



Texas Public Policy Foundation
**LEGISLATOR'S GUIDE
TO THE ISSUES
2021-2022**

Air Quality

The Issue

Few Americans know that [air quality in America has improved dramatically over the past 50 years](#). Aggregate emissions of the six criteria pollutants regulated under the Clean Air Act have [fallen 77% since 1970](#), and the U.S. has some of the lowest levels of fine particulate matter (PM2.5) in the world

[All but 16 of the 3,007 counties in the U.S.](#) meet the National Ambient Air Quality Standard (NAAQS) for PM2.5. Additionally, [196 counties](#) do not meet the standard for ozone, primarily because that standard was just lowered in 2015. Despite most of the country enjoying safe air, there has been a concerted advocacy effort to tighten air quality standards as much as possible, regardless of the potential costs, using faulty science to redefine what is safe for humans to breathe.

Until recently, the EPA tightened the NAAQS and other standards at almost every opportunity, but the current administration is finally bringing balance to the regulatory process. The EPA has completed more than [60 “deregulatory” actions](#) and has another 40 in development, paring back the excesses of the previous administration while still maintaining the standards of environmental quality that Americans desire.

The EPA's new [“back to basics”](#) approach will help restore the model of cooperative federalism that has fostered our air quality improvements over the past 50 years and will give more power to states and individuals to protect their local environments. These changes present an opportunity for Texas to establish more regulatory certainty and improve the burdensome environmental permitting process for Texas businesses.

Fine Particulate Matter (PM2.5) NAAQS Review

An example of the historic changes happening at the EPA is occurring as part of the 5-year review of the NAAQS for PM2.5. For the first time since PM2.5 began being regulated under the Clean Air Act in the mid-1990s, the [EPA is proposing not to lower the NAAQS](#). It is likely that the standard will be left unchanged during the final rulemaking in 2020.

Concentrations of PM2.5 throughout the U.S. are the [lowest on record](#) and are approaching natural levels in most places. However, the EPA has relied on flawed studies claiming that PM2.5 causes many thousands of premature deaths even at very low concentrations. Despite [numerous criticisms](#) of these studies and the methods for setting the PM2.5 NAAQS, the EPA persisted in using them to justify lowering the NAAQS until this latest decision.

The EPA has also used co-benefits from reducing PM2.5 below the NAAQS to justify air quality regulations that would not pass a cost-benefit test on their own merit. For example, in the [2012 Mercury Air Toxics rule](#), 99.6% of the predicted public health benefits were PM2.5 co-benefits, and only 0.007% were from the direct reduction of mercury. The current EPA is attempting to

eliminate or reform many of these practices, and Texas businesses and policymakers should encourage their efforts.

Ozone NAAQS Review and Implementation

The process for setting the ozone NAAQS has been similarly abused with even greater costs. The 2015 standard of 70 parts per billion (ppb) was estimated to impose [annual regulatory costs](#) of more than \$1 billion. As of June 2020, [16 counties in Texas](#), comprising the areas around Houston, Dallas, and San Antonio, are in nonattainment, adding burdensome permitting restrictions for new businesses in those areas.

To balance the cost of the new standard, the EPA claimed annual public health benefits of up to \$6 billion. However, a large majority of those benefits come not from directly lowering ozone levels but from the co-benefit of reducing PM2.5. The claims that these standards will save thousands of lives are shrouded in scientific sleights of hand and represent an abuse of the NAAQS to regulate industries out of existence.

As with PM2.5, the [EPA is proposing that the current ozone standard not be lowered](#), a potentially historic decision that will bring regulatory certainty to many states and localities still working to reach the 2015 standard. The Clean Air Scientific Advisory Committee is also suggesting [several important reforms](#) to improve the regulatory process for the ozone NAAQS and asking for more causal evidence linking ozone exposure to adverse health effects.

Visibility: Regional Haze Program

The Regional Haze Program (RHP) is an example of how cooperative federalism is being restored in the realm of air quality regulations. When the U.S. Congress created the RHP in the [Clean Air Act Amendments of 1977](#), it was clear that Congress intended for the states to take charge of the program.

However, in 2009, the EPA began rejecting state implementation plans (SIPs) for regional haze and imposing federal implementation plans (FIPs). In January 2016, the EPA imposed a [FIP](#) on Texas, with estimated compliance costs of [\\$2 billion](#), to attain a maximum visibility improvement of 0.5 deciviews. [Peer-reviewed](#) research has shown that a reduction of 5 to 10 deciviews are needed for the average person to perceive any improvement in visibility.

Fortunately, the new administration is returning decision-making power under the RHP to the states. In October 2017, EPA published a [final rule](#) allowing the Lone Star State to implement a flexible, market-based, intra-state emission-allowance trading program for electricity generators to meet requirements at a lower cost. A year later, Administrator Wheeler issued a [roadmap](#) to initiate [reforms](#) that give more power to states and ensure adequate support for implementing the program.

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The Facts

- [Ambient levels of all six criteria pollutants](#) regulated under the Clean Air Act have fallen substantially in the U.S. in recent decades. Carbon monoxide fell 85% between 1980 and 2019, sulfur dioxide fell 92%, and nitrogen oxides fell 65%.
- Texas has been a leader in improving air quality without sacrificing economic growth. From 2000 to 2018, [state levels](#) of nitrogen oxides fell by 50%, sulfur dioxide by 78% and carbon monoxide by 75%, even as the state's [population](#) grew by 40% and its [economy](#) by 61%.
- The previous administration imposed more than 10 times the number of FIPs as the three administrations before it combined. Under the new administration, the EPA has scaled back the use of FIPs in favor of SIPs.
- In April 2018, President Trump signed a [memorandum](#) for EPA Administrator Scott Pruitt, directing the agency to provide efficient and cost-effective implementation of the NAAQS and the Regional Haze Program.
- The current EPA has completed more than [60 “deregulatory” actions](#) and has another 40 in development. It is also committed to reforming the process by which the NAAQS are set.

Recommendations

- Texas should work with the leadership at EPA to reclaim its proper authority to implement the Clean Air Act.
- Congress should reform the Clean Air Act to require more careful consideration of costs and benefits in setting the NAAQS and give more power to states to establish their own implementation plans.

Resources

- [“Air Quality – National Summary,”](#) U.S. Environmental Protection Agency (Last updated May 21, 2020).
- [“Cross-State Air Pollution Rule \(CSAPR\),”](#) Texas Commission on Environmental Quality (Last updated Oct. 7, 2019).
- [“EPA Deregulatory Actions,”](#) U.S. Environmental Protection Agency (Last updated July 7, 2020).
- [EPA’s Pretense of Science: Regulating Phantom Risks](#) by Kathleen Hartnett White and Brent Bennett, Texas Public Policy Foundation (Dec. 2019).
- [“Recent Developments in Regional Haze Policy: EPA and Environmental Groups Battle Over a New Program for Texas”](#) by Norman W. Fichthorn, Nickel Report (March 13, 2018).
- [“Nonattainment Areas for Criteria Pollutants \(Green Book\),”](#) U.S. Environmental Protection Agency (Last updated June 30, 2020).