AUGUST ADVOCACY TOOLKIT FOR COUNTIES

National Association of Counties
INFORMATION FOR AUGUST ADVOCACY

With Congress in recess for the month of August and 2014 being an election year, county leaders have a great opportunity to advocate at home for county legislative and regulatory priorities. NACo has put together the following information to help you be an advocate effectively back home:

**Advocacy Opportunities and Planning**

**Media Toolkit**

**Policy and Regulatory Briefs**

ADVOCACY OPPORTUNITIES AND PLANNING

Between now and the end of the year, federal lawmakers will be back in their home districts and states more days than they are in Washington. These recess periods, particularly the one occurring during the month of August, provide counties a unique opportunity to communicate with members of Congress and demonstrate their impact within their communities.

If you do not already have plans to meet with your Senators and Representative(s) while they are home, we encourage you to reach out to their offices and request meetings. To schedule a meeting with members of your congressional delegation, you should contact the scheduling staff at the office location nearest to you. Information on office locations and contact numbers can be found on Members’ websites. Links to U.S. House of Representatives websites can be found [here](#) and links to U.S. Senate websites can be found [here](#).

If possible, county leaders should invite members of Congress and local media to tour county facilities and projects, especially those that closely relate to policy and regulatory issues outlined below (e.g. jails, transportation facilities and hospitals that received federal funding, etc.). Lawmakers will appreciate the opportunity to see the facilities made possible with federal funds, meet local elected officials and talk with employees (meaning voters!) who work in the new facilities. Whether you get them in a car and drive around their district or schedule a tour, this is a highly effective way to build the relationship and begin your advocacy efforts.

A Federal project tour gives legislators an opportunity to see their contribution to their constituents and also serves as an opportunity for the local community and local elected officials to provide on-site feedback to their members of Congress. If a federal project tour isn’t an option for your county, consider inviting your congressional members to attend one of your county events such as county fairs and county commission meetings. Remember to thank them for their time, and if possible, take pictures and write a press release about the visit.

Please be sure to let NACo know about your advocacy efforts, and share pictures and media coverage with NACo’s Legislative Director, Deborah Cox at [dcx@naco.org](mailto:dcx@naco.org).
MEDIA TOOLKIT

While members of Congress are in their states and districts during the summer recess, county officials have a great opportunity to work with local media outlets to draw attention to key federal policy priorities. Inform your community about a Congressman’s visit to your county projects through a press release. NACo's Media Relations Guide for Counties is available to assist county officials in working with local media outlets.

Submitting an op-ed or guest commentary to local papers is an excellent way to express your views in a highly-visible way. NACo created a short guide on writing an op-ed on the proposed redefinition of “Waters of the U.S.” along with general guidance on writing effective op-eds. Here is an example of NACo 1st Vice President Sallie Clark’s op-ed in the Denver Post.

NACo has tools to assist you with local media outlets

To access the media relations guide, click here

To access the op-ed guide, click here

POLICY AND REGULATORY BRIEFS

BRIEFS INCLUDED:

Highway Trust Fund and Surface Transportation Reauthorization
Marketplace and Internet Tax Fairness Act
Tax-Exempt Status of Municipal Bonds
Payment in Lieu of Taxes (PILT)
Secure Rural Schools (SRS)
Waters of the U.S. Proposed Rule
ISSUE: HIGHWAY TRUST FUND AND SURFACE TRANSPORTATION REAUTHORIZATION

Background: In 2012, Congress passed the current federal surface transportation law known as Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 authorized federal highway and transit programs through September of 2014. The programs authorized by MAP-21 are primarily funded through the Highway Trust Fund (HTF). The HTF collects revenue from federal motor fuels taxes to pay for highway and transit projects across the country. Since 2008, the HTF has experienced funding shortfalls and has required multiple transfers to ensure its solvency and meet its obligations. The HTF’s funding shortfalls are primarily caused by lower levels of fuel consumption and the fact that the tax rate on gasoline (18.4 cents per gallon) has not been raised since 1993 and was never indexed to the rate of inflation. In the lead up to the passage of MAP-21, the Congressional Budget Office predicted that the HTF would become insolvent before the end of 2014. Rather than fix the HTF, Congress deferred action and left the HTF in a dire state, letting the HTF head toward insolvency.

County Interest: Counties own 45 percent of the nation’s road miles and 39 percent of the nation’s bridges, and are involved with over a third of the nation’s transit systems. As significant owners of the nation’s surface transportation network, counties often receive HTF dollars through their State DOTs to support eligible transportation projects. In addition, the policies and programs authorized through MAP-21 and future surface transportation authorization bills impact the funding available for county-owned infrastructure, transportation planning processes, and project delivery requirements and regulations.

Status: On July 31, 2014, Congress passed a short-term measure that will keep the HTF solvent and extend MAP-21 through May of 2015. Congress has until that time to find a sustainable long-term funding solution for the HTF and reauthorize MAP-21.

NACo has developed transportation profiles for each state

To access the MAP-21 state profiles, click here

To access the state funding and finance profiles, click here
Talking Points:

- **What’s best for America’s transportation system and for counties is a long-term vision and funding certainty at the federal level.** Therefore, counties urge Congress to fix the HTF and pass a multi-year surface transportation reauthorization bill (preferably six years in length).

- **MAP-21 significantly decreased the funding available for locally-owned infrastructure.** In fact, due to the program consolidation and elimination under MAP-21, the funding for county-owned and municipal-owned highways and bridges decreased by 30 percent.

- **Counties want Congress to provide more funding for the Surface Transportation Program (STP) and increase the portion of STP dollars that are sub-allocated to local areas.** The STP program receives 27 percent of the highway funding from MAP-21 but has to support the vast majority of the system (78 percent of the nation’s highway miles and 77 percent of the nation’s bridges). Before MAP-21, 62.5 percent of the program’s funding was sub-allocated to local areas. MAP-21 changed the portion that gets sub-allocated to 50 percent. Counties want Congress to at minimum, restore the sub-allocated percentage to 62.5 percent.

- **Counties want Congress to continue funding for public transportation through the HTF.** The HTF is made up of two major accounts: the highway account and the transit account. Currently, 80 percent of the HTF funds federal highway programs and 20 percent funds federal public transportation (transit) programs. Without funding from the HTF, federal transit formula dollars would be subject to the annual appropriations process, which has proven to be an unpredictable and unreliable funding process.

- **Counties want Congress to support additional county priorities for MAP-21 reauthorization.** For more information on NACo’s priorities for MAP-21 reauthorization, click [here](#).

**Relevant Committees (find your member):**

- [House Transportation and Infrastructure Committee](#) (Jurisdiction: Highway and Transit Programs)
- [House Ways and Means Committee](#) (Jurisdiction: HTF)
- [Senate Environment and Public Works Committee](#) (Jurisdiction: Highway Programs)
- [Senate Banking Committee](#) (Jurisdiction: Transit Programs)
- [Senate Commerce Committee](#) (Jurisdiction: Highway Safety and Freight)
- [Senate Finance Committee](#) (Jurisdiction: HTF)
ISSUE: MARKETPLACE AND INTERNET TAX FAIRNESS ACT (S. 2609)

Background: The Marketplace and Internet Tax Fairness Act (MITFA) (S. 2609) would combine the Marketplace Fairness Act (S. 743), which passed the Senate last year with strong bipartisan support, with a ten-year extension of the Internet Tax Freedom Act (ITFA), which is scheduled to expire on November 1.

With this combination, S. 2609 has two components important to counties. First, it includes the Marketplace Fairness Act (MFA), a long-standing priority for NACo that enables state and local governments to enforce existing sales and use tax laws on remote or online sales. This essentially requires out-of-state merchants to collect the same taxes that merchants on Main Street currently collect. Second, S. 2609 provides a temporary extension of the ITFA, which prohibits counties from collecting a tax on Internet access. While a 10-year extension is not the ideal scenario for counties, it is preferable to the House-passed bill (H.R. 3086) that seeks to permanently extend the prohibition. Additionally, S. 2609 preserves the status of grandfathered states created in the original ITFA, i.e. states that were collecting Internet access taxes when the law was first enacted (grandfathered states include: HI, NM, ND, OH, SD, TX, WI, NH, WA, TN).

County Interest: The issue of taxing remote sales has compounded in recent years due to the extraordinary development of the Internet's use as a retail marketplace, resulting in billions of dollars lost by state and local governments in uncollected sales taxes and Main Street businesses finding themselves at a significant competitive disadvantage to various online retailers. Further, over the next several years, most telecommunications and cable services will transition to broadband. As a result, the scope of the services that the current Internet access tax moratorium immunizes from state and local taxation will rapidly expand. The temporary extension provided for in S. 2609 would allow time to understand and more meaningfully assess what the transition from telecommunications and cable to broadband means for state and local governments, consumers, and other industries.

Status: The Senate hopes to take up The Marketplace and Internet Tax Fairness Act (S. 2609) in September, once Congress returns from recess. It is likely, however, that the bill will not be considered until after the General Election in a lame duck session.
Talking Points:

- If your member voted in favor of the Marketplace Fairness Act (S. 743), please thank them and urge their support for the Marketplace and Internet Tax Fairness Act (S. 2609). You can click here to view the Roll Call vote to see how your member voted.

- **Enacting the Marketplace Fairness Act does not create a new tax.** It simply allows state and local governments to enforce existing sales and use tax laws.

- **The bill would enable states and local governments to collect an estimated $23 billion owed in sales taxes each year** that could be dedicated to providing important public services such as infrastructure, education, health and public safety.

- **Enacting the Marketplace Fairness Act would level the playing field for Main Street businesses.** These businesses are at an estimated five to ten percent competitive disadvantage to remote sellers because of their inability to collect existing sales taxes. Main Street businesses contribute to local economies and are active participants in local communities.

- **The technology to help businesses track varying tax rates and collect from customers already exists, reducing the concern that once existed for business.** The software that keeps track of tax rates is no more complicated than calculating real-time-shipping, a feature that already exists on most retail websites.

- **The Internet of 2014 does not need the same level of protection that the Internet of 1998 required.** The original intent of ITFA was to encourage the development of the Internet, since the technology was fairly new. Now that the Internet is weaved into countless aspects of daily life, this justification is no longer applicable given the substantial advancements in technology since 1998.

- **Counties would prefer to temporarily extend ITFA, including extending the status of grandfathered states, rather than permanently extend the moratorium on taxing Internet access.** The ten-year extension would preserve ITFA's longstanding grandfather clause that protects an estimated $500 million in annual revenues in seven states, and recognizes that the Internet access tax moratorium should not be made permanent in the midst of enormous technological change, particularly when telecommunications and cable services are rapidly transitioning to broadband services subject to the ITFA.

**Relevant Committees (find your member):**

- [House Judiciary Committee](#)
- [Senate Finance Committee](#)
ISSUE: TAX-EXEMPT STATUS OF MUNICIPAL BONDS

Background: Tax-exempt bonds were written in the first tax code in 1913 and are a well-established financing tool. They are predominantly issued by state and local governments for governmental infrastructure and capital needs purposes. The debt issued for capital projects help governments pay for public projects, such as the construction or improvement of schools, streets, highways, hospitals, bridges, water and sewer systems, ports, airports and other public works.

Tax-exempt bonds are a critical tool for counties that facilitate the budgeting and financing of long-range investments in the infrastructure and facilities necessary to meet public demand for government services. Without the tax-exemption, counties would pay more to raise capital, a cost that would ultimately be borne by the taxpayers through means such as reduced spending on the roads and bridges that counties are responsible for, decreased economic development or higher taxes or user fees.

County Interest: Deficit reduction efforts have already resulted in cuts in aid to local governments from the states and reduced funding in federal programs that benefit counties. Now, counties face the additional risk of not having a low-cost, market-driven means of financing to support local needs.

Status: Although a comprehensive rewrite of the federal tax code is unlikely in 2014, the work over the past few years of members like House Ways and Means Chairman Dave Camp to lead the tax reform discussion will certainly serve as the roadmap for future efforts. There seems to be building consensus that true reform of the federal tax code is one of the necessary components to getting our nation’s fiscal house in order. The debate on tax reform will likely be revived in earnest after this year’s elections and will certainly be a hot topic in the next presidential election. Since changes to provisions important to state and local governments, like the exemption for municipal bond interest, are still on the table, it is important to continue engaging your delegation members and stress the importance of this critical tool for counties.

NACo has resources to help with your Municipal Bonds advocacy efforts

To access the research report, click here

To access individual state profiles showing the potential impact of changing the tax-exempt status of municipal bond interest, click here
Talking Points:

- **75 percent of all national infrastructure projects are completed using bond financing.** Counties, localities, states and state/local authorities invested $3.2 trillion in infrastructure using municipal bonds from 2003-2012.

- **If municipal bonds were fully taxable during the 2003-2012 period, it is estimated that the financing for the 21 largest infrastructure purposes would have cost state and local governments an additional $495 billion of interest expense.** If the 28 percent cap were in effect, the additional cost to state and local governments would have been approximately $173.4 billion.

- **The municipal bond tax-exemption represents a fair allocation of the cost of projects between federal and state/local levels of government.** Through the use of tax-exempt municipal bonds, state and local governments invested 2.5 times more in infrastructure than the federal government.

- **Tax-exempt bonds are vital for infrastructure, justice and health needs** because counties own and operate 45 percent of public road miles and 39 percent of the nation’s bridges, are involved with over a third of the nation’s transit systems and airports, own 964 hospitals, manage 1,947 health departments and own many of the nation’s jails.

Relevant Committees (find your member):

- [House Ways and Means Committee](#)
- [Senate Finance Committee](#)
ISSUE: PAYMENT IN LIEU OF TAXES (PILT)

Background: The PILT program was created in 1976 to offset costs incurred by counties for services provided to federal employees and families, the public and to the users of public lands. These include education, solid waste disposal, law enforcement, search and rescue, health care, environmental compliance, firefighting, parks and recreation and other important community services. Today, the U.S. Department of the Interior makes PILT payments to over 1,850 counties in 49 states, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands.

County Interest: The federal government owns roughly 635-640 million acres, or 28 percent, of land in the U.S. As federal land is not taxable by local governments, PILT provides payments to counties to offset losses in property tax revenues and also to reimburse counties.

Status: The last PILT payments were distributed in late June, as FY 2014 funding was included in the 2014 Farm Bill. While FY 2015 PILT funding was included in the Interior Appropriations Bill in the U.S. House, the U.S. Senate has not attached funding to any of their appropriations bills. PILT is a top priority for NACo and counties across the country, and we continue to urge lawmakers to support a long-term, sustainable solution.

To view the presentation, click here.

NACo has developed a presentation “Why PILT Matters to Counties”

FY 2014 ANNUAL PILT PAYMENTS
County by County Breakdown
Talking Points

- Thank your member for including PILT funding in the 2014 Farm Bill. To see how your members voted, click here to view the roll call votes in the U.S. House and here to view the roll call vote from the U.S. Senate.

- The PILT program provides payments to counties and other local governments to offset losses in tax revenues due to the presence of substantial acreage of federal land in their jurisdictions. As federal land is not taxable by local governments, public land counties have struggled to provide adequate services to the public in light of the annual losses in tax revenue. Counties with public lands in their jurisdictions often provide critical services on those lands including law enforcement, search and rescue, fire management, solid waste disposal, and emergency medical services.

- Without additional mandatory funding, PILT will revert to a discretionary program subject to the annual appropriations process. Counties require a public commitment from the administration and Members of Congress to support long-term funding at its full authorized levels - $425M - for FY 2015 and beyond.

- As local governments are unable to tax the property values or products derived from federal lands, these payments are essential to support essential government services (mandated by law) such as education, first responders, transportation infrastructure, law enforcement and healthcare.

Relevant Committees (find your member):

- Senate Energy & Natural Resources Committee
- House Natural Resources Committee
ISSUE: SECURE RURAL SCHOOLS
(“SRS” OR REVENUE SHARING PAYMENTS TO FOREST COUNTIES)

**Background:** The Secure Rural Schools (SRS) program provides assistance to rural counties and school districts affected by the decline in revenue from timber harvests on federal lands. Historically, rural communities and schools have relied on a share of receipts from timber harvests to supplement local funding for education services and roads. During the 1980s, national policies substantially diminished the revenue-generating activity permitted in these forests. The resulting steep decline in timber sales decreased the revenues that rural counties and school districts received from these timber sales.

**County Interest:** The SRS program was enacted to provide funding for counties and schools to compensate for steep reductions in revenues from timber harvests. In 2014, the SRS program provided $270 million to 729 rural counties, parishes and boroughs across the United States.

**Status:** SRS funding was last addressed in the Helium Stewardship Act of 2013. This provided funding for FY 2013, however, FY 2014 funding and beyond has not yet been provided.

**Talking Points**

- **Thank your members for supporting SRS funding in the Helium Stewardship Act of 2013 (P.L. 113-40).** To see how your members voted, you can click [here](#) to view the roll call vote in the U.S. House and [here](#) to view the roll call vote in the U.S. Senate.

- **The expiration of the Secure Rural Schools and Community Self-Determination (SRS) Act in 2014 will create dramatic budgetary shortfalls for 729 rural counties** if Congress fails to renew this federal obligation to rural county governments.

- **New legislation should be enacted that provides payments to counties and promotes active natural resource management for the stability and well-being of forest counties and communities.** NACo supports a forest trust model that would designate specific Forest Service land to be managed by the states on behalf of counties and schools according to state land management practices and federal and state laws as they apply to state land.

**Relevant Committees (find your member):**

- **Senate Energy & Natural Resources Committee**
- **House Natural Resources Committee**
ISSUE: WATERS OF THE U.S. (WOTUS) PROPOSED RULE

Background: On April 21, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) jointly released a newly proposed rule – “Definition of Waters of the U.S. Under the Clean Water Act.” The amended definition of “Waters of the U.S.” would subsequently expand the range of waters, including ditches, which fall under federal authority.

County Interest: Counties are charged with maintaining public safety infrastructure such as roads and roadside ditches, flood control channels, drainage conveyances, stormwater systems and green infrastructure. Without clarification, the broad nature of the proposed rule would expand the number of county owned and maintained ditches that ultimately fall under federal authority. The new regulation would increase the number of federal permits required for construction and maintenance, thereby increasing the time and costs associated with the permitting process.

Status: Both the FY 2015 House Energy and Water Appropriations and the House Interior-EPA Appropriations bills include a funding moratorium for the development and implementation of the “Waters of the U.S.” proposed rule for one year. The proposed rule, published in the Federal Register, is open for public comment for 181 days, until October 20, 2014.

NACo has resources to help with your “Waters of the U.S.” advocacy efforts

To access the NACo policy brief, click here

To access the new information hub (which includes draft comments, letters and other resources), click here
Talking Points:

- **The proposed rule would broaden the number of county maintained ditches—roadside, flood channels and potentially others—that would require CWA Section 404 federal permits.** Counties use public infrastructure ditches to funnel water away from low-lying roads, properties and businesses to prevent accidents and flooding incidences.

- The proposed rule states that man-made conveyances, including ditches, are considered jurisdictional tributaries if they have a bed, bank and ordinary high water mark (OHWM) and flow directly or indirectly into a “Water of the U.S.,” regardless of perennial, intermittent or ephemeral flow.

- The proposed rule excludes certain types of upland ditches with less than perennial flow or those ditches that do not contribute flow to a “Water of the U.S.” However, under the proposed rule, key terms like ‘uplands’ and ‘contribute flow’ are undefined. It is unclear how currently exempt ditches will be distinguished from jurisdictional ditches, especially if they are near a “Water of the U.S."

- **Ultimately, a county is liable for maintaining the integrity of their ditches, even if federal permits are not approved by the federal agencies in a timely manner.** For example, in 2002, in Arreola v. Monterey County (99 Cal. App. 4th 722), the Fourth District Court of Appeals held the County of Monterey (Calif.) liable for not maintaining a levee that failed due to overgrowth of vegetation, even though the County argued that the Corps permit process did not allow for timely approvals.

- **The National Association of Counties’ policy calls on the federal government to clarify that local streets, gutters, and man-made ditches are excluded from the definition of “Waters of the U.S.”**
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## STATUS OF PENDING EPA REGULATIONS OF INTEREST TO COUNTIES

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<tr>
<th>NAME</th>
<th>STATUS • FINAL</th>
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<tr>
<td><strong>DEFINITION OF “WATERS OF U.S.” UNDER CLEAN WATER ACT (CWA)</strong></td>
<td>Status: Public Comment Period opened April 21, 2014</td>
<td>RIN: 2040-AF30</td>
<td>According to the EPA, the purpose of this upcoming rule would clarify which bodies of water (and their ditches) fall under federal jurisdiction in the Clean Water Act (CWA). Proposed rule released on April 21, 2014. Public comments will be accepted for 181 days.</td>
<td>Local governments that oversee a number of ditches (roadside, stormwater, floodwater, etc.) that would be impacted.</td>
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<td><strong>WATER QUALITY STANDARDS</strong></td>
<td>Final Rule: May 2015</td>
<td>RIN: 2040-AF16</td>
<td>EPA has proposed changes to water quality standards (WQS) regulations which would: tighten current standards, clarify designated uses, and address variances to WQSs.</td>
<td>Many local governments must comply with WQS for their CWA programs. The standards are not always achievable or affordable.</td>
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<tr>
<td><strong>STORMWATER REGULATIONS REVISION TO ADDRESS DISCHARGES FROM DEVELOPED SITES</strong></td>
<td>Status: Pre-proposal</td>
<td>RIN: 2040-AF13</td>
<td>EPA is working on crafting an updated version of its existing stormwater rule. The proposed rule may impact all Phase I, Phase II and non-regulated Municipal Separate Storm Sewer Systems (MS4). The rule would establish requirements, at a minimum, for managing stormwater discharges from newly developed sites.</td>
<td>Local governments are likely to be both regulated and involved in implementation of this rule. Since the rule may include requirements to expand the current universe of Phase 1, Phase 2, and MS4s to other localities, local governments may be impacted.</td>
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<td><strong>DRINKING WATER REGULATIONS: REGULATION OF LEAD AND COPPER</strong></td>
<td>Status: Pre-Proposal NPRM: Feb. 2016</td>
<td>RIN: 2040- AF28</td>
<td>EPA announced it is assessing rule-making options on lead and copper to determine if there is a national problem related to elevated lead and copper levels in drinking water.</td>
<td>This rule will impact local governments who own or operate water utilities.</td>
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<td>LEAD: RENOVATION, REPAIR, AND PAINTING FOR PUBLIC AND COMMERCIAL BUILDINGS</td>
<td>Status: ANPRM NPRM: July 2015</td>
<td>RIN:2070-AJ56</td>
<td>In 2008, the EPA established a final rule to address lead-based paint hazards in housing and child care facilities. EPA was sued for not addressing lead renovation hazards in public and commercial buildings. In a settlement agreement, EPA agreed to determine whether lead in these buildings create hazards, and thus, work practices, in these buildings, must be federally regulated.</td>
<td>This proposal will impact any county that owns a building with lead paint.</td>
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<tr>
<td>NPDES ELECTRONIC REPORTING RULE</td>
<td>Proposed Rule Stage Final Rule: Dec. 2014</td>
<td>RIN: 2020- AA47</td>
<td>This regulation would identify the essential information that EPA needs to receive electronically, primarily from NPDES permittees with some data required from NPDES agencies (NPDES-authorized States, territories and tribes) to manage the national NPDES permitting and enforcement program.</td>
<td>An electronic reporting rule would impact areas that don’t have broadband or other types of infrastructure.</td>
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<td>POLYCHLORINATED BIPHERRYLS (PCB) LIGHT FIXTURES</td>
<td>Status: NPRM Feb. 2015</td>
<td>RIN: 2070-AJ38</td>
<td>Due to a lawsuit, EPA is considering whether to require all building operators who may still use ballast light fixtures (common in buildings older than 1978 and have not been subject to energy efficiency upgrades) to replace them. These fixtures may be common in schools, hospitals, government centers, etc.</td>
<td>If EPA required immediate replacement of all PCB fixtures, this would create a huge unfunded mandate on local governments.</td>
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<td>STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION RESIDUALS GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS</td>
<td>Status: Proposal; Final: Dec. 2014</td>
<td>RIN: 2050-AE81</td>
<td>In 2010, EPA proposed the first-ever national rules to ensure the safe disposal and management of coal combustion residuals. Coal combustion residuals, also known as coal ash, is a byproduct of combustion at power plants, and can cause health problems and contamination if not properly handled. Coal ash can be recycled for beneficial uses, rather than disposing of the byproducts in landfills. EPA sought to clarify these beneficial uses.</td>
<td>Local governments use coal ash as a major component in road bed construction projects. Byproducts are also heavily used in cement, concrete, brick, roofing materials, agriculture applications, paints, plastics, and snow and ice control.</td>
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<td><strong>EMISSION STANDARDS FOR MUNICIPAL SOLID WASTE LANDFILLS</strong></td>
<td>Status: Pre-proposal Final: Jan. 2015</td>
<td>RIN: 2060-AM08</td>
<td>Due to a judicial consent decree, EPA agreed to reassess its New Source Performance Standards (NSPS) and Emission Guidelines for municipal solid waste landfills. There are a number of options on the table ranging from no changes to tighter emission standards for all landfills.</td>
<td>New and/or tighter emissions requirements will impact every county that owns/manages a landfill.</td>
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<td><strong>OZONE AIR STANDARDS</strong></td>
<td>Status: NPRM: Dec. 2014</td>
<td>RIN: 2060-AP38</td>
<td>In Feb. 2014, EPA released its Policy Assessment for the Review of Ozone National Ambient Air Quality Standards Second External Review Draft. Preliminary conclusions include a recommendation to tighten current standards as low as 60 parts per billion (ppb). The current ozone standard, set in 2008, 75 ppb.</td>
<td>During the last reconsideration, over 1000 counties would have been in non-attainment if levels were tightened. Counties in non-attainment areas often have difficulty attracting and keeping business, who must comply with the tighter standards.</td>
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<td><strong>MGMT STANDARDS FOR HAZARDOUS WASTE PHARMACEUTICALS</strong></td>
<td>2nd NPRM: Dec. 2014</td>
<td>RIN: 2050-AG39</td>
<td>A small portion of pharmaceuticals are regulated as hazardous waste under the Resource Conservation and Recovery Act when discarded. Health care (and associated) facilities that generate hazardous waste pharmaceuticals have reported having difficulties complying with the manufacturing-oriented framework of the subtitle C hazardous waste regulations for a number of reasons.</td>
<td>Counties own and operate nursing homes and hospitals that may be impacted. The impact on pharmaceutical give-back programs is also uncertain.</td>
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# UNFUNDED MANDATES AND OTHER REGULATORY IMPACTS ON COUNTIES

## ENVIRONMENTAL PROTECTION AGENCY

| Clean Air Act | Compliance with federal air pollution standards, including, but not limited to, monitoring air quality; retrofitting stationary and mobile sources of pollution and obtaining required permits; ozone and particulate matter (PM) standards for PM 10 and PM 2.5. While tighter standards for PM 10 and ozone have been temporary tabled, the reconsideration process for air standards resets every five years. Ozone reconsideration started in February 2014, the latest draft document proposed tightening the current standard of 75 parts per billion (ppb) to a range of 60-70 ppb. |
| Particulate Matter Standards | Mentioned briefly above, lowering PM standards is problematic, especially for rural areas, where practices governing regular everyday events such as cars driving down dirt roads and agricultural practices that sustain local economies could be regulated, as could natural events such as wildfires, droughts or wind storms. Because of the high, naturally occurring, dust levels found in arid climates, many western counties have a difficult time meeting the current PM standard. This, in turn, affects their economic base, which will further restrain economic recovery. Based on previous experience, non-attainment areas have difficulty maintaining and attracting businesses to their regions, since these businesses would have to operate under the tighter standards. Most businesses chose to relocate or not even build in a non-attainment area. |
| Pesticides Regulation | The general permit for pesticides became effective the end of October, 2011. NACo has heard mixed reviews from our counties. Some counties, have changed spraying patterns, which may not be as effective as previous practices. The general permit has a heavier paperwork burden for spraying activities. This in turn has changed the way counties administer the program. Since county governments serve as primary service providers for their residents, this permit has significant effects on county programs, particularly mosquito abatement and noxious weed control efforts, creating unfunded mandates for both urban and rural counties through the tight reporting requirements. |
| Clean Water Act | Compliance with federal regulations and mandates related to: county owned water and wastewater treatment regulations; combined and sanitary sewer overflow consent decrees; "Waters of the U.S." definitional changes (refer below for more specific problems with the navigable "waters of the U.S." regulation program); regulation of point and non-point discharges (including those from forest roads), including standards for improving and maintaining water quality; and the upcoming stormwater regulations which will impose tighter requirements on local governments. |
| Drinking Water | Establishes maximum contaminant levels for contaminants in public water systems and specifies treatment techniques to be used. Upcoming regulations that will have a direct impact on local governments that own/operate drinking water facilities include the lead and copper rules. |
| Resource Conservation and Recovery Act | Cleanup at landfills, superfund sites and underground storage tanks. Local governments who own landfills are subject to federal standards regarding location, operating criteria, groundwater monitoring, corrective actions, closure and post-closure care. For Superfund sites, the issues stem from institutional controls such as zoning around sites, setting and enforcing easements and covenants and overseeing building and/or excavation near sites. |
### UNFUNDED MANDATES AND OTHER REGULATORY IMPACTS ON COUNTIES

#### COAL ASH
Coal ash, aka “Fly Ash,” is a byproduct of coal combustion for electricity generation. Coal ash is used in the production of concrete and is a mixture of choice for many local transportation projects because of its performance and cost-saving benefits. However, the EPA has proposed to reclassify coal ash as a hazardous material. This would prevent it from being used in road projects. The American Road and Transportation Builders Association estimates costs would increase $104 billion over the next 20 years if coal ash was no longer available as a road, runway, and bridge building material.

#### BROWNFIELDS REDEVELOPMENT/DIOXIN
Brownfields redevelopment has created some of the biggest success stories for local governments. However, the EPA is assessing whether to drop its dioxin levels to a point that would halt all brownfields development in the nation. While dioxin can be created as a byproduct through manufacturing, it is also naturally occurring. The levels the EPA proposed to lower dioxin are equal to many naturally occurring levels. NACo would urge the EPA to revisit the science used behind the health standards. Otherwise, this could be a huge loss for local governments.

#### ARMY CORPS OF ENGINEERS – SPECIFIC PROBLEMS DEALING WITH THE 404 PERMIT PROGRAM (EPA & USACE)

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<tr>
<th>Category</th>
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<tr>
<td>COMPENSATION WETLAND MITIGATION</td>
<td>Rule issued in conjunction with EPA. Local governments request added flexibility in meeting wetland mitigation requirements. Specific example includes variance between state and federal requirements. In this case, the state has an expanded set of options to meet the requirement that is not necessarily followed at the federal level. Therefore a local government may satisfy state requirements but not be able to meet federal requirements.</td>
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<td>DITCH DRAINAGE REQUIREMENTS</td>
<td>The excessive amount of requirements necessary to provide information for USACE to review before a project is approved is both costly and time consuming for counties. For example, a county that wished to pursue and complete a drainage project was informed that the following was needed by USACE before work could be started: detailed plans showing existing condition, photos of areas where work will be done, details concerning existing water surface elevation, ordinary high water line, calculations of amount of material to be excavated, and a wetland delineation. Just to do this, the county would need to hire engineers to survey and perform calculations. All of this would significantly add to the cost of the project without necessarily ensuring clean water.</td>
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<td>POST CONSTRUCTION REQUIREMENTS – 404 PERMIT RELATED</td>
<td>The post construction monitoring process adds costs for channel rebuilds and other mitigation measures. For example, one county, after completion of a bridge replacement project, was required by NOAA Fisheries and FHWA to reintiate formal consultation due to shifting boulders in the stream bed. State fish and wildlife officials supported the county in its objection and in its request to allow the channel to continue to stabilize. An updated BA and additional reporting would cost the county $50,000 in this instance. Should the reconstruction of the stream bed be required by the agencies, almost $1M in additional costs could be incurred.</td>
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<td>WATERS OF THE U.S.</td>
<td>Any changes to “Waters of the U.S.” definition within the CWA will have an impact on county owned and maintained ditches such as roadside, flood control, stormwater, etc. Additionally, since there is only one “waters of the U.S.” definition in the CWA, changes would impact more than the Section 404 permit program. A proposed “waters of the U.S.” rule was published on April 21 jointly by EPA and Corps. The public comment period will end Oct 20. Concurrently, EPA is developing its connectivity report that will be used as the scientific basis of the proposed rule.</td>
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### TRANSPORTATION

#### GRANT REQUIREMENTS
Requirements do not provide flexibility during implementation phase. For example, a county applies for funding to install electronic dynamic driver feedback speed limit signs. The county would like to purchase the signs using grant funding and then use county resources (e.g. staff) to install them. Requirements however, dictate that all stages of the process must be let out to private contractors which further implies other requirements, e.g. Davis-Bacon, EEO, etc.

#### MAP-21
MAP-21 provides for some major reforms in regard to project delivery/environmental streamlining. It also proposes to modify the categorical exclusion process for NEPA review of certain projects. NACo continues to be engaged in rulemakings pertaining to these areas.

### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

#### NATIONAL MARINE FISHERIES SERVICE
The Biological Assessment (BA) process through NMFS is extremely time consuming and raises costly barriers. For example, one county was working on a joint interchange project with the state to address urban growth. In an attempt to navigate the federal environmental permitting process, the project took two years alone to navigate the BA consultation with NMFS. A standard BA consultation generally takes 9-12 months but the NMFS process added more than a year in time and approximately $1M in additional engineering costs with no added value to the project.

### MISCELLANEOUS/MULTIPLE AGENCIES

#### INMATE HEALTHCARE
The Supreme Court required counties to provide health care for jail inmates in Estelle v. Gamble, 429 U.S. 97 (1976), while the federal government refuses to contribute to the provision of Medicaid, Medicare, CHIP or veterans' health benefits or services for otherwise eligible inmates.

#### FUNDING ASSISTANCE-APPLICATIONS
When applying for funding assistance from separate sources/agencies for one project, multiple applications are required. The duplicity and lack of interchangeability of the forms and the agencies is very time consuming for local governments.

#### USE OF .GOV DOMAIN FOR COUNTY WEBSITES
US GSA regulates the use of this extension. Arguably, this would make county sites easier to recall constituents. Rules for use, however, restrict counties from enacting local ordinances/laws to assist in offsetting technology costs associated with website operation and maintenance via approved and regulated advertising.