G are exempt from SOCMI NSPS.
National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (RICE) (“RICE NESHAP”) ³⁷	Currently applies to over one million engines in the United States, and the regulatory costs may exceed environmental benefits for the owners/operators of small stationary internal combustion engines.
Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (“NSPS IIII”) ³⁸ Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (“NSPS JJJJ”) ³⁹	Regulatory costs associated with this rule may exceed environmental benefits for owners/operators of small stationary internal combustion engines.
National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry (“HON”) ⁴⁰ National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins (“Polymers & Resins IV MACT”) ⁴¹ and, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing (“MON”) ⁴²	Multiple regulations containing very similar requirements. EPA should consider consolidating these into a single rule.

³⁵ Found in EPA’s final rule “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units,” [81 FR 40956](https://www.epa.gov/title-v-operating-permits/air-curtain-incinerators-and-title-v-operating-permits) (6/23/2016). See also: <https://www.epa.gov/title-v-operating-permits/air-curtain-incinerators-and-title-v-operating-permits>.

³⁶ <https://www3.epa.gov/airtoxics/nsps/socww/socwwpg.html>.

³⁷ “National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines,” [78 FR 6674](https://www.epa.gov/stationary-engines/national-emission-standards-hazardous-air-pollutants-reciprocating-internal-0) (01/30/2013). More information: <https://www.epa.gov/stationary-engines/national-emission-standards-hazardous-air-pollutants-reciprocating-internal-0>.

³⁸ [81 FR 44212](https://www.epa.gov/stationary-engines/new-source-performance-standards-stationary-compression-ignition-internal-0) (7/7/2016). More information: <https://www.epa.gov/stationary-engines/new-source-performance-standards-stationary-compression-ignition-internal-0>.

³⁹ [73 FR 3568](https://www.epa.gov/stationary-engines/new-source-performance-standards-stationary-spark-ignition-internal-combustion) (1/18/2008). More information: <https://www.epa.gov/stationary-engines/new-source-performance-standards-stationary-spark-ignition-internal-combustion>.

⁴⁰ [71 FR 76603](https://www.epa.gov/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national) (12/21/2006). More information: <https://www.epa.gov/stationary-sources-air-pollution/synthetic-organic-chemical-manufacturing-industry-organic-national>.

⁴¹ [79 FR 17430](https://www.epa.gov/stationary-sources-air-pollution/group-iv-polymers-and-resins-national-emission-standards-hazardous) (3/27/2014). More information: <https://www.epa.gov/stationary-sources-air-pollution/group-iv-polymers-and-resins-national-emission-standards-hazardous>.

⁴² [71 FR 40316](https://www.epa.gov/stationary-sources-air-pollution/miscellaneous-organic-chemical-manufacturing-national-emission) (7/14/2006). More information: <https://www.epa.gov/stationary-sources-air-pollution/miscellaneous-organic-chemical-manufacturing-national-emission>.

Leak Detection and Repair New Source Performance Standards (NSPS) and Maximum Achievable Control Technology (MACT) requirements ⁴³	Multiple regulations containing similar requirements. EPA should consider consolidating these into a single rule that applies to both NSPS and MACT sources. Additionally, the requirement that source report to both state and EPA is redundant.
U.S. EPA's "Recommendation on the Disposal of Household Pharmaceutical Collected by Take-Back Events, Mail-Back, and Other Collection Program," per memorandum dated September 26, 2012 ⁴⁴	NSPS Subpart EEEE ⁴⁵ provides exemptions for units that combust contraband or prohibited goods. ⁴⁶ However, EPA's 2012 memorandum excludes prescription drugs from take-back events from this exemption (hence requiring conforming to NSPS Subpart EEEE for incinerating this type of pharmaceuticals). This can be cost prohibitive, especially in those areas of U.S. (such as Nevada) where there are no already adequate incinerating facilities.
Compliance Assurance Monitoring (CAM) ⁴⁷	Some of the CAM regulations in 40 CFR 64 may already be addressed in 40 CFR 70.
Regulations and policies related to ambient monitoring plans ⁴⁸	Ambient monitoring plans are currently required to be submitted yearly following public notice and comment. The requirements for these plans have increased significantly, with the current plans being hundreds of pages. EPA should investigate changing these requirements to submission of modifications to the plans yearly with full plan submission and public review every five years.
Gasoline Reid Vapor Pressure Regulations ⁴⁹	Regulation relies on outdated information and technology.
Vehicle Emissions Inspection and Maintenance (I/M) Regulations ⁵⁰	Auditing and reporting requirements are unnecessarily burdensome.
Prevention of Significant Deterioration (PSD) permit review ⁵¹	Currently, Regional offices are reviewing each PSD permit application processed by the State. Typically, comments and suggestions from the region do not result in any modification of the proposed permit. Reviewing and responding to these minor comments and suggestions requires extra time from the permitting staff and often unnecessarily holds up timely issuance of the permits.

⁴³ See EPA's [Leak Detection and Repair: A Best Practices Guide](#) (2014) and EPA's [Guidelines for MACT Determinations under Section 112\(j\) Requirements](#) (2002). EPA's overview of air toxics (Section 112 of the Clean Air Act) can be found [here](#), and a full list of NESHAPs can be found [here](#).

⁴⁴ Memorandum can be found [here](#).

⁴⁵ More information available [here](#).

⁴⁶ [71 FR 75832\(p\)](#) (12/18/2006).

⁴⁷ [62 FR 54900](#) (10/22/1997). More information: <https://www.epa.gov/air-emissions-monitoring-knowledge-base/compliance-assurance-monitoring>.

⁴⁸ More information can be found at EPA's [Ambient Monitoring Technology Information Center](#) (AMTIC).

⁴⁹ <https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>.

⁵⁰ An extensive list of related regulations can be found at: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-inspection-and-maintenance-im-regulations>.

⁵¹ Information from EPA on PSD can be found [here](#), and EPA's Office of Air Quality Planning and Standards issued an [October 2012 memorandum](#) on timely processing of PSD permits.

Prevention of Significant Deterioration (PSD) modeling review ⁵²	EPA Regional staff typically review each PSD modeling review. Often, the staff modelers are required to spend significant time in discussion with EPA regarding the modeling review or addressing comments, yet significant changes rarely result from these discussions.
New Source Review (NSR) permitting ⁵³	Specific suggestions to adjust NSR permitting include: removal of volatile organic compound (VOC) requirements in areas with oxides of nitrogen limits under New Source Review (NSR); ⁵⁴ modifications to PSD and NSR that consider environmentally beneficial projects; and providing a clean unit exemption.
Infrastructure State Implementation Plan (iSIP) ⁵⁵	<p> Within 3 years after the promulgation or revision of a NAAQS, Sections 110(a)(1) and (2)⁵⁶ of the Clean Air Act require each state to submit a plan to U.S. EPA which provides for the implementation, maintenance, and enforcement of the NAAQS. These plans have become colloquially known as “infrastructure SIPs” or “iSIPs.” Historically, states were required to generally demonstrate that they had the adequate authorities and resources in place to comply with each requirement in Section 110(a)(1) and (2). This was commonly achieved by submitting the relevant state-level rules that provided these authorities and resources to the states. Over the past several years, however, much more has been asked of the states to fulfill the requirements of these iSIPs for promulgations and revisions of various NAAQS. In fact, the states are now asked to submit information for iSIPs that is more appropriate for inclusion into full SIPs or attainment demonstrations. This process has become overly burdensome and requires far too many resources. Options to address these concerns: </p> <ul style="list-style-type: none"> • Allow the states to again demonstrate that they have the adequate authorities and resources in place to comply with the requirements of 110(a)(1) and (2) by simply submitting the relevant state-level rules and regulations that provide the state such authorities and resources. • Rather than have the states submit nearly identical plans each time one of the NAAQS is promulgated or revised, allow the states to develop and submit to EPA one, non-NAAQS-specific general plan that demonstrates that all of the authorities and resources required in 110(a)(1) and (2) are in place. When such a plan is approved by EPA, allow that iSIPs to satisfy these requirements for all subsequent NAAQS promulgations and revisions unless and until such time that the state no longer has the required authorities and resources in place.

⁵² A list of permit modeling guidance documents from EPA can be found [here](#).

⁵³ Information on recent EPA regulatory actions related to NSR permitting can be found [here](#).

⁵⁴ <https://www.epa.gov/nsr/nsr-regulatory-actions#ozone>.

⁵⁵ More information on iSIPs available [here](#), including an EPA [fact sheet](#) and [guidance](#).

⁵⁶ <https://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapI-partA-sec7410.htm>.

Clean Air Act Modernization

Additional suggestions for updating the Clean Air Act include: adjusting the NAAQS review cycle to 10 years; properly updated new source performance standards (NSPS) and maximum achievable control technologies (MACT) to consider best achievable control technologies (BACT);⁵⁷ timely implementation tools;⁵⁸ and, regulatory consideration of background ozone.⁵⁹

Thank you for the attention to these comments. The Association is available to provide additional information on any of the regulations identified in the list above. AAPCA and its members look forward to working with U.S. EPA and the Regulatory Reform Task Force as it evaluates existing regulations and makes recommendations to the Administrator regarding those that can be repealed, replaced, or modified to make them less burdensome. If you have any questions, please contact cwoods@csg.org or (859) 244-8040.

Sincerely,



Clinton J. Woods, Executive Director
AAPCA

⁵⁷ <https://www.epa.gov/clean-air-act-overview/setting-emissions-standards-based-technology-performance>.

⁵⁸ AAPCA, *State Environmental Agency Perspectives on Timely NAAQS Implementation*, September 2015.

⁵⁹ AAPCA, *State Environmental Agency Perspectives on Background Ozone & Regulatory Relief*, June 2015.