

Clearing the Air? An Update on EPA's Air Regulation Reset



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Presentation Goals



1. Why?
 - Motivation behind the regulatory reset
2. How?
 - Clarify legal authority
3. What?
 - Summarize key regulatory shifts
 - Describe potential impacts to the Arrowhead Region



Why?



Motivation behind the regulatory reset

EPA Administrator Zeldin: “Powering the Great American Comeback”

2/4/2025



Pillar 1: Clean Air, Land, and Water for Every American

- *...fulfilling its mission to protect human health and the environment....*

Pillar 2: Restore American Energy Dominance

- *...cut energy costs for everyday Americans....*
- *...stop relying on energy sources from adversaries....*

Pillar 3: Permitting Reform, Cooperative Federalism, and Cross-Agency Partnership

- *...work with our partners at the state and federal levels to ensure projects are being approved...*
- *...streamlining these processes....*
- *...partnering with businesses to follow the necessary steps to safeguard our environment....*
- *...Incentivize investment into our economy and create American jobs...*

Pillar 4: Make the United States the Artificial Intelligence Capital of the World

- *...ensure data centers and related facilities can be powered and operated in a clean manner....*

Pillar 5: Protecting and Bringing Back American Auto Jobs

- *...streamline and develop smart regulations that will allow for American workers to lead the great comeback of the auto industry....*

[EPA Administrator Lee Zeldin Announces EPA’s “Powering the Great American Comeback” Initiative | US EPA](#)



How?



Clarify legal authority

Legal Mechanisms



1. Executive orders
2. Presidential exemptions
3. Congressional Review Act
4. Reconsideration and Rule Making
5. EPA Guidance



What?



Summarize Key Regulatory Shifts

EPA Launches Biggest Deregulatory Action in U.S. History

3/12/2025



EPA Administrator Zeldin:

- *“[Today is the greatest day of deregulation our nation has seen.](#) We are driving a dagger straight into the heart of the climate change religion to drive down cost of living for American families, unleash American energy, bring auto jobs back to the U.S. and more.”*
- *“Alongside President Trump, we are living up to our promises to [unleash American energy, lower costs for Americans, revitalize the American auto industry, and work hand-in-hand with our state partners](#) to advance our shared mission.”*

[EPA Launches Biggest Deregulatory Action in U.S. History | US EPA](#)



Executive Orders



Executive Orders



U.S. Constitution provides the president authority to issue Executive Orders:

- The Vesting Clause (Article II, Section 1)
 - *“The executive Power shall be vested in a President of the United States of America.”*
- The Take Care Clause (Article II, Section 3)
 - *“[The President] shall take Care that the Laws be faithfully executed.”*

An Executive Order:

- Directs agencies and officials of the Executive Branch
- Carry the force and effect of law within Executive Branch
- Can be revoked or amended by future Presidents
- Can be nullified by Courts
- Can be rendered ineffective by congressional action

Timeline of Recent Deregulatory Executive Orders



January 2025

Initial Rescissions Of Harmful Executive Orders And Actions

- Revocation of most of President Biden’s executive orders on energy and climate change (and other matters)

Putting America First In International Environmental Agreements

- Withdraw and/or revoke various climate change agreements (e.g, Paris Climate Agreement)

Declaring a National Energy Emergency

- *“Use any lawful emergency authorities “to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources.”*
- “critical minerals” were included as part of this emergency

Unleashing American Energy

- Agencies were direct to review all existing regulations *“that impose an undue burden on the identification, development, or use of domestic energy resources – with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources”*

Timeline of Recent Deregulatory Executive Orders



April 2025

Protecting American Energy From State Overreach

- *“The Attorney General... shall identify all State and local laws, regulations, causes of action, policies, and practices (collectively, State laws) burdening the identification, development, siting, production, or use of domestic energy resources that are or may be unconstitutional, preempted by Federal law, or otherwise unenforceable.”*
- *“The Attorney General shall prioritize the identification of any such State laws purporting to address “climate change” or involving “environmental, social, and governance” initiatives, “environmental justice,” carbon or “greenhouse gas” emissions, and funds to collect carbon penalties or carbon taxes.”*

Reinvigorating America's Beautiful Clean Coal Industry

- *“...the Administrator of the Environmental Protection Agency... shall identify any guidance, regulations, programs, and policies within their respective executive department or agency that seek to transition the Nation away from coal production and electricity generation”*

Zero-Based Regulatory Budgeting to Unleash American Energy

- Directs agencies, such as EPA and FWS, to incorporate a “sunset provision” into their regulations governing energy production to ensure the rules are reexamined periodically

Timeline of Recent Deregulatory Executive Orders



May 2025

Increasing Efficiency At the Office of the Federal Register

- *“The Office of the Federal Register frequently takes days or, in some cases, even weeks to publish new regulatory actions. Such delay is unwarranted. The Office of the Federal Register receives final documents that are fully executed by the relevant decisionmakers...”*

Reinvigorating the Nuclear Industrial Base

- *“...expedite and promote to the fullest possible extent the production and operation of nuclear energy to provide affordable, reliable, safe, and secure energy to the American people...”*
- *“...the Department of Energy shall prioritize work with the nuclear energy industry to facilitate 5 gigawatt of power uprates to existing nuclear reactors and have 10 new large reactors with complete designs under construction by 2030.”*

Timeline of Recent Deregulatory Executive Orders



July 2025

[Accelerating Federal Permitting of Data Center Infrastructure](#)

- *“The Order instructs agencies to streamline environmental reviews and permitting for data centers and related infrastructure by leveraging existing exemptions and creating new ones to expedite the construction of Qualifying Projects”*



Presidential Exemptions



Presidential Exemptions (Clean Air Act Section 112(i)(4))



The Clean Air Act allows the President to exempt stationary sources of air pollution from compliance with any standard or limitation under Section 112 for up to two years:

- if the technology to implement the standard is not available

AND

- it is in the national security interests of the United States to do so

[Clean Air Act Section 112 Presidential Exemption Information | US EPA](#)

Regulatory Relief for Certain Stationary Sources to Promote American Energy

July 2025 – Two Separate Exemptions



- *National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review*
 - *Also known as Mercury and Air Toxics Standards (MATS)*
- May 2024 Final Rule imposed new emissions-control requirements
- “Specifically, the Rule requires compliance with standards premised on the application of emissions-control technologies that do not yet exist in a commercially viable form. The current compliance timeline of the Rule therefore raises the unacceptable risk of the shutdown of many coal-fired power plants, eliminating thousands of jobs, placing our electrical grid at risk, and threatening broader, harmful economic and energy security effects.”
- Exemption from May 2024 Final Rule for two years beyond the relevant compliance dates
 - Remain subject to the standard in effect before March 2024
- MATS is under Reconsideration by EPA

[Regulatory Relief for Certain Stationary Sources to Promote American Energy](#)

[Regulatory Relief for Certain Stationary Sources to Further Promote American Energy](#)

Regulatory Relief for Certain Stationary Sources to Promote American Iron Ore Process Security

July 2025



- *National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing* (Taconite Rule)
- March 2024 Final Rule imposed new emissions-control requirements
- “The Taconite Rule mandates compliance with standards that rely on emissions-control technologies that have not been demonstrated to work in the taconite industry, are untested at commercial scale, or are not reasonably achievable under current operational conditions.”
- Exemption from March 2024 Final Rule for two years beyond the relevant compliance dates
 - Remain subject to the standard in effect before March 2024
- The Taconite Rule is under Reconsideration by EPA

[Regulatory Relief for Certain Stationary Sources to Promote American Iron Ore Processing Security](#)



Congressional Review Act



Congressional Review Act (CRA)



Congress can overturn certain federal agency actions.

- Applies to final rules, including major rules, non-major rules, and interim final rules.
- The definition includes agency actions that are not subject to traditional notice-and-comment rulemaking, such as guidance documents and policy memoranda.
- The CRA does not apply to presidential actions or to non-rule agency actions such as orders.

Requirements:

1. CRA Joint Resolution of Disapproval
 - Approved by both houses of congress
 - Signed by the President
2. Resolution must be introduced during a 60-days-of-continuous-session period beginning when the rule has been published in the Federal Register and been received by Congress

[The Congressional Review Act \(CRA\): A Brief Overview | Congress.gov | Library of Congress](#)

Environmental Rules Overturned by CRA in 2025 (so far)



- “Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions” (Federal Register, vol. 89, p. 91,094 (Nov. 18, 2024))
- “Energy Conservation Program: Energy Conservation Standards for Commercial Refrigerators, Freezers, and Refrigerator-Freezers” (Federal Register, vol. 90, p. 7,464 (January 21, 2015))
- “Energy Conservation Program for Appliance Standards: Certification Requirements, Legal Requirements, and Enforcement Provisions for Certain Consumer Products and Commercial Equipment” (Federal Register, vol. 89, p. 81,994 (Oct. 9, 2024))
- “Energy Conservation Program: Energy Conservation Standards for Walk-In Coolers and Walk-In Freezers” (Federal Register, vol. 89, p. 104,616 (Dec. 23, 2024))
- Energy Conservation Program: Energy Conservation Standards for Consumer Gas-fired Instantaneous Water Heaters” (Federal Register, vol. 89, p. 105,188 (Dec. 26, 2024))
- “National Emission Standards for Hazardous Pollutants: Rubber Tire Manufacturing” (Federal Register, vol. 89, p. 94,886 (Nov. 29, 2024))
- “California State Motor Vehicle and Engine and Nonroad Engine Pollution Control Standards; The ‘Omnibus’ Low NOX Regulation; Waiver of Preemption; Notice of Decision” (Federal Register, vol. 90, p. 643 (Jan. 6, 2025). Pub. L. 119-17 (June 12, 2025))
- “California State Motor Vehicle and Engine Pollution Control Standards; Advanced Clean Cars II; Waiver of Preemption; Notice of Decision” (Federal Register, vol. 90, p. 642 (Jan. 6, 2025). Pub. L. 119-16 (June 12, 2025))
- “California State Motor Vehicle and Engine Pollution Control Standards; Heavy-Duty Vehicle and Engine Emission Warranty and Maintenance Provisions; Advanced Clean Trucks; Zero Emission Airport Shuttle; Zero-Emission Power Train Certification; Waiver of Preemption; Notice of Decision” (Federal Register, vol. 88, p. 20,688 (Apr. 6, 2023))
- “**Review of Final Rule Reclassification of Major Sources as Area Sources** Under Section 112 of the Clean Air Act” (Federal Register, vol. 89, p. 73,293 (Sept. 10, 2024))



EPA Reconsideration and Rule Making



Reconsideration of Existing Regulations



EPA can reconsider previously issued regulations and are required to:

1. Display awareness that it is changing position
 - The agency must clearly state that it is departing from a prior policy or interpretation.
2. Offer good reasons for the new policy
 - It must justify the change with evidence, logic, or changed circumstances.
3. Consider reliance interests
 - Agencies must assess whether regulated parties have relied on the previous position and how the change affects them.

[23-1038 FDA v. Wages and White Lion Investments, LLC \(04/02/2025\)](#)



Reconsideration of National Emission Standards for Hazardous Air Pollutants



Reconsideration of National Emission Standards for Hazardous Air Pollutants

March 2025



1. Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review (89 FR 38508; May 7, 2024) (**MATS Rule**)
 - Repeal proposed on June 17, 2025
2. Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins (89 FR 42932; May 16, 2024) (HON rule)
3. Ethylene Oxide Emissions Standards for Sterilization Facilities Residual Risk and Technology Review (89 FR 24090; April 5, 2024) (Sterilizer Rule)
4. Primary Copper Smelting Residual Risk and Technology Review and Primary Copper Smelting Area Source Technology Review (89 FR 41648; May 13, 2024) (Copper Rule);
5. Integrated Iron and Steel Manufacturing Facilities Technology Review (89 FR 23294; April 3, 2024) (Iron and Steel Rule);
6. Lime Manufacturing Plants Technology Review (89 FR 57738; July 16, 2024) (Lime Rule)
7. Coke Ovens: Pushing, Quenching, and Battery Stacks, and Coke Oven Batteries; Residual Risk and Technology Review, and Periodic Technology Review (89 FR 55684; July 5, 2024) (Coke Ovens Rule)
8. Taconite Iron Ore Processing (89 FR 16408; March 6, 2024) (**Taconite Rule**)



Reconsideration of NAAQS



National Ambient Air Quality Standards

PM_{2.5} Annual NAAQS Reconsideration

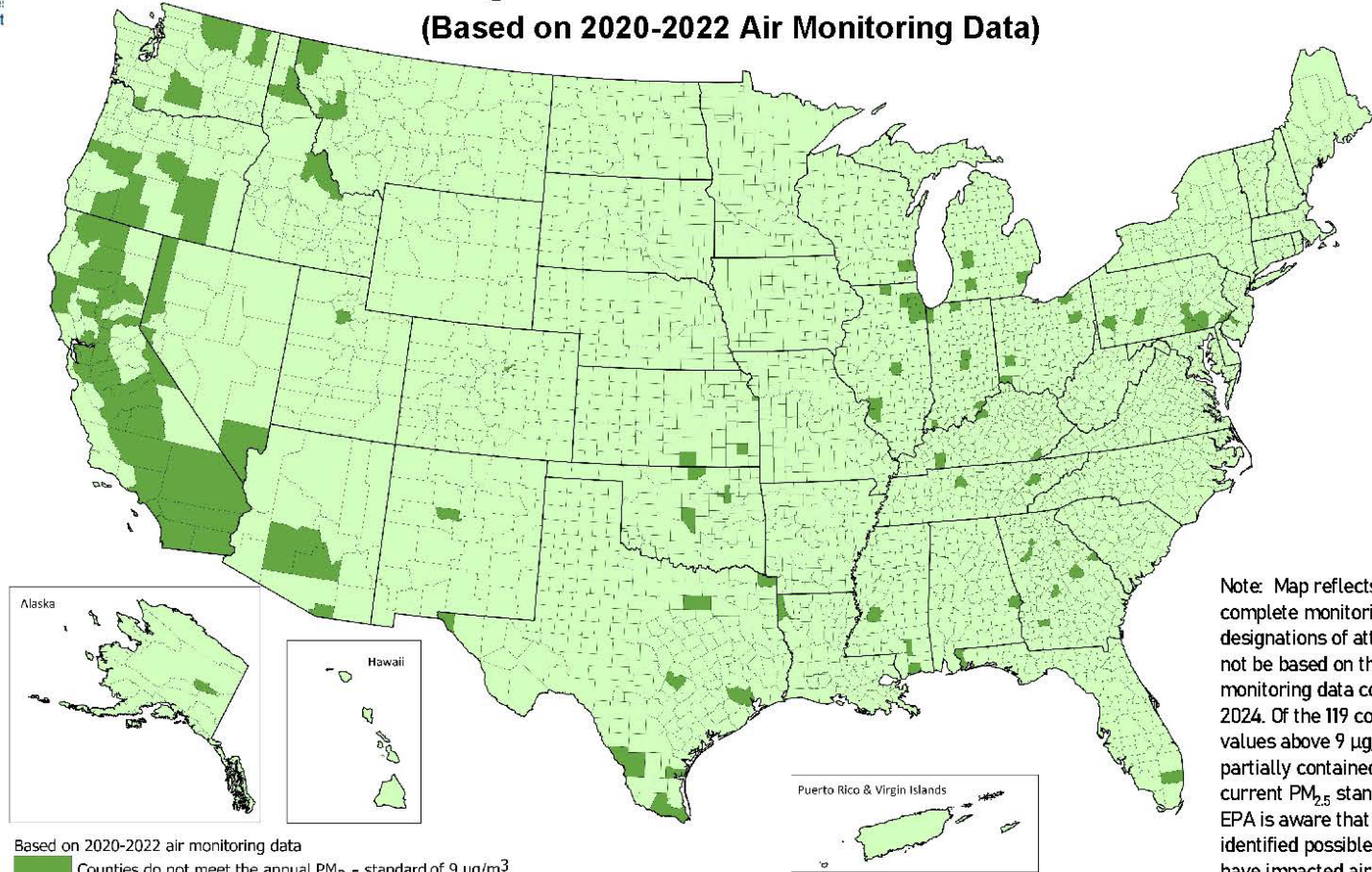
March 2025



3/6/2024 Final PM_{2.5} Annual NAAQS
From 12 to 9 µg/m³



Most Counties with Monitors Already Meet the Strengthened Particle Pollution Standard (Based on 2020-2022 Air Monitoring Data)



Based on 2020-2022 air monitoring data
■ Counties do not meet the annual PM_{2.5} standard of 9 µg/m³

This information is provided for illustrative purposes only and is not intended to predict the outcome of any forthcoming designations process.

Note: Map reflects monitored counties with complete monitoring data. Future final designations of attainment/nonattainment will not be based on these data, but likely on monitoring data collected between 2022 and 2024. Of the 119 counties with 2020-2022 design values above 9 µg/m³, 59 counties are totally or partially contained in nonattainment areas for current PM_{2.5} standards. In years 2021 and 2022, EPA is aware that some states have already identified possible exceptional events that may have impacted air quality in the US and may be relevant to designations decisions.

Other Potential NAAQS Issues



- SO₂ Secondary NAAQS promulgated 12/10/2024 as annual 10 ppb standard averaged over 3 years and demonstrated through 1-hour primary SO₂ NAAQS demonstration
- NO_x NAAQS review due by November 2028 (Consent Decree)
- Lead NAAQS currently undergoing review
- Ozone NAAQS final rule on SIP Designation deadlines published 1/17/2025 then EO pause on 1/20/2025
- Clean Air Scientific Advisory Committee (CASAC) 7-person panel dismissed and seeking new members
 - CASAC responsible for reviewing the updated scientific studies for regular NAAQS reviews
 - Timed before EPA publishes their FR notice of PM_{2.5} NAAQS reconsideration

Exceptional Events Exclusion Rule Reconsideration

March 2025



- Exceptional Events Rule
 - The rule clarifies the criteria and data requirements for exclusion from ambient air quality analysis (attainment calculations)
 - Defined as affecting air quality, not reasonably controllable or preventable, caused by human activity that is unlikely to recur at a particular location or a natural event
- March 12, 2025 announced reevaluation of 2016 rule
- Goal is further simplification of exceptional event determination for prescribed fires or wildfires
- No details on how this will be streamlined
- Current rule exceptional event definition is specific, so simplifying the determination won't necessarily increase the number of thrown out monitored values

[Fact Sheet - Reevaluation of Exceptional Events Data](#)

Exceptional Events Powering the Great American Comeback Fact Sheet	
Action	<ul style="list-style-type: none"> • Reevaluation of the “Treatment of Data Influenced by Exceptional Events” (81 FR 68216; October 3, 2016).
Reasons for Action	<ul style="list-style-type: none"> • States often cannot prevent air pollution from “exceptional events” such as wildfires. Including data from these events when assessing state’s air quality-standard attainment status can be unfair; Congress provided EPA authority to account for this. • The current regulatory process for identifying the impact of exceptional events on air quality is burdensome for state, local, and tribal air agencies and should be streamlined and simplified.
Important facts on regulation/program	<ul style="list-style-type: none"> • The Exceptional Events Rule implements Clean Air Act section 319(b), which outlines a pathway for air agencies to request the exclusion of air quality monitoring data influenced by exceptional events from certain regulatory actions such as designating whether and area meets the National Ambient Air Quality Standards.
Groups or entities requesting reconsideration	<ul style="list-style-type: none"> • State air agencies • Tribal air agencies • Local air agencies • Industry trade associations • Companies • Other federal agencies
Responds to	<ul style="list-style-type: none"> • Pillar 3: Permitting Reform, Cooperative Federalism, and Cross-Agency Partnership • Executive Order 14192: Unleashing Prosperity Through Deregulation



Reconsideration of the Regional Haze Program



Regional Haze Program Restructuring

March 2025



- Goal is to meet Congressional intent (natural visibility in Class I areas by 2064) “based on current scientific information and reflects recent improvements in air quality.”
- March 12, 2025 announced restructuring the Regional Haze Program
- Emphasis on “reasonable” progress vs. “maximal” progress
- EPA has been approving multiple state implementation plans (SIPs) that were on hold

[Fact Sheet - Reconsideration of the Regional Haze Program](#)

Regional Haze Powering the Great American Comeback Fact Sheet	
Action	<ul style="list-style-type: none"> • Restructuring the Regional Haze Program through the development of new regulations.
Reasons for Action	<ul style="list-style-type: none"> • Ensure states have the tools they need to effectively protect visibility. Better take into account non-United States and non-anthropogenic impacts on visibility in Class I areas. • Significant improvements in visibility have occurred over the past 20 years as a result of Clean Air Act and state actions. • The federal program must evolve to allow for demonstrated improvements that avoid unnecessary burdens for states and industry.
Important facts on regulation/program	<ul style="list-style-type: none"> • The Clean Air Act established a national goal of eliminating manmade visibility impairment at national parks and wilderness areas. Currently, this program covers 156 identified Class I areas. EPA rules issued pursuant to the CAA implement this program.
Groups or entities requesting reconsideration	<ul style="list-style-type: none"> • States • Industry • Members of the public
Responds to	<ul style="list-style-type: none"> • Pillar 1: Clean Air, Land, and Water for Every American • Pillar 3: Permitting Reform, Cooperative Federalism, Cross Agency Partnership • Executive Order 14192: Unleashing Prosperity Through Deregulation



Reconsideration of GHG Endangerment Finding



2009 GHG Endangerment Finding Reconsideration (1 of 2)

August – September 2025



Background

- 2009 Endangerment Finding
 - *“The Administrator finds that the current and projected concentrations of the six key well-mixed greenhouse gases—carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—in the atmosphere threaten the public health and welfare of current and future generations.”*
- Enabled the EPA to regulate GHG emissions from vehicles and other sources under the Clean Air Act (CAA)

Reconsideration

- The CAA does not authorize the EPA to regulate emissions for the purpose of addressing global climate change
- The 2009 finding was based on an unreasonable analysis of the scientific record, and new developments cast doubt on its reliability
- Historically, CAA endangerment provisions applied to local or regional exposure
- Public comment period recently ended

2009 GHG Endangerment Finding Reconsideration (2 of 2)

August – September 2025



If the repeal is successful

1. Legal challenges will occur
 - Ultimate decision with SCOTUS
 - If *Mass v. EPA*, 549 U.S. 497 (2007) is completely overturned:
 - Would lose federal preemption over state vehicle GHG standards
 - Would lose federal preemption over common law claims related to climate change

2. Regulations would change:
 - EPA would lose authority to regulate GHG from new motor vehicles
 - GHG regulations would be rolled back (in some cases, will require separate rule making)

3. Future state rule making?



Reconsideration of the GHG Reporting Rule



Reconsideration of the GHG Reporting Rule

August – September 2025



1. Scope:

- Remove reporting requirements for all source categories except Subpart W (Petroleum and Natural Gas Systems)
- Remove reporting requirements for “Natural Gas Distribution” industry segment of Subpart W
- Suspend obligations for the remaining Subpart W segments until reporting year 2034.

2. Timeline:

- 9/16/2025: Published in [Federal Register](#)
- 10/1/2025: Public Hearing
- 11/3/2025: Public comment period ends



Reconsideration of the Good Neighbor Plan for Ozone NAAQS



2023 Good Neighbor Plan for the 2015 Ozone NAAQS (1 of 2)

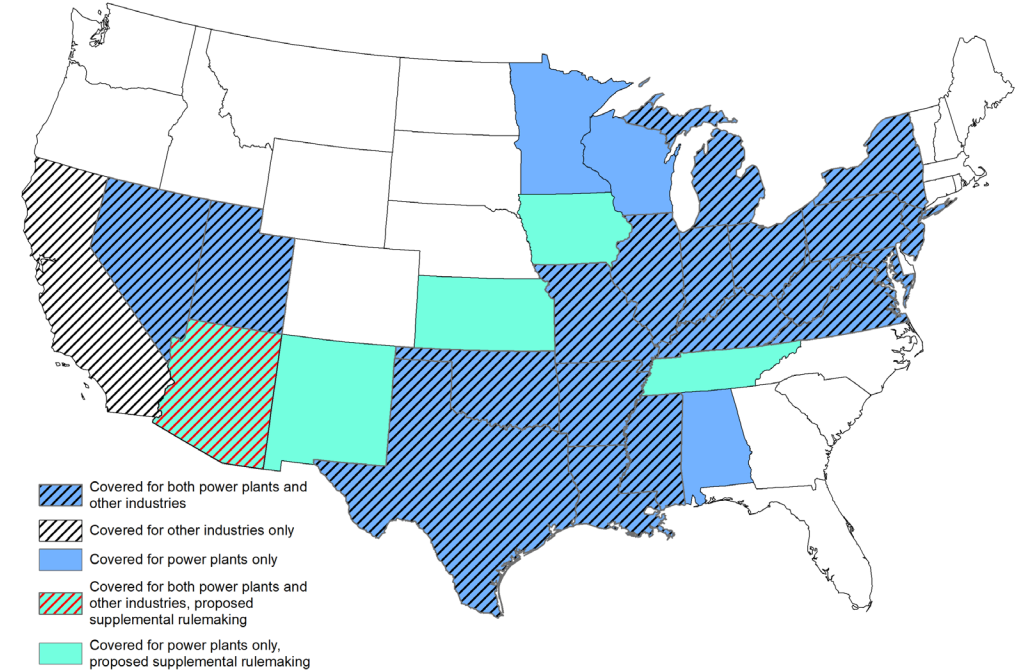
March 2025



Background

- Goal: reduce NO_x emissions contributing to ozone exceedance in downwind states
- EPA's actions:
 - Implemented Federal Implementation Plan (FIP)
 - Applied to 23 states
 - Required NO_x emission reductions
 - Disapproved State Implementation Plans (SIPs)
- SCOTUS issued stay in June 2024

[Good Neighbor Plan for 2015 Ozone NAAQS | US EPA](#)



2023 Good Neighbor Plan for the 2015 Ozone NAAQS (2 of 2)

March 2025



Current EPA Actions

- Included Good Neighbor Plan in 3/12/2025 deregulation announcement
- Ending the Good Neighbor FIP
- Approving SIPs that were previously rejected
 - Shifting regulatory authority back to states (“cooperative federalism.”)



EPA Guidance



Relaunch of EPA Guidance Document Website

August 2025



- EPA guidance documents describe how the agency interprets an underlying statute and its regulations:
 - Memoranda
 - Policy statements
 - Handbooks
 - Manuals
 - Other documents formally titled as guidance.
- Guidance documents that have been superseded with newer guidance are not included.
- Guidance documents are agency statements of general applicability, intended to have future effects on the behavior of regulated parties, that set forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, with some exceptions.
 - The portal does not contain documents that are excluded from this definition

[EPA Announces Relaunch of Comprehensive Guidance Document Website, Advances Total Transparency of Trump Administration | US EPA](#)

[EPA Guidance Documents | US EPA](#)

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“Begin Actual Construction” for Air Permitting (1 of 3)



Background

- 40 CFR 52.21 Prevention of Significant Deterioration of Air Quality (PSD Regulations)
- 40 CFR 52.21(a)(2)(iii): ***No new major stationary source or major modification... shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.***
- 40 CFR 52.21(b)(11): ***Begin actual construction*** means, in general, initiation of ***physical on-site construction activities on an emissions unit*** which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.
- 40 CFR 52.21(b)(7): *Emissions unit* means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant....

“Begin Actual Construction” for Air Permitting (2 of 3)



3/28/1986 EPA memorandum

- ...any part of a PSD source which would emit any pollutant subject to regulation under the Act is considered an emissions unit, even if that particular unit is not subject to PSD review.
- The **emissions unit would include any installations necessary to accommodate that unit.**
- Therefore, before issuance of the PSD permit, construction is prohibited on any emissions unit or on **any installation designed to accommodate the emissions unit.**
- If the emissions unit (**including any accommodating installation**) is an integral part of the source or modification (i.e. the source or modification would not serve in accordance with its original intent, except for inclusion of the emissions unit), the PSD permit must be obtained before construction on the entire source commences.

[Construction Activities Prior to Issuance of a PSD Permit with Respect to "Begin Actual Construction"](#)

“Begin Actual Construction” for Air Permitting (3 of 3)

September 2025



[TSMC Arizona Begin Actual Construction - EPA Response Letter](#)

- *“...The EPA also continues to view the 1986 Reich memo to have adopted an overly broad reading of the term “emissions unit” to suggest that it includes installations necessary to accommodate an emissions unit....”*
- *Allows construction of “...the core and shell of a building, provided that the construction of this core and shell of a building does not involve the physical construction on an emission unit or the laying of underground piping or construction of supports and foundations that are part of any emissions unit....”*
- Other notes:
 - Technically, the document is a site-specific determination for a plant in Arizona and is not “guidance” directly usable at other sites
 - Not finalizing the March 2020 draft guidance on begin actual construction
 - EPA will complete a rulemaking in 2026 to “distinguish between emissions units and other parts ... that are not ... part of an emissions unit”
 - EPA appears to welcome in the interim case-by-case determinations for any projects held up by a PSD permit

[EPA Announces Permitting Reform to Provide Clarity, Expedite Construction of Essential Power Generation, Reshore Manufacturing | US EPA](#)

Policy on Enforceability of Actual-to-Projected-Actual Applicability Test

September 2025



Background

- Originally issued by EPA in December 2017
- Rescinded by EPA in December 2022

Summary

- Projected actual emissions are not automatically enforceable
- *“EPA intends to focus on the level of actual emissions during the 5- or 10-year recordkeeping or reporting period after the project.... That is, the EPA does not presently intend to initiate enforcement in such future situations unless post-project actual emissions data indicate that a significant emissions increase or a significant net emissions increase did in fact occur.”*

[EPA Policy on Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability in New Source Review Preconstruction Permitting: Reinstatement of 2017 Memorandum](#)

Reactivation Policy

September 2025



Historic Policy

- Presumed that a major stationary source that was idled for 2-years or more was permanently shutdown and required re-permitting
- Could provide evidence that the shutdown was not permanent

Updated Policy

- *“...EPA will not require the source to obtain an NSR permit unless this change qualifies as a "major modification" under applicable regulations based on the nature of the change and the magnitude of any resulting increase in emissions.”*
- *“Thus, a restart of an idled facility involving a physical change (or a change in the method of operation at the source other than simply restarting) will still require a PSD permit if it qualifies as a "major modification" by virtue of the nature of the change and the degree to which it results in an increase in regulated NSR pollutant emissions.”*

[New Source Review Program "Reactivation Policy" Memorandum](#)

Summary



- 1. Sweeping changes are occurring**
 - Consistent with campaign promises
- 2. Multiple legal approaches are being used**
 - Executive Orders and Guidance can be changed by future Administrations
- 3. Stay informed**
 - Federal Register
 - EPA announcements
 - Industry organization
 - Consultants
- 4. Assess legal and compliance risk**
 - Legal challenges will occur
- 5. Consider voluntary environmental commitments**
 - Investor and consumer interest



Q&A and contact info



Please contact me for further discussion!

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