Southwestern Public Service Company (“SPS”); Entergy Services, Inc., on behalf of Entergy Corporation and its subsidiaries (collectively, “Entergy”); and Cleco Power LLC (“Cleco”) (collectively, “Petitioners”) respectfully petition the U.S. Environmental Protection Agency (“EPA” or “Agency”) for reconsideration of the final rule entitled “Protection of Visibility: Amendments to Requirements for State Plans,” Docket No. EPA–HQ–OAR–2015–0531.¹ Specifically, Petitioners request that EPA eliminate (1) provisions codifying an interpretation of the relationship between reasonable progress goals and long-term strategies; and (2) provisions pertaining to the reasonably attributable visibility impairment (“RAVI”) program. These provisions contradict the Clean Air Act (“CAA” or “Act”) and EPA’s previous regulations and impose unnecessary and potentially staggering costs without achieving any corresponding visibility benefits. The Final Rule also improperly interferes with state authority to implement the Regional Haze Program, in direct violation of the cooperative federalism structure of the CAA. As was recently explained in a letter to Administrator Pruitt from the Attorneys General for 19 states, “the primary regulators of the environment are the States and local governments.”² EPA should reconsider and eliminate these provisions of the Final Rule to restore the proper balance of state and federal authority, as well as to make the Rule consistent with the CAA and prior EPA regulations and effectuate recent Executive Orders.

I. INTRODUCTION

A. Description of Petitioners

The Petitioners are electric generating companies that own and/or operate power plants subject to the Regional Haze Program and are directly affected by the Final Rule.

SPS is a wholly owned subsidiary of Xcel Energy Inc., a utility holding company headquartered in Minneapolis, Minnesota. Xcel Energy Inc.’s operating companies own 75 generating facilities with approximately 16,744 megawatts of electric generating capacity and 20,053 miles of transmission lines, with SPS owning nine generating plants with approximately 4,446 megawatts of electric generating capacity and 6,839 miles of transmission lines. Xcel Energy Inc.’s operating companies, including SPS, serve approximately 3.5 million electricity customers across Colorado, Michigan, Minnesota, New Mexico, North Dakota, South Dakota, Texas and Wisconsin, with SPS serving approximately 388,000 electric customers in a 52,000 square mile area of the Texas Panhandle and eastern and southern New Mexico. Xcel Energy Inc. has approximately 12,000 employees.

Entergy is an integrated energy company engaged primarily in electric power production and retail distribution operations. Entergy owns and operates power plants with approximately 30,000 megawatts of electric generating capacity. Entergy delivers electricity to 2.8 million utility customers in Arkansas, Louisiana, Mississippi, and Texas and owns and operates wholesale electricity generating units in Massachusetts, Michigan, and New York. Entergy has more than 13,000 employees.

Cleco is a regulated utility company headquartered in Pineville, Louisiana. Cleco owns nine generating units with a total nameplate capacity of 3,310 megawatts, 11,931 miles of distribution lines and 1,305 miles of transmission lines. Cleco delivers electricity to approximately 287,000 customers in Louisiana through its retail business, and supplies wholesale power in Louisiana and Mississippi. Cleco is a wholly owned subsidiary of Cleco Corporate Holdings LLC, a utility holding company headquartered in Pineville, Louisiana. Cleco Corporate Holdings LLC has approximately 1,200 employees.

B. Background

Section 169A of the CAA establishes a national goal of preventing future visibility impairment (i.e., “regional haze”) and remedying existing visibility impairment caused by manmade air pollution in certain national parks, wilderness areas, and monuments (collectively defined as “Class I areas”). To implement this goal, states must adopt State Implementation Plans (“SIPs”) for phased 10-year planning periods that (1) require certain major stationary sources to meet emission limits based on the installation of “best available retrofit technology”

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(“BART”), and (2) include a long-term strategy for the state to make “reasonable progress” towards the national goal of attaining natural visibility conditions by 2064. The long-term strategy consists of “such emission limits, schedules of compliance and other measures as may be necessary” for meeting reasonable progress goals.

In setting a reasonable progress goal, the CAA requires states to consider four factors: “the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.” EPA further specifies that the reasonable progress goal “must provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period.” EPA has explained that reasonable progress goals are “interim goals that represent incremental visibility improvement over time toward the goal of natural background conditions.”

EPA took a two-phased approach in establishing the Regional Haze Program to satisfy the mandate of CAA Section 169A. In the first phase, EPA addressed impairment of visibility in Class I areas that was “reasonably attributable” to a specific source or smaller group of sources. This “reasonably attributable visibility impairment” ("RAVI") program also addressed potential visibility impacts from new and modified major sources already subject to New Source Review permitting requirements. In the second phase, beginning with EPA’s 1999 Regional Haze Rule, EPA addressed regional haze in Class I areas through a regional planning approach. This second phase targets visibility impairment that is not reasonably attributable to a single source or small, defined group of sources, but instead is produced by emissions from a wide array of sources over a broad geographic area.

4 BART is defined as “an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction.” 40 C.F.R. § 51.301.
5 42 U.S.C. § 7491(b)(2).
6 Id.
7 42 U.S.C. § 7491(g)(1).
8 40 C.F.R. § 51.308(d)(1).
11 Id.
The Final Rule revises provisions of both the RAVI and Regional Haze Programs. According to EPA, the revisions remove older provisions that have been superseded by subsequent developments and clarify certain provisions to ensure consistent understanding of requirements as states prepare their Regional Haze SIPs for the second implementation period. Most notably, the Final Rule (1) “clarifies” the relationship between reasonable progress goals and long-term strategies; and (2) modifies and expands the RAVI program.

II. REQUEST FOR RECONSIDERATION

EPA should grant reconsideration because certain provisions of the Final Rule contradict the CAA and EPA’s previous regulations, undermine the principles of cooperative federalism, and impose excessive costs with no corresponding visibility benefits. Federal agencies have inherent authority to reconsider their past decisions and to revise, replace or repeal a decision to the extent permitted by law and supported by a reasoned explanation. FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009); Motor Vehicle Mfrs. Ass’n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983).

Reconsideration of a rulemaking is “well within an agency’s discretion” when it is based “on a reevaluation of which policy would be better in light of the facts.” Nat’l Ass’n of Home Builders v. EPA, 682 F.3d 1032, 1038, 1042 (D.C. Cir. 2012) (citing Fox, 556 U.S. at 514-15). The agency need not demonstrate that the reasons for the new policy are better than the reasons for the old one; rather, “it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.” Fox, 556 U.S. at 515 (emphasis omitted). A new Presidential Administration is a valid reason for conducting such a reevaluation of the best policy approach. Motor Vehicle Mfrs. Ass’n, 463 U.S. at 59 (1983) (Rehnquist, J., concurring in part and dissenting in part) (“A change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations.”). EPA recently exercised this authority when announcing its intent to reconsider the Clean Water Rule.


The Final Rule revises certain regulatory provisions to “clarify the relationship between long-term strategies and reasonable progress goals.” These revisions include adding provisions (1) requiring states to select emission control measures for long-term strategies before calculating reasonable progress goals, and (2) providing that a state, when developing its long-term strategy and considering the time necessary for compliance, “may not reject a control measure because it cannot be installed or become operational until after the end of the

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13 40 C.F.R. Pts. 51-52.
15 82 Fed. Reg. at 3,078.
16 See 40 C.F.R. § 51.308(f)(2)(i).
implementation period.” These modifications should be eliminated because they undermine the CAA’s intent to achieve gradual and steady improvement in visibility in Class I areas over a 60-year period, as well as limit state authority and increase costs for affected sources without any corresponding visibility benefit.

1. The “Clarifications” Improperly Require Assessment of Reasonable Progress Controls Before States Set Reasonable Progress Goals.

EPA’s “clarification” turns the statutory scheme on its head by requiring states to identify reasonable progress controls to be included in long-term strategies before they establish their reasonable progress goals, contradicting both the CAA and the Agency’s own regulations. The CAA requires states to set reasonable progress goals by considering four factors: (1) the costs of compliance; (2) the time necessary for compliance; (3) the energy and nonair quality environmental impacts of compliance; and (4) the remaining useful life of any existing source subject to such requirements. The Act then permits states to impose emission reduction requirements in their long-term strategies only to the extent necessary to achieve reasonable progress. Accordingly, Congress directed that states first set reasonable progress goals (considering the four statutory factors) and second, develop long-term strategies to achieve the reasonable progress goals. As EPA itself has explained, a state’s long-term strategy is inextricably linked to the reasonable progress goals because the long-term strategy “must include enforceable emission limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals.”

The Final Rule effectively reverses this process, violating the statutory mandate that reasonable progress controls be imposed as necessary to meet reasonable progress goals. First, when developing long-term strategies, the Final Rule requires states to “evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment.” Second, the Final Rule requires states to establish reasonable progress goals that reflect the visibility conditions projected to be achieved by the end of the applicable implementation period as a result of the emission reductions measures identified in the first step. Taken together, these new provisions require states to identify reasonable progress controls to include in their long-term strategies before establishing their reasonable progress goals.

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17 82 Fed. Reg. at 3,089; see also 40 C.F.R. § 51.308(f)(2)(i).
18 42 U.S.C. § 7491(g)(1).
19 See 42 U.S.C. § 7491(b)(2) (long term strategies must “contain such emission limits ... as may be necessary to make reasonable progress”) (emphasis added).
22 Id. § 51.308(f)(3)(i).
Not only does this change in sequencing violate the CAA, EPA’s new approach leads to the absurd result that states may be required to impose emission control requirements that are not necessary to make reasonable progress toward the national visibility goal. In other words, states may be forced to require controls where actual visibility in the Class I area already is better than the reasonable progress goals that would be established based on an evaluation of the four statutory factors. This is the case in Arkansas and Texas, where EPA applied this new sequencing in Federal Implementation Plans (“FIPs”) for those states. In both cases, EPA imposed burdensome and expensive emission control requirements in long-term strategies even though visibility in both states already has surpassed EPA’s final reasonable progress goals for the first planning period.23 The outcome in Arkansas is particularly arbitrary, as the Class I areas in that state already have surpassed the uniform rate of progress (“URP”), or glidepath, for the planning period.24

This is a plainly arbitrary outcome that far exceeds what the CAA envisions. Under the Act, a state may impose emission reduction requirements only to the extent necessary to achieve reasonable progress towards natural visibility levels.25 But EPA’s new approach requires individual source controls without assessing whether those controls are necessary to address visibility impairment. If an evaluation of the four statutory factors identifies control measures, the Final Rule requires that states establish reasonable progress goals based on the imposition of such control measures, regardless of whether the controls result in reasonable visibility improvements in a Class I area. As a result, because the reasonable progress goal assumes the installation of these control measures, states are effectively required to mandate that individual sources impose these controls.

The practical effect of this approach will give undue weight to the cost of compliance factor. In recent Regional Haze FIPs, which applied EPA’s new interpretation even before EPA codified it in the Final Rule, EPA deemed a control to be “reasonable” for a state’s long-term strategy if it is cost-effective. For example, in the Arkansas Regional Haze FIP, EPA required controls on Entergy’s Independence Plant in part because EPA concluded that imposing controls on the plant would be cost-effective.26 EPA gave no consideration to whether the controls and resulting emissions reductions would improve visibility in any Class I area and, in fact, recognized that controls would not be necessary for Arkansas Class I areas to meet their URPs.27 This is problematic because it does not consider the costs in relation to visibility improvement,

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23 See Brief of Entergy, et al. at 34-35, Arkansas v. EPA, No. 16-4270 (8th Cir. Feb. 17, 2017); Brief of State of Arkansas at 34-38, Arkansas v. EPA, No. 16-4270 (8th Cir. Feb. 17, 2017); Texas v. EPA, 829 F.3d 405, 427 (5th Cir. 2016).


25 See 42 U.S.C. § 7491(b)(2) (implementation plans must “contain such emission limits . . . as may be necessary to make reasonable progress”) (emphasis added).


or lack thereof. Controls, regardless of their cost-effectiveness, should be required only when they are necessary for a state to achieve reasonable progress toward the national visibility goal.

Implementation of the new approach also will illegally proscribe states’ authority in setting their reasonable progress goals and developing their long-term strategies. In effect, the Final Rule requires EPA to reject SIPs if the state determines that controls are unnecessary because they would achieve only minute visibility improvements. It also requires EPA to reject SIPs if the state decides not to evaluate any sources for reasonable progress controls because its Class I areas already are meeting or exceeding the URP; instead, states will be forced to select specific sources for evaluation of emission controls. Because such determinations are within the states’ purview pursuant to the CAA, the Final Rule unlawfully takes authority away from the states and gives it to EPA. Such arrogation of authority violates the cooperative federalism principles underlying the CAA.28 The Act limits EPA to a deferential role, under which the Agency must defer to states’ determination of their reasonable progress goals so long as they comply with the Act.29

2. The “Clarifications” Improperly Sever the Link Between Reasonable Progress Controls and Planning Periods.

The Final Rule severs the link between reasonable progress controls in a state’s long-term strategy and the 10-year planning periods on which the Regional Haze Program is based. States’ authority to consider planning periods when developing long-term strategies under the Final Rule is explicitly constrained. Specifically, the Final Rule modifies the Regional Haze regulations to explicitly provide that if a state, in selecting control measures for a long-term strategy, “concludes that a control measure cannot reasonably be installed and become operational until after the end of the implementation period, the State may not consider this fact in determining whether the measure is necessary to make reasonable progress.”30 This revision means that states are required to impose reasonable progress controls without any nexus to an implementation period—that is, regardless of whether or not the control will help meet reasonable progress goals during the relevant 10-year planning period.

This directly conflicts with both the statute and the regulatory requirements in § 51.308. First, the Regional Haze regulations still require states to consider the relevant planning period when setting reasonable progress goals: when setting goals, states must consider “the [URP] and

28 See 42 U.S.C. § 7401(a)(3); § 7407(a).
29 Texas v. EPA, 829 F.3d 405, 428 (5th Cir. 2016) (citing 42 U.S.C. § 7410(k)(3) (EPA “shall approve” a state implementation plan that satisfies the requirements of the Act)); Luminant Generation Co. v. EPA, 675 F.3d 917, 921 (5th Cir. 2012) (“With regard to implementation, the Act confines the EPA to the ministerial function of reviewing SIPs for consistency with the Act’s requirements”); Michigan v. EPA, 268 F.3d 1075, 1083 (D.C. Cir. 2001) (“[T]he Act intended to create an overarching federal role in air pollution control policy,…but that overarching role is in setting standards, not in implementation.”).
30 40 C.F.R. § 51.308(f)(2)(i); see also 82 Fed. Reg. at 3,089 (a state “may not reject a control measure because it cannot be installed or become operational until after the end of the implementation period.”) (emphasis added).
the emission reduction measures needed to achieve it for the period covered by the implementation plan.”  31 Second, § 51.308(d)(3) mandates that long-term strategies include measures “as necessary to achieve the reasonable progress goals.”  32 The regulatory text further specifies that reasonable progress goals must consider the emission reduction measures needed to achieve the uniform rate of progress “for the period covered by the implementation plan.”  33 Even in the Final Rule, EPA itself emphasized that the reasonable progress goals do not include emission reductions that would occur only after the end of the relevant planning period.  34 It is simply illogical, then, that a control measure that could not be implemented until after the planning period would nonetheless be deemed necessary to achieve reasonable progress for that same period.

EPA should not require states to evaluate and impose control measures that are completely divorced from the planning period at issue. This undermines the purpose of the 10-year planning period. Planning periods are mandated by the statute,  35 and indicate Congress’s intent to establish a program that takes a gradual approach toward the national goal of eliminating visibility impairment. EPA itself observed this when first promulgating the Regional Haze Rule, providing the states with 60 years to reach natural visibility conditions at Class I areas because, in the long term, facilities built in the latter part of the 20th century will retire and/or be replaced by more fuel-efficient facilities, and innovations in emissions control technologies and renewable energy will allow new plants to meet lower emissions rates.  36 EPA also has explained that states “should take into account the fact that the long-term goal of no manmade impairment encompasses several planning periods. It is reasonable for [the state] to defer reductions to later planning periods in order to maintain a consistent glidepath toward the long-term goal.”  37

EPA’s approach in the Final Rule contradicts this statutory and regulatory scheme and will force states to mandate emissions controls even if it would be reasonable to defer them to later planning periods. It also imposes unnecessary costs on regulated sources, which may be required to install costly new control measures without any corresponding benefit in visibility improvement that would help achieve reasonable progress during the relevant planning period.

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32 40 C.F.R. § 51.308(d)(3).

33 40 C.F.R. § 51.308(d)(1)(i)(B).

34 82 Fed. Reg. at 3,089 (“Of course, any emission reductions that will not occur until after the end of the implementation period should not be reflected in the [reasonable progress goals].”).


37 Reasonable Progress Guidance at 1-4.
B. EPA Should Eliminate the RAVI Program, Which Is Unnecessary and Impedes State Authority.

EPA should eliminate the outdated RAVI program from the Regional Haze regulations because it serves no purpose in light of the subsequent implementation of the Regional Haze Program and because it unlawfully intrudes upon states’ authority under the CAA. In the Final Rule, EPA not only retained the RAVI program but expanded the program’s scope to (1) include all states for the first time; \(^{38}\) (2) allow federal land managers (“FLMs”) to certify RAVI in states where the source or sources are located, even if that state does not contain the Class I area where the visibility impairment occurred; \(^{39}\) and (3) cover both BART-eligible and non-BART-eligible sources. \(^{40}\) The Final Rule also alters the federal-state relationship by (1) giving FLMs authority to identify (as opposed to suggest) the source or small group of sources responsible for RAVI, thereby triggering mandatory requirements for the state, including the requirement to submit a SIP revision; \(^{41}\) and (2) revising the definition of “reasonably attributable” to “make clear that a state does not have complete discretion to determine what techniques are appropriate for attributing visibility impairment to specific sources.” \(^{42}\) 

As noted above, EPA took a two-phased approach in establishing the Regional Haze Program. In the first phase, EPA established the RAVI program to address impairment of visibility in Class I areas that was “reasonably attributable” to a specific source or smaller group of sources. \(^{43}\) The RAVI regulations sought to address “plume blight,” which is “smoke, dust, colored gas plumes, or layered haze emitted from stacks which obscure the sky or horizon and are relatable to a single source or a small group of sources.” \(^{44}\) EPA “explicitly deferred action on regional haze,” defined as “visibility-impairing pollution that is caused by the emission of air pollutants from numerous sources located over a wide geographic area.” \(^{45}\) In the second phase, EPA addressed regional haze in Class I areas through a regional planning approach with the promulgation of the Regional Haze Rule. This second phase targets visibility impairment that is not reasonably attributable to a single source or small, defined group of sources, but instead is

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\(^{39}\) See 40 C.F.R. § 51.302.

\(^{40}\) See 82 Fed. Reg. at 3,112-13; see also 40 C.F.R. § 51.302(a)-(c). Under the revised RAVI program, a state must revise its Regional Haze SIP to include a reasonable progress control determination for a particular source or small group of sources upon receipt of a RAVI certification of impairment, regardless of whether or not the source is BART-eligible. See 40 C.F.R. § 51.302(b).

\(^{41}\) See 40 C.F.R. § 51.302(a)-(c).

\(^{42}\) 82 Fed. Reg. at 3,112; 40 C.F.R. § 51.301.


\(^{44}\) RAVI Regulation, 45 Fed. Reg. at 80,085.

produced by emissions from a wide array of sources over a broad geographic area. This expanded the scope of visibility improvement requirements to many more sources.

The Regional Haze Program has, by design, subsumed the RAVI program and rendered it unnecessary. RAVI was designed as a placeholder until techniques for assessing regional haze, particularly from multiple sources, improved sufficiently for EPA to establish a comprehensive program. EPA established this comprehensive program in the 1999 Regional Haze Rule which “fulfill[ed] EPA’s responsibility under section 169A, pending since 1980, to put in place a national regulatory program that addresses both reasonably attributable and regional haze visibility impairment.” 46 Specifically, the evaluation of sources for reasonable progress controls under the Regional Haze Program will capture sources that otherwise might be targeted by RAVI.

Instead of eliminating the RAVI program in recognition of the fact that it is unnecessary in light of the Regional Haze Program, the Final Rule expands the RAVI program beyond its original intent, thereby increasing its redundancy with the Regional Haze Program. First, EPA’s assertion that RAVI is applicable to any source, even if it is not BART-eligible, 47 goes against EPA’s own regulations and guidance, which state that RAVI is focused on BART-eligible sources. 48 The Final Rule also suggests that an FLM certification of RAVI would reopen the BART determination process for sources that already were eliminated from BART requirements because their emissions were not determined to be causing or contributing to visibility impairment in any Class I area. This makes no sense. If a source was deemed not subject to BART because it is not causing or contributing to visibility impairment, the FLM certification would necessarily be for imperceptible visibility impairment and not the visibility impairment intended to be addressed by the RAVI program. Further, the reasonable progress analysis under the Regional Haze Program already provides an avenue to address non-BART sources. The new RAVI provisions simply provide a mechanism by which the federal government can supplant state determinations on how to address these sources.

Second, the Final Rule’s requirement for FLMs to issue RAVI certifications to states outside of the state with the affected Class I area 49 effectively alters the RAVI program from one that addresses intrastate haze from a source or small group of sources to one addressing interstate haze from regional sources. Rather than streamlining the RAVI and Regional Haze programs, this change increases the overlap between the two programs. It also is unnecessary

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48 See U.S. EPA, Additional Regional Haze Questions, at 16-17 (Sept. 27, 2006) Docket No. EPA-HQ-OAR-2016-0289-0014; U.S. EPA, Guidelines for Determining Best Available Retrofit Technology for Coal-Fired Power Plants and Other Existing Stationary Facilities, at 3-6, 6 (Nov. 1980) EPA-450/3-80-009b (“Once the impact of the existing stationary facility on visibility is identified as being reasonably attributable to that source, the State must conduct an analysis to determine BART for that particular existing stationary facility.”).
49 See 40 C.F.R. § 51.302.
because the Regional Haze Program already establishes a comprehensive program for addressing haze from sources outside of a state in which an affected Class I area is located.

Third, EPA suggests that RAVI certifications could be based on modeling alone.\(^50\) Modeled visibility impairment is not what the RAVI program was designed to address and makes the RAVI program even more duplicative of the Regional Haze Program. Modeling that simulates an event that might occur is far from the “visual observation” called for in the original definition of “reasonably attributable.”\(^51\) It also strays far from the original intent of RAVI to address plume blight. Modeling would not demonstrate any “smoke,” “dust,” “colored gas plumes,” or “layered haze,” or whether such events “obscure the sky or horizon.”\(^52\) Instead, the use of modeling would make RAVI indistinguishable from how states are directed to determine whether sources are causing or contributing to regional haze.

Finally, the revised RAVI program improperly alters the federal-state relationship. In developing a “cooperative federalism” framework under the CAA, Congress purposely limited the federal government’s authority by creating a statute in which “air pollution prevention . . . and air pollution control . . . is the primary responsibility of States and local governments.”\(^53\) The Final Rule undermines this intent. For instance, the revisions giving FLMs the authority to identify (as opposed to merely suggest, as under the prior regulation) the source or small group of sources responsible for RAVI shifts discretion and authority from states to FLMs.\(^54\) While FLMs may be able to identify RAVI, they have no particular expertise in identifying which sources are causing RAVI. States are more appropriate authorities for this identification.

EPA should eliminate the RAVI provisions from its regulations. There are no sources evading the Regional Haze Program that warrant retaining the RAVI program as a backstop. It makes no sense to continue to impose RAVI when reasonable progress planning addresses emissions from sources that would have been subject to RAVI and imposes controls for visibility impairment far below what would warrant controls under RAVI. It also is not necessary to preserve the RAVI program to provide FLMs the ability to work with states or EPA to address visibility concerns given that the Regional Haze Program has existing mechanisms for engaging with FLMs in developing implementation plans. In light of this redundancy, the RAVI

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\(^50\) 82 Fed. Reg. at 3,113 (explaining changes to definition of “reasonably attributable” in 40 C.F.R. § 51.301). In the RAVI regulations, EPA made it clear that RAVI certifications were to be based on observed visibility impairment (in evaluating FLM certification, the state needs to review the specific documentation of visibility conditions contained in the certification, which “should include information regarding the type of impairment (i.e., coherent plume or layered haze)[,] the location of both the observer and the observed impairment, the meteorological conditions when the impairment was observed, and the time(s) of day or year of occurrence.”). 52 Fed. Reg. 7802, 7804 (Mar. 12, 1987).

\(^51\) See 40 C.F.R. § 51.301.

\(^52\) See RAVI Regulation, 45 Fed. Reg. at 80,085.

\(^53\) 42 U.S.C. § 7401(a)(3); see also 42 U.S.C. § 7407(a) (“Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State . . . .”); see also Texas v. EPA, 829 F.3d at 411 (EPA’s role in reviewing SIPs is “ministerial”).

\(^54\) See 40 C.F.R. § 51.302(a)-(c).
program’s costs cannot justify its benefits. Further, the obligation for states to develop SIP revisions in response to a RAVI certification could strain states’ limited resources.

C. Reconsideration Is Appropriate in Light of Recent Executive Orders.

EPA should grant reconsideration of the Final Rule in light of recent executive orders directing federal agencies to reduce regulatory costs and/or eliminate or modify regulations that impose unnecessary costs or burdens. Specifically, President Trump issued an executive order on January 30, 2017, entitled “Reducing Regulation and Controlling Costs,” which sets a “zero sum” cost requirement for new regulations, under which the total incremental cost of all new regulations to be finalized in fiscal year 2017 shall be “no greater than zero,” unless otherwise required by law or directed by the White House Office of Management and Budget. The Order requires agencies to offset “any new incremental costs associated with new regulations . . . by the elimination of existing costs associated with at least two prior regulations.”

President Trump issued another executive order on February 24, 2017, entitled “Enforcing the Regulatory Reform Agenda,” that directs agencies to establish Regulatory Reform Task Forces to evaluate existing regulations and recommend any which should be repealed, replaced, or modified, including those that (i) eliminate jobs or inhibit job creation; (ii) are outdated, unnecessary, or ineffective, or (iii) impose costs that exceed benefits.

As discussed in this Petition, certain provisions of the Final Rule impose unnecessary costs and burdens. Specifically, EPA’s new interpretation of “reasonable progress” requires states to impose controls on sources, even when such controls are unnecessary to achieve reasonable progress during the planning period covered by the SIP. In states where the URP or reasonable progress goals already have been attained without reasonable progress controls, no additional “benefit” in light of the purposes of the Regional Haze Program can be gained through the imposition of such controls. Additionally, the RAVI program adds redundant and potentially costly requirements to the already comprehensive Regional Haze Program. EPA should eliminate those portions of the Final Rule that impose costs with no benefits and all of the RAVI program provisions to further the Agency’s efforts to effectuate these Executive Orders. Repealing these provisions also would assist EPA in complying with the One In, Two Out Order, because eliminating program costs will help the Agency offset new mandatory environmental regulations.

56 Id. at § (2)(b).
57 Id. at § (2)(c).
59 Id. at § (3)(d).
III. CONCLUSION

For the reasons discussed above, Petitioners urge EPA to reconsider certain provisions of the Final Rule.

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Respectfully submitted,

[Signature]

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