Consistent with President Trump’s stated objectives of U.S. energy independence and economic growth, EPA and other federal agencies should advance a regulatory system that promotes streamlined permitting and cost-effective regulations, while protecting public health and the environment.
The business community, including the oil and natural gas industry, relies upon a cost-effective regulatory system that promotes the certainty and predictability necessary to make the massive capital investments required to bring energy and other projects to the U.S. economy. Consistent with President Trump’s stated objectives of U.S. energy independence and economic growth, the U.S. Environmental Protection Agency (EPA) and other federal agencies should advance a regulatory system that promotes streamlined permitting and cost-effective regulations, while protecting public health and the environment.

In 2011 and 2015, EPA sought to relieve the burdens imposed by its rules and the time has come to review those regulations and the additional requirements imposed by the Obama Administration, while promoting public health, safety and the environment as industry and citizens support.

Key EPA Regulations
As described below, EPA should expeditiously review the oil and gas New Source Performance Standards (NSPS), Renewable Fuels Standards (RFS), and ozone National Ambient Air Quality Standards (NAAQS) and their implementation.

First, regarding the oil and gas final NSPS rule issued last year, detailed petitions for administrative reconsideration of the final rule were filed with then-EPA Administrator McCarthy on August 2, 2016. The previous 2012 standards and innovation are already effectively reducing emissions while production has increased significantly. EPA’s April 4, 2017 announcement to review the 2016 standards is encouraging, and a full review of the rule and the revision of the standards is appropriate. In conjunction, EPA has recently solicited comment on a proposed rule staying compliance dates for portions of the NSPS for two years to provide the EPA sufficient time to propose, take public comment, and issue a final action on specific requirements on which EPA has granted reconsideration of the NSPS.

Second, under the RFS program, EPA is required to determine and publish annual percentage standards for each compliance year. On July 21, 2017, EPA proposed for comment the standards for 2018 and the biomass-based diesel volume for 2019. Unfortunately, there are a number of problems with the outdated RFS program that EPA should address:

1. EPA should use its waiver authority to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the mandate does not exceed the E10 blend wall.

2. In order to maintain a market for ethanol-free gasoline, EPA should not set a RFS mandate that would cause the average ethanol content to exceed 9.7 percent of projected gasoline demand. EPA should use realistic projections of E0, E15, E85, and cellulosic demand when setting the annual Renewable Volume Obligations.

3. EPA should reject calls to move the RFS Point of Obligation.

4. EPA should work with Congress to reform and ultimately end this unworkable program as the program does not reflect current market realities and it creates the potential for economic harm.

Third, regarding the ozone NAAQS, the American Petroleum Institute and other organizations have commented previously that the more restrictive ozone standards promulgated by EPA in late 2015 were unnecessary, because ambient ozone levels were declining and the public health was already protected with an adequate margin of safety. The commenters also pointed out, as EPA correctly identified, that ozone levels would keep falling. Unfortunately, EPA’s new standards create tremendous burden on states, risk significant impacts on job growth, and increase the potential number of U.S. counties thrown out of attainment.

Legal challenges to the 2015 rule have been consolidated, and on April 11, 2017, the court agreed to halt the case while
EPA reviews the final rule for possible reconsideration. EPA should reconsider the 2015 ozone NAAQS based on the issues identified in the comments and court briefs. It is crucial that the EPA complete this review quickly, as deadlines pertaining to the 2008 and 2015 ozone NAAQS are soon approaching. If EPA decides not to reconsider the 2015 ozone NAAQS after its review, the agency should expeditiously revoke the 2008 ozone NAAQS as proposed in the 2015 ozone Nonattainment Area Classifications and State Implementation Plan (SIP) Rule in order to avoid the burdens of implementing two ozone NAAQS simultaneously.

**Comprehensive Review of EPA Regulations**
The following should be considered in review of all existing and new regulations.

1. The cumulative cost impacts of regulations on individual industrial sectors.
2. The review should seek and utilize actual compliance costs from impacted industries to the maximum extent possible.
3. The benefits clearly attributable to the rule under review should be based on measurable metrics to the maximum extent possible.
4. Benefits should not be double counted (i.e., the same benefits being attributed to multiple rules).
5. The science supporting a regulation should be reviewed to determine if it is consistent with EPA’s Principles of Scientific Integrity and Policy (2012), with meaningful disclosure of potential areas of bias, along with new information available since promulgation.
6. The regulation reporting burdens should confirm the amount, method, and frequency of data collection necessary to meet the objectives of the regulation.
7. General permits should be considered as a cost-effective permitting alternative.
8. EPA should evaluate how better to write regulations more clearly.
9. EPA should consider incentives for enhancing self-compliance auditing under the EPA Audit Policy and voluntary programs.
10. EPA should consider increasing rule flexibility and support to allow sources broader use of available improved technologies to monitor, model, and demonstrate compliance. For example, rules dictating precise monitoring, repair, modeling, or compliance measurement methods should be reviewed to eliminate outdated technologies and methods (i.e., Method 21 for LDAR monitoring).
11. Duplicative and overlapping regulations should be curtailed.
12. Regulations should be examined for any unintended, negative effects on recycling (i.e., regulations that create economic barriers to recycling).

**Improve the Permitting Process**
The current federal permitting process presents many challenges for applicants. Significant improvements could be achieved by standardizing permitting processes, improving coordination among federal and state agencies (including deadlines for permit issuance), and using a dispute resolution process to resolve interagency permitting problems. Furthermore, implementation of measures similar to the FAST Act would be beneficial.

Even though responsibility for U.S. Clean Air Act (CAA) permits is often delegated to the states, tribes, and local air control agencies, EPA continues to play a role in reviewing and amending the permit programs, as well as weighing in on Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) permits in many cases. Even in cases where a state issues CAA permits under an EPA-approved SIP, there are instances when decisions made by the permitting authority are re-evaluated and revisited by EPA, duplicating the efforts of the agencies, adding delay and uncertainty for the permittee.

If a project is subject to a National Environmental Policy Act (NEPA) analysis, there will be overlap between the requirements of the NEPA process and the requirements of certain permits. For example, a proposed source was issued a PSD and greenhouse gas air permit from a state with an EPA-approved permitting program. The Federal Energy Regulatory Commission (FERC) has required that the permittee continue implementing measures similar to the FAST Act reforms to the offset program; and adoption of a consistent treatment for pending permit applications.
Additional NSR reform items include:

- Netting should be fixed to allow use of projected actual emissions in lieu of Potential to Emit (PTE), as the rule allows in accordance with the “new level of actual emissions” in 40 CFR 52.21(b)(3)(v).
- Models and procedures should be updated to improve efficiency and to remove the excessive conservatism that exists in the modeling system.
- Project netting should be allowed not only for existing emission sources, as already allowed in the rule (although EPA has written policy memos to the contrary), but for hybrid units as well.
- “Begin actual construction” has, by policy, been extended to prohibit construction on “any installation necessary to accommodate the emissions unit”. Sources should be able to conduct early work up until the piece of equipment is actually emitting.
- Best Available Control Technology (BACT) evaluations should be streamlined. BACT is fairly stable and well-known for most industries/sources and evaluations need not be as onerous as the traditional five-step top-down evaluation that EPA continues to require. BACT for most source types is well established and a detailed analysis is not warranted.
- The Greenhouse Gas Significant Emissions Rate should be re-evaluated and should include a de minimis threshold above 75,000 tons per year.
- The 2009 proposal for debottlenecking should be re-evaluated and finalized.
- Streamlining should be achieved through the use of permits by rule, where a facility operator can simply notify the permitting agency when all requirements contained in the “rule” are met by the planned construction.
- General permits that apply to a set array of conditions are useful to commence construction with a notification of use.

**Improve Advisory Boards**

EPA’s Science Advisory Board (SAB) was established in 1978 to provide scientific advice to the EPA Administrator. While the participants selected for the chartered SAB and the various subcommittees and panels—predominantly from academia—are certainly knowledgeable in their particular fields of study, they are not always well-versed in the industrial, technical, or operational aspects of the regulations, research, or plans under review. There are instances where industry has offered superb candidates with the essential extensive practical and current expertise for SAB consideration to provide a proper stakeholder input to the advisory panel only to be turned down by the SAB staff due to a perceived “disqualifying financial interest” under the Ethics in Government Act of 1978.

A balanced panel is supported by the Federal Advisory Committee Act (FACA). Section 5(b)(2) of the FACA requires “the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee.” The corresponding FACA regulations reiterate this requirement at 41 CFR § 102-3.30(c), and, for discretionary committees being established, renewed, or reestablished, require agencies to provide a description of their plan to attain fairly balanced membership during the charter consultation process with the General Services Administration. See, for example, 41 CFR § 102-3.60(b)(3).

EPA has acknowledged that there is no automatic exclusion from serving on the SAB or its panels merely because a nominee may work for industry. The SAB Office should reconsider how it views a balanced panel and be encouraged to fairly evaluate the full suite of candidates interested in serving in this capacity.

**Conclusion**

Federal regulatory policy can either strengthen or weaken the U.S. energy renaissance and the business climate. Regulatory actions should be rooted in sound contemporary science and data, with a consideration of the costs and benefits, while protecting public health and the environment. The rules cited in this article should be addressed through notice and comment rulemaking and improved as suggested.