

White House Directs EPA to Review Air Quality Standards and Permitting Process

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A new White House memorandum directs the U.S. Environmental Protection Agency (EPA) to review and streamline Clean Air Act implementation. Its stated aims are to protect air quality “while reducing unnecessary impediments to new manufacturing and business expansion.”

Since 2011, congressional actions on air quality issues have centered on EPA’s regulatory authority, including EPA’s 2015 revision to ozone air quality standards. Two recent bills—H.R. 806 and S. 263—would, among other things, delay designation of areas not meeting the ozone standards and extend EPA’s review period for air quality standards from every five years to 10.

This Insight summarizes the memorandum’s directives and discusses considerations for Congress.

Background

The Clean Air Act seeks to protect human health and the environment from air pollution. The provisions most relevant to the memorandum include those that establish health-based air quality standards, address interstate and international emissions transport, and restore visibility in national parks and wilderness areas.

Notwithstanding the undisputed air quality progress since 1970, several challenges remain to reduce pollution in areas exceeding federal standards and to continue protection in areas meeting the standards. For example, the movement of air pollutants across state borders poses difficulties for states whose air quality is affected by emissions from upwind jurisdictions. Some states are concerned about emissions transported from other countries.

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Memorandum's Directives

The memorandum presents air quality management goals—such as timely petition reviews—but does not prescribe particular methods. This section summarizes the directives in the context of the statutory provisions.

Air Quality Standards

The Clean Air Act establishes roles for federal and state agencies. EPA establishes minimum national air quality standards—National Ambient Air Quality Standards (NAAQS)—and is required to review them every five years. States adopt State Implementation Plans (SIPs) to ensure compliance with the standards. EPA reviews SIPs to ensure they meet statutory requirements. The act requires EPA, under certain conditions, to impose sanctions and to issue a Federal Implementation Plan (FIP) if a state fails to submit or implement an adequate SIP.

The White House memorandum directs EPA to review the multi-step process for setting and revising NAAQS—in particular, to assess the transparency of the science reviews, develop guidance differentiating science and policy considerations, and seek Clean Air Scientific Advisory Committee advice regarding background pollution and potential adverse effects from NAAQS compliance strategies. The memorandum is silent on prior Administrations' reviews, which have considered the “timeliness, scientific integrity and transparency” of the NAAQS review process.

NAAQS Implementation and Permitting Programs

The memorandum directs EPA to review related “existing rules, guidance, memoranda, and other public documents,” including preconstruction permit applications. It directs EPA to determine whether to revise or rescind any of these documents, consistent with the law, and to improve the timeliness of SIP and permit decisions. Some of the memorandum's timeline goals reiterate EPA's statutory deadlines (e.g., for SIP approvals and permit reviews). The memorandum's timeline goal for preconstruction permit issuance may be less relevant, however, given that states issue most of these permits.

The memorandum directs EPA to issue NAAQS implementation regulations and guidance concurrent with the NAAQS revisions. Historically, EPA has issued implementation regulations and guidance, in collaboration with states, subsequent to the NAAQS revisions.

International Emissions and Exceptional Events

The act authorizes EPA to provide regulatory relief, under certain conditions, for air emissions deemed beyond the control of a state. For example, monitoring data from exceptional events—unusual or naturally occurring events affecting air quality—may be excluded from determinations of NAAQS compliance status (“Section 319(b) petitions”). EPA may also approve SIPs that demonstrate that an area would have met NAAQS if not for emissions from another country (“Section 179B petitions”). The memorandum directs EPA to ensure timely processing of these petitions; the statute does not specify deadlines for them.

The memorandum directs EPA to consider Section 179B petitions from any state—not just those bordering Canada and Mexico—and to consider whether emissions from Asia affect domestic air quality. EPA has previously considered international transport: The 2015 ozone rule discussed ozone precursor emissions that can contribute to “background” levels and described outreach to other countries, including China (p. 65443). While Section 179B does not limit the petitions to particular states, EPA's 2016

comment solicitation suggested that international ozone may have greatest influence in areas “in the immediate vicinity of Mexico or Canada.”

The memorandum’s directives also address use of modeling data and, in the context of intrastate and regional emissions trading, development and implementation of offset policies in rural areas.

Regional Haze

The White House memorandum directs EPA to review FIPs issued under the Regional Haze program, which limits pollution impairing visibility in certain national parks and wilderness areas, and to replace such FIPs with approvable SIPs. EPA previously announced plans to review a 2017 Regional Haze rule but has not specified whether it will address the memorandum’s directives.

Issues for Congressional Consideration

The effect of the President’s memorandum is unclear, given that it does not specify changes EPA is to make. Separately, EPA has announced initiatives related to the memorandum’s goals: EPA established an Ozone Cooperative Compliance Task Force, issued new guidance for preconstruction permitting, proposed new requirements for use of scientific studies in rulemaking, and plans to issue new exceptional events guidance.

Issues for Congress may include

- The effect of EPA’s initiatives on federal-state partnerships, including how they would affect EPA’s statutory obligation to set health-based air quality standards and oversee state implementation.
 - Whether the act provides sufficient clarity about international pollution impacts on domestic air quality or if this determination should remain at EPA’s discretion. It is unclear how EPA will define *background emissions* in future actions while it pursues its stated goal to maximize flexibility of Section 179B petitions and other regulatory relief tools.
 - Proposals to modify the statute based on reviews of the NAAQS process and other programs.
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