

CLEAN AIR ACT UPDATE

PICK SIX



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ARKANSAS ENVIRONMENTAL FEDERATION
OCTOBER 9, 2026

Mark H. Allison

CAA UPDATE – PICK SIX

- **NAAQS** **PM_{2.5}**
- **SEC** **CLIMATE DISCLOSURES**
- **TITLE V** **SSM**
- **NSR** **BEGIN ACTUAL CONSTRUCTION**
- **TITLE V** **STREAMLINING**
- **NSR** **PROJECT ACCOUNTING RULE**



CAA UPDATE – PICK SIX

PM_{2.5}



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CAA UPDATE – PM_{2.5}

PRIMARY NAAQS STANDARDS

LIMITS TO PROTECT PUBLIC HEALTH, INCLUDING SENSITIVE POPULATIONS

AIR QUALITY CRITERIA +

ADEQUATE MARGIN OF SAFETY

MAY BE REVISED IN THE SAME MANNER AS PROMULGATED

42 USC §7409(B)(1)



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CAA UPDATE – PM_{2.5}

NAAQS STANDARDS

EPA SHALL REVIEW CRITERIA, NAAQS AND SCIENCE AT FIVE YEAR INTERVALS

MUST CONDUCT A THOROUGH REVIEW OF CRITERIA

MAY REVIEW/REVISE NAAQS EARLIER OR MORE FREQUENTLY

EPA SHALL REVISE OR ESTABLISH NEW NAAQS AS MAY BE APPROPRIATE

42 USC §7409(D)(1)



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CAA UPDATE – PM_{2.5}

NAAQS STANDARDS - COURT DECISIONS

MAY NOT CONSIDER COSTS IN ESTABLISHING NAAQS

MARGIN OF SAFETY ADDRESSES UNCERTAINTIES AND UNIDENTIFIED HAZARDS

EPA NOT BOUND BY PREVIOUS NAAQS REVIEWS



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CAA UPDATE – PM_{2.5}

PM_{2.5} HISTORY

1971	TSP	75 µg/m ³
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1987	PM ₁₀	50 µg/m ³
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1997	PM _{2.5}	15 µg/m ³
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2006	no change to PM _{2.5}	
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2012	PM _{2.5}	12 µg/m ³
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CAA UPDATE – PM_{2.5}

PM_{2.5} HISTORY

JAN. 2017	TRUMP 1.0 INAUGURATION
NOV. 2020	ELECTION DAY
DEC. 2020	5 YR REVIEW - RETAINS 12 µg/m ³ PM _{2.5} STANDARD
JAN. 16, 2021	PETITION FOR RECONSIDERATION - EPA
JAN. 20, 2021	INAUGURATION DAY - BIDEN



CAA UPDATE – PM_{2.5}

PM_{2.5} HISTORY

JUNE 21, 2021 EPA PM_{2.5} RECONSIDERATION

JAN. 6, 2023 EPA PROPOSES ANNUAL LIMIT BETWEEN 9-10 µg/m³

25 MONTHS AFTER PREVIOUS 5-YR REVIEW

FEB. 7, 2024 FINAL RULE – PM_{2.5} ANNUAL 9 µg/m³

38 MONTHS AFTER PREVIOUS 5-YR REVIEW

MAR. 6, 2024 RULE PUBLISHED

RULE APPEALED – KENTUCKY V. EPA



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CAA UPDATE – PM_{2.5}

PM_{2.5} HISTORY

NOV. 2024 ELECTION DAY

DEC. 16, 2024 ORAL ARGUMENT – KENTUCKY V. EPA

JAN. 20, 2025 INAUGURATION DAY – TRUMP 2.0

FEB. 25, 2025 COURT STAYS KENTUCKY V. EPA PENDING EPA POLICY REVIEW

AUG. 13, 2025 EPA STATES INTENTION TO RECONSIDER 2024 RULE



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CAA UPDATE – PM_{2.5}

PM_{2.5} HISTORY

NOV. 4, 2025	EPA REQUESTS COURT TO VACATE 2024 RULE AS “UNLAWFUL”
JUNE 26, 2026	<u>KENTUCKY V. EPA</u> - UPHOLDS 2024 PM _{2.5} RULE



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CAA UPDATE – PM2.5

KENTUCKY V. EPA D.C. CIRCUIT OPINION

QUESTION: Must EPA conduct a “thorough review” when it conducts a less than 5 – year, “off cycle” NAAQS revision?

No. EPA may revise the NAAQS more frequently without conducting a “thorough review.”

QUESTION: Must EPA consider cost and feasibility when deciding whether it is appropriate to revise an existing NAAQS?

No. Binding Supreme Court case law says cost may not be considered in setting the NAAQS.



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CAA UPDATE – PM_{2.5}

PM_{2.5} HISTORY

JULY 17, 2026	CALIFORNIA COURT ORDERS EPA DESIGNATIONS BY FEB. 6, 2027
AUG. 10, 2025	DEADLINE FOR REHEARING IN <u>KENTUCKY V. EPA</u>
AUG. 28, 2026	STATE/INDUSTRY PETITION TO SUPREME COURT
SEPT. 24, 2026	DEADLINE FOR EPA SUPREME COURT PETITION



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CAA UPDATE – PM2.5

QUESTIONS FOR SUPREME COURT

MAY EPA REVISE A NAAQS WITHOUT A “THOROUGH REVIEW” REQUIRED BY 109(D)(1) WHEN EPA ACTS EARLIER THAN NECESSARY?

OFF CYCLE REVIEWS WITHOUT SIGNIFICANT CHANGES IN NEW FACTS AND DATA ALLOWS QUICK REVERSAL OF A PRIOR DECISION BASED ON JUDGMENT ALONE – NO GUARDRAILS

MUST EPA CONSIDER COSTS AND ATTAINABILITY WHEN EPA EXERCISES DISCRETION TO REVISE A NAAQS EARLIER THAN NECESSARY?

PROHIBITION ON CONSIDERING COST SHOULD BE LIMITED TO 5-YEAR NAAQS REVIEWS



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CAA UPDATE – PM2.5

EPA DESIGNATIONS

**SEPT. 3, 2026 EPA APPEALS ORDER REQUIRING FEB. 7, 2027
PM2.5 DESIGNATIONS**

**SEPT. 4, 2026 EPA ASKS 9TH CIRCUIT TO EXPEDITE DECISION ON DESIGNATION
DEADLINE**

ORAL ARGUMENT SET FOR JANUARY 2027



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SEC CLIMATE RULE



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CAA UPDATE – SEC CLIMATE RULE

JAN. 20, 2021 PRESIDENT BIDEN’S TERM BEGINS

**MAR. 21, 2022 SECURITIES AND EXCHANGE COMMISSION (SEC)
PROPOSES CLIMATE DISCLOSURE RULES FOR PUBLIC
COMPANIES**

MAR. 6, 2024 SEC FINAL CLIMATE DISCLOSURE RULE ISSUED

EFFECTIVE DATE, MARCH 28, 2024

COMPLIANCE DATE – FY 2027



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CAA UPDATE – SEC CLIMATE RULE

MAR. 12, 2024	<u>IOWA V. SEC</u> , PETITION FOR REVIEW, 8 TH CIR. ARKANSAS IS A PETITIONER
MAR. 21, 2024	SEC DISCLOSURE RULE LITIGATION CONSOLIDATED IN 8 TH CIR. <u>IOWA V SEC</u> CASE
APRIL 4, 2024	SEC ISSUES ADMINISTRATIVE STAY PENDING COMPLETION OF REVIEW IN 8 TH CIR.
NOV. 5, 2024	ELECTION DAY



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CAA UPDATE – SEC CLIMATE RULE

JAN. 20, 2025	INAUGURATION DAY – TRUMP 2.0
MAR. 27, 2025	SEC VOTES TO END LEGAL DEFENSE OF SEC CLIMATE DISCLOSURE RULE
JUL. 23, 2025	SEC INFORMS 8TH CIR. IT WILL RESCIND RULE
SEP. 12, 2025	8TH CIR. ORDERS CASE IN ABEYANCE UNTIL SEC RECONSIDERS RULE OR RENEWS DEFENSE OF RULE
JUNE 1, 2026	SEC NOTIFIES COURT OF PROPOSED RESCISSION RULE



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CAA UPDATE – SEC CLIMATE RULE

JUNE 3, 2026

SEC PROPOSED RESCISSION OF CLIMATE-RELATED DISCLOSURE RULES

EXCEEDS LIMITS OF SEC'S DISCLOSURE AUTHORITY

INCONSISTENT WITH REGISTRANT-SPECIFIC, MATERIALITY APPROACH TO DISCLOSURE

BEYOND POLICY CONCERNS OF SECURITIES LAWS

SUBSTANTIAL COSTS NOT JUSTIFIED BY INFORMATIONAL BENEFITS

AT ODDS WITH GOALS OF FACILITATING CAPITAL FORMATION AND PROMOTING PUBLIC COMPANIES



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CAA UPDATE – SEC CLIMATE RULE

AUG. 3, 2026 COMMENT PERIOD ENDED

CURRENT STATUS

RULE IS ADMINISTRATIVELY STAYED BY SEC

CASE IS IN ABEYANCE BY 8TH CIRCUIT

AWAITING FINAL RULE ON RESCISSION



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CAA UPDATE – PICK SIX

SSM – TITLE V AND SIP GUIDANCE



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CAA UPDATE – SSM UPDATE

TITLE V AFFIRMATIVE DEFENSE – 40 CFR 70.6(G)

An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency.

An emergency shall not include noncompliance to the extent caused by

- improperly designed equipment;**
- lack of preventative maintenance;**
- careless or improper operation; or**
- operator error.**



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CAA UPDATE – SSM UPDATE

TITLE V AFFIRMATIVE DEFENSE – 40 CFR 70.6(G)

An emergency constitutes an affirmative defense . . . if the following conditions are met.

An emergency occurred and the permittee can identify the cause

The facility was being properly operated at the time

The permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other permit requirements

The permittee submitted notice by the next working day



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CAA UPDATE – SSM UPDATE

RESCISSION OF TITLE V AFFIRMATIVE DEFENSE, JULY 21, 2023

STATE PROGRAMS REQUIRED TO REMOVE DEFENSE FROM TITLE V - PART 70 RULES

TITLE V AFFIRMATIVE DEFENSE ENCROACHES ON JUDICIARY'S ROLE TO DETERMINE PENALTIES FOR CAA VIOLATIONS

OPERATES AS AN UNLAWFUL EXEMPTION FROM CONTINUOUS EMISSION LIMITATIONS



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CAA UPDATE – SSM UPDATE

FLORIDA ELECTRIC POWER COORDINATING COMM. V. EPA (2024)

SIPS MUST HAVE EMISSION LIMITATIONS; CAN HAVE OTHER MEASURES AS NEEDED FOR NAAQS

ONLY EMISSION LIMITATIONS MUST BE CONTINUOUS

2015 SSM SIP CALL - EPA DID NOT PROPERLY DETERMINE WHETHER STATE SSM PROVISIONS WERE EMISSION LIMITATIONS OR “OTHER MEASURES”

COMPLETE AFFIRMATIVE DEFENSE DOES NOT INTRUDE ON JUDICIAL POWER TO SET CAA PENALTIES - THERE IS NO CAA VIOLATION



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CAA UPDATE – SSM UPDATE

SSM LITIGATION GROUP V. EPA (2025)

EPA HAS HAD A TITLE V AFFIRMATIVE DEFENSE SINCE 1992

2023 TITLE V RESCISSION RULE BASED ON ERRONEOUS LEGAL GROUNDS

TITLE V AFFIRMATIVE DEFENSE IS A “COMPLETE” DEFENSE – DOES NOT INTERFERE WITH COURT POWER TO SET PENALTIES FOR VIOLATIONS

DOES NOT CHANGE ANY “CONTINUOUS” EMISSION LIMITATION – SIMPLY PROVIDES A DEFENSE TO LIABILITY FOR EMERGENCIES

EMISSION LIMITATIONS CONTINUE TO APPLY CONTINUOUSLY



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CAA UPDATE – SSM UPDATE

**JUNE 1, 2026 RESCISSION OF 2023 TITLE V AFFIRMATIVE
DEFENSE RULE**

40 CFR 70.6(G) RESTORED AS IT EXISTED BEFORE 2023 RULE

**NO NEED FOR PUBLIC NOTICE AND COMMENT - RESCISSION OF RULE IS
REQUIRED TO COMPLY WITH SSM LITIGATION MANDATE**



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CAA UPDATE – SSM UPDATE

**JUNE 12, 2026 WITHDRAWAL OF FINDINGS OF FAILURE TO
SUBMIT SSM SIP REVISIONS FOR 13 STATES**

REQUIRED BY FLORIDA ELECTRIC CASE DECISION

STOPS THE FIP CLOCK RUNNING

SEPT. 12, 2026 POLICY UPDATE FOR SSM PROVISIONS IN SIPS

**EPA WILL PRESUME THAT A SIP PROVISION IS A CONTINUOUS EMISSION
LIMITATION; STATE MUST EXPLAIN THAT IT IS NOT “NECESSARY AND
APPROPRIATE” IF NOT TO BE A CONTINUOUS EMISSION LIMITATION**



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**NSR – BEGIN ACTUAL
CONSTRUCTION**



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CAA UPDATE – BEGIN ACTUAL CONSTRUCTION

PSD (1977)

No major emitting facility . . . may be constructed in an area to which this part applies unless . . . a permit has been issued for such facility

42 USC §7475(A)(1)

NNSR

[SIP] provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area

42 USC §7502(C)(5)



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CAA UPDATE – BEGIN ACTUAL CONSTRUCTION

PSD RULES (1980)

No new major stationary source or major modification . . . shall begin actual construction without a permit . . .

40 CFR 52.21(a)(2)(iii)

Begin actual construction means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. . . .

40 CFR 52.21(b)(11)

Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant . . .

40 CFR 52.21(b)(7)

PSD rules are incorporated by reference into Arkansas SIP



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CAA UPDATE – BEGIN ACTUAL CONSTRUCTION

1986 REICH MEMO

Before issuance of the PSD permit, construction is prohibited on any emissions unit or on any installation designed to accommodate the emissions unit . . . the PSD permit must be obtained before construction on the entire source commences

1993 GP MEMO

Begin actual construction means initiation of physical on-site construction activities ... which are of a permanent nature. . . . [The] activities in this case . . . are costly, they significantly alter the site, are an integral part of the overall construction project, and are clearly of a permanent nature. Consequently, these activities are within the meaning of "begin actual construction."



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CAA UPDATE – BEGIN ACTUAL CONSTRUCTION

1993 HOWEKAMP MEMO

All on-site activities of a permanent nature aimed at completing construction of the source . . . are prohibited until after the permit is issued and effective, under all circumstances

1995 SEITZ MEMO

Prohibited (permanent and/or preparatory) preconstruction activities . . . would include any construction that is costly, significantly alters the site, and/or permanent in nature.



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CAA UPDATE – BEGIN ACTUAL CONSTRUCTION

MARCH 2020 EPA DRAFT GUIDANCE

A source owner or operator may . . . undertake physical on-site activities . . . provided that those activities do not constitute physical construction on an emissions unit

An “installation necessary to accommodate” the emissions unit . . . is not considered part of that emissions unit

Construction activities that may involve such “accommodating installations” may be undertaken in advance of . . . obtaining a major NSR permit.

2025 TSMC memo

“begin actual construction” . . . does not prohibit initiation of physical on-site construction of those parts of a facility that do not qualify as an emission unit



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CAA UPDATE – BEGIN ACTUAL CONSTRUCTION

MAY 13, 2026

PROPOSED RULE – BEGIN ACTUAL CONSTRUCTION IN THE NSR PRECONSTRUCTION PERMITTING PROGRAM, 91 FR 26958

**FOCUS PROHIBITING CONSTRUCTION OF AIR EMITTING EQUIPMENT
NOT WHETHER THE CONSTRUCTION ACTIVITY IS PERMANENT**

Begin actual construction means, in general, initiation of physical on-site construction of pollutant-emitting activities on a stationary source. . . .

Pollutant-emitting activities . . . include any equipment or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant. . . .

Classification as pollutant-emitting is based on emissions from a process or operation after construction

CAA UPDATE – PICK SIX

TITLE V – STREAMLINING



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CAA UPDATE – TITLE V STREAMLINING

TITLE V STATUTE

The Administrator shall promulgate . . . regulations establishing the minimum elements of a permit program These elements shall include . . . adequate, **streamlined**, and reasonable procedures for **expeditiously** determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for **expeditious review** of permit actions . . .

42 USC §7661a(b)(6)

1995 EPA White Paper Number 1

1996 EPA White Paper Number 2



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CAA UPDATE – TITLE V STREAMLINING

April 16, 2026 Guidance on Streamlining Clean Air Act Title V Operating Permit Renewals

Affirms White Paper 1 and White Paper 2

**Title V - Not a source of new requirements
 - Permits define existing compliance obligations**

**If no changes to permit terms or underlying applicable requirements . . .
permitting authorities may allow applicants to resubmit the prior application
with a current date**

**Permitting authorities do not need to proactively explain the legal and
technical basis of every permit term—especially unchanged permit terms**



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CAA UPDATE – TITLE V STREAMLINING

May 11, 2026 Guidance on Streamlining Title V Operating Permit Reviews

Title V requirements

- 30-day public notice and comment**
- 45-day EPA permit review and objection**
- 60-day public petition to object**

EPA may review proposed permit concurrently with public comment period

EPA may expedite 45-day review/issue no objection letter and permitting authority may issue permit before end of EPA review period

Does not affect 60-day period for petitions to object



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CAA UPDATE – PICK SIX

NRS – PROJECT ACCOUNTING RULE



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CAA UPDATE – PROJECT ACCOUNTING

Prior Major NSR applicability test

Step 1 – Is the sum of emissions increases for the project “significant”?

- cannot include emissions decreases for the project

If No, then minor permit mod

If Yes, then . . .

Step 2 – Is there a significant net emissions increase at the source?

- take into account emission increases and decreases at other contemporaneous projects at the source



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CAA UPDATE – PROJECT ACCOUNTING

1980	Original NSR Applicability Rule
2002	Added “Project” definition and “reasonable possibility” recordkeeping requirements for Step 1
2006	Proposed Debottlenecking, Aggregation Project Netting Rule Would include emissions decreases in Step 1 analysis
2009	Final Debottlenecking rule did not include Step 1 netting
2018	Pruitt Memorandum – decreases included in Step 1



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CAA UPDATE – PROJECT ACCOUNTING

Nov. 24, 2020 **Project Emissions Accounting Rule (Final)**
Replaced “sum of the emissions increases” in 40 CFR
52.21(a)(2)(iv)(f) with “sum of the difference”

Jan. 20, 2021 **Inauguration Day**

Jan. 21, 2021 **Petition for Stay and Reconsideration of 2020 Rule**
Petition denied, but rulemaking to be initiated

May 3, 2024 **Proposed Changes To Project Accounting Rule**
-“Project” Definition Revised
-Additional Recordkeeping For Minor Mods
- Step 1 Decreases – Made enforceable In Permit



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CAA UPDATE – PROJECT ACCOUNTING

Jan. 20, 2025 Inauguration Day

July 21, 2025 EPA withdraws May 2024 proposed rule

July 28, 2026 Environmental Defense Fund v. EPA, D.C. Cir., 183 F.4th 867

Upholds 2020 Project Emissions Accounting Rule

Mandate issued September 18, 2026



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THE END



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