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PM2.5/Clean Air Act: U.S. Environmental Protection Agency Motion for Vacatur of Revised NAAQS

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The United States Environmental Protection Agency ("EPA") filed a Motion for Vacatur ("Motion") in the United States Court of Appeals for the D.C. Circuit in regard to pending challenges to the PM2.5 Clean Air Act National Ambient Air Quality Standard ("NAAQS").

The Commonwealth of Kentucky and a number of other states (including Arkansas) and various business organizations had challenged in the federal appellate court EPA's strengthening during the Biden Administration of the PM2.5 NAAQS to 9 micrograms per cubic meter during the Biden Administration.

A number of environmental organizations and other groups oppose the challenge to the Rule.

Particulate matter is a generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. It is composed of two major components.

Larger particulates (PM10) are generally the result of mechanical, evaporative, and suspension processes. Particulates designated PM2.5 typically consist of sulfates, nitrates, elemental carbon, organic carbon, compounds or metals. Because of their small size, these particulates can remain in the air for a significant period of time.

Section 108 and 109 of the Clean Air Act require that EPA identify air pollutants utilizing certain criteria and set NAAQS for each. Particulates are one of the six air pollutants currently designated as criteria air pollutants and are therefore subject to NAAQS. Section 109 requires that EPA promulgate primary NAAQS for the pollutants identified under Section 108.

Section 109(d)(1) of the Clean Air Act mandates a periodic review of each NAAQS. Depending on the results of the review, EPA must determine whether the existing air quality criteria and NAAQS must be revised. EPA's previous review and revision of the PM2.5 NAAQS during the Biden Administration is an example of this review process.

The Clean Air Act does not allow EPA to consider either economics or cost in setting or revising NAAQS.

Note that states are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established or revised one. Each state is then required to formulate, subject to EPA approval, an implementation plan (i.e., "SIP") designed to achieve each NAAQS.

The SIP will contain the measures and actions the state proposes to undertake to attain each NAAQS. The measures or actions must be enforceable through state regulations and typically include emission limits applicable to certain types of stationary sources.

EPA in its November 24th Motion argued that in revising the PM2.5 NAAQS it based its action on an erroneous interpretation of the Clean Air Act and exceeded its authority by revising the standard without initiating and completing a thorough review. The federal agency argues that it did so:

... based on a novel interpretation of the statute and without the “thorough review” of the underlying air quality criteria and related standards required by the Act.

The agency argues that the result was:

... an unlawful tightening of the annual standard for fine particulate matter (PM2.5) from 12.0 µg/m³ to 9.0 µg/m³ , without the rigorous, stepwise process that Congress required.

EPA asks that the D.C. Circuit vacate the Rule before the area designation deadline of February 7, 2026.

A copy of the Motion can be found [here](#).