



Air Regulation Outlook - 2026

AAPCA 2026 Spring Meeting

April 8, 2026

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Agenda

- 01 Climate Change Regulations
- 02 Interstate Transport of Ozone and Fine Particulate Matter
- 03 National Ambient Air Quality Standards (NAAQS)
- 04 National Emission Standards for Hazardous Air Pollutants (NESHAP)
- 05 New Source Review / Prevention of Significant Deterioration (NSR/PSD)
- 06 Regional Haze

Climate Change Regulations – Background

EPA has primarily relied on Clean Air Act §111 in its three attempts to regulate GHG emissions from fossil-fuel EGUs over the last two decades.

Attempt #1: Obama EPA

- Obama EPA's Clean Power Plan used CO₂ trading program to induce existing electric generating units to switch from coal to gas and from any fossil fuel to renewables.
- The Supreme Court stayed and ultimately rejected the Clean Power Plan, holding that "generation shifting" is unlawful.
- Obama EPA also set CO₂ standards for new coal units based on partial CCS and for new gas units based on efficient design (Subpart TTTT); these standards remain in effect for new EGUs.

Attempt #2: Trump 1 EPA

- Repealed the Clean Power Plan and replaced it with the ACE rule that focused on what could be done "inside the fenceline" (i.e., efficiency improvements).
- Rejected by D.C. Circuit, but was not reviewed by the Supreme Court.

Attempt #3: Biden EPA

- Repealed ACE and adopted 2024 rules that would require:
 - **existing coal units** to install 90% CCS, co-fire natural gas or retire early;
 - **new gas units** had to choose between installing 90% CCS or strict limits on efficiency and capacity factors.

Climate Change Regulations – What's Next?

- **In 2025, Trump EPA proposed to either:**
 - Repeal all existing Obama- and Biden-era climate rules, or
 - Repeal Biden-era rules for existing coal units and CCS requirement for new gas-fired EGUs
- **Trump EPA's actions will be challenged—court decisions expected around 2028 that will shape future EGU climate regulation.**
- **Democratic administration in 2029–2032 would likely issue new §111 climate rules for EGUs because other Clean Air Act provisions (e.g., §112, §115, or a GHG NAAQS) present greater legal or practical constraints.**
 - Under §111, future rules would likely use a “CCS or retire” model for coal and possibly gas units and cover both new and existing sources.
- **Rulemaking, state plan development, and compliance timelines make it unlikely that new §111(d) obligations for existing units would become effective before about 2035.**

Interstate Transport – Background

- The Clean Air Act’s “good neighbor” provision requires states to prohibit emissions that “contribute significantly” to nonattainment in downwind states.
- States submit interstate transport SIPs for each new or revised NAAQS—EPA approvals and disapprovals have generated extensive litigation.
- Under Obama EPA policy, EGUs were required to participate in a regional emission trading program known as the Cross State Air Pollution Rule (“CSAPR”) if a state’s emissions were projected to impact another state by more than a *de minimis* threshold.
 - EPA’s policy deemed impacts above that *de minimis* threshold to constitute a “contribution,” and asserted the only way to ensure that contribution was not “significant” was to require cost-effective controls via the trading program.
- Although EPA’s methodology has been heavily criticized, it was upheld by the Supreme Court in 2016 in the Court’s last decision to rely on *Chevron* deference, which was recently overturned by *Loper Bright*.

Interstate Transport – Background

- **Biden EPA’s “Good Neighbor Plan” for the 2015 ozone NAAQS created a new trading program with aggressive timelines and control requirements.**
 - The rule required SCR installation on large coal units as a “backstop.”
- **However, both the Good Neighbor Plan and the state SIP disapprovals upon which it relied were successfully challenged in the courts, which held that Trump-era transport guidance had to be considered.**
- **Current Trump administration has promised to address interstate transport but thus far has only proposed to approve a handful of SIPs for states able to demonstrate that all impacts on other states are below the *de minimis* threshold identified by Trump EPA guidance.**
- **Current Trump EPA has also signaled changes to transport program methodology in general.**

Interstate Transport – What's Next?

- A Democratic administration could move to reverse Trump-era approvals of interstate transport SIPs for the 2015 ozone NAAQS.
- If the 2024 PM_{2.5} NAAQS remains in place, EPA could develop an interstate transport program for PM_{2.5}.
- Future interstate programs are likely to rely on regional NOx trading combined with SCR-based backstop limits for coal-fired EGUs and perhaps gas-fired EGUs as well.
- The next administration will likely utilize the Biden EPA approach of expanding the good neighbor provision beyond EGUs.
- Short timeframe for effective dates of prior NOx trading programs could mean shorter-term impacts of a new rulemaking than for other Clean Air Act programs.

NAAQS – Background

- EPA sets National Ambient Air Quality Standards (NAAQS) for six pollutants: ozone, PM, NO₂, SO₂, CO, and lead.
- NAAQS must be reviewed every five years, but EPA often misses this schedule.
- Ozone and PM_{2.5} standards most recently revised and most controversial.

OZONE

- The current (2015) ozone NAAQS is 70 ppb; while controversial, it has been upheld in court.
- Nonattainment designations and most state plans for the 2015 ozone standard are already in place.

PM_{2.5}

- The PM_{2.5} NAAQS was tightened to 9 µg/m³ in 2024; that standard is subject to a pending legal challenge focused on the unusual procedural approach taken by the Biden administration via “reconsideration” rather than full review.
- Trump EPA has confessed error on the 2024 PM_{2.5} rule and sought vacatur, delaying area designations and implementation, still awaiting D.C. Circuit decision.



NAAQS – What's Next?

- A Democratic administration may pursue a more stringent ozone NAAQS, given the age and stringency of the 2015 standard.
- Even if tightened, a new ozone NAAQS would not likely create new state or source obligations until after 2035.
- A new PM_{2.5} NAAQS is less likely because the 2024 standard is more recent, BUT ...
 - If the 2024 PM_{2.5} standard is vacated, a Democratic EPA would likely re-promulgate and then implement it, restarting the designations and planning process.
 - If the 2024 PM_{2.5} NAAQS remains in place, the next administration may oversee designations and state planning.

NESHAP – Background

- **Clean Air Act §112 requires EPA to establish MACT standards (NESHAP) for listed hazardous air pollutant source categories.**
 - Existing-source MACT must be at least as stringent as the average of the best-performing 12% of sources in a category.
 - New-source MACT must be as stringent as the single best-performing controlled source in the category.
- **EPA has MACT standards for dozens of source categories, and many have been controversial.**
 - Biden EPA tightened MATS by imposing more stringent filterable PM limits and requiring PM CEMS, but the second Trump EPA repealed those Biden-era MATS changes and reverted to the original 2012 MATS rule.
 - The MATS repeal is under D.C. Circuit review, which may clarify EPA's obligations regarding the scope of its periodic review of MACT standards.

NESHAP – What's Next?

A Democratic EPA could again seek more stringent MATS limits similar to the repealed Biden revisions.

EPA's residual risk assessment found coal EGU cancer risks below 1-in-1-million, which may limit the justification for much tighter MACT standards.

Any attempt to tighten MATS would need to address D.C. Circuit precedent from litigation over the recent MATS repeal.

NSR / PSD – Background

- **New Source Review (NSR) requires permits for construction of new major sources and major modifications at existing major sources.**
 - Prevention of Significant Deterioration (PSD) is the NSR program for attainment and unclassifiable areas, and it requires the application of Best Available Control Technology (BACT) for regulated pollutants and modeling to show that a project will not cause or contribute to a NAAQS or PSD increment violation.
 - Nonattainment NSR applies in nonattainment areas and requires application of Lowest Achievable Emission Rate and offsets for all significant emission increases.
- **NSR/PSD applicability has long been controversial, especially around what constitutes a “major modification.” Ambiguity over exclusions such as routine maintenance, repair, and replacement has driven significant enforcement and citizen litigation, including a recent \$100 million penalty.**
- **EPA guidance on NSR applicability has shifted markedly across administrations and remains a focus of policy changes.**

NSR / PSD – Potential Changes

- **Current Trump EPA has promised changes to current NSR policy and guidance, although we don't know exactly what this list entails.**
 - “Begin actual construction” is one area where Trump EPA has taken action.
 - Decided not to finalize new definition of “project” proposed by Biden EPA, including language that would provide more certainty around project aggregation.
- **A Democratic EPA could tighten NSR applicability by rescinding Trump-era guidance that provides more flexibility in projecting emissions.**
 - In particular, guidance allowing reliance on emissions management to avoid significant increases could again be withdrawn.
- **To the extent that Trump EPA relies on guidance rather than rulemaking to make other changes, future administrations could roll that back as well.**

Regional Haze – Background

- **The regional haze program seeks to improve visibility in national parks and wilderness areas.**
- **States must submit regional haze SIPs every 10 years demonstrating “reasonable progress” toward this long-term goal.**
 - The first planning period focused heavily on EGUs and application of best available retrofit technology (BART).
 - Subsequent planning periods focus on the controls that are “necessary” to make “reasonable progress” toward an aspirational goal of eliminating manmade impairment by 2064.
- **Obama EPA disapproved many first round state plans and took an aggressive approach to EGU controls, often upheld despite statutory language favoring state discretion.**
- **Biden EPA initially followed a similar course, disapproving several second-round state plans and issuing 2021 guidance reinforcing limits on state discretion.**
- **The second Trump EPA reversed course, issuing 28 proposed and final approvals of remaining state plans and adopting policies that favor state discretion in regional haze decisions.**

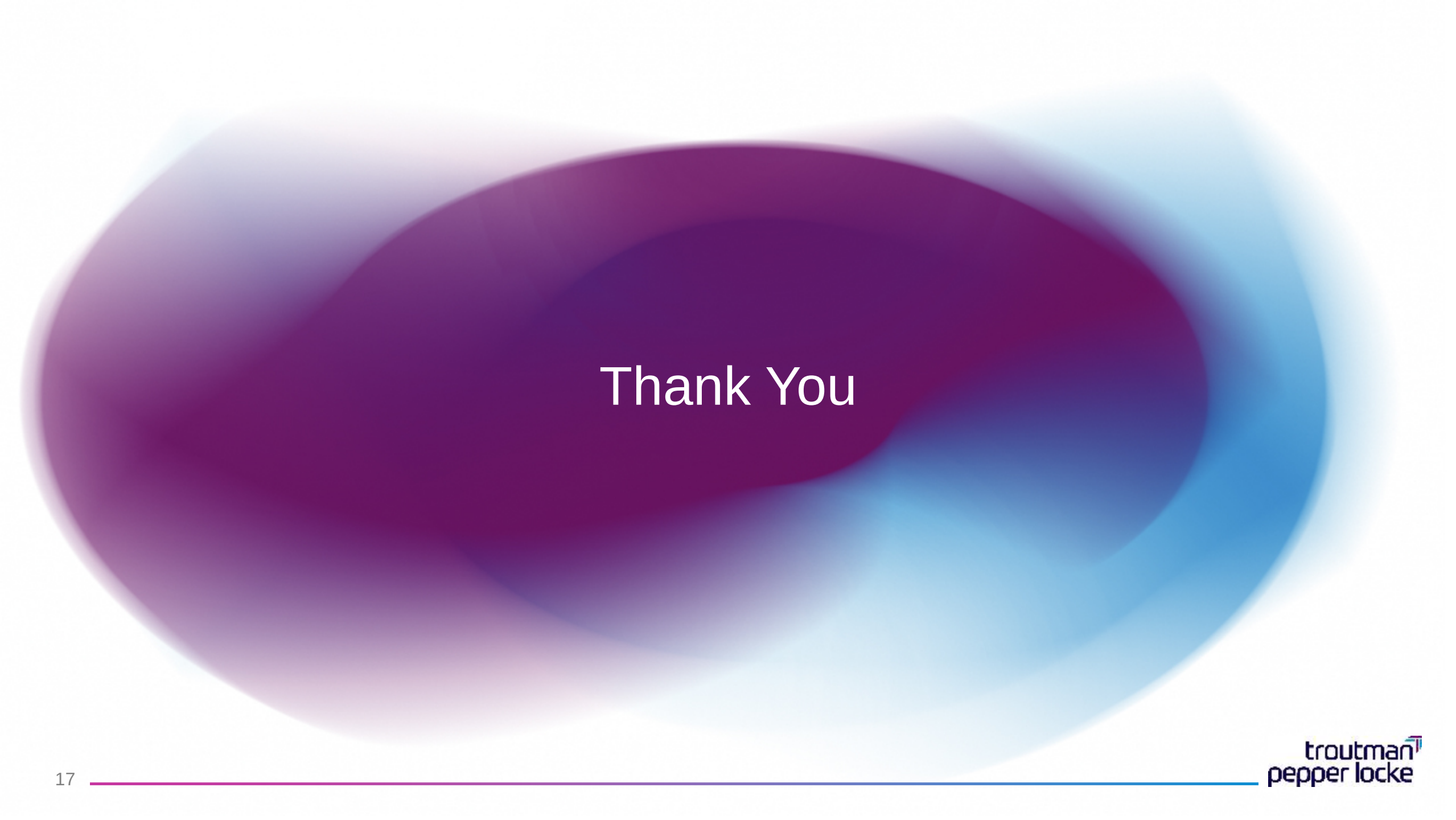
Regional Haze – What's Next?

Trump EPA is considering “restructuring” the regional haze program, which could lead to fundamental program changes.

A Democratic EPA could seek to return to Obama/Biden-style constraints on state discretion in regional haze planning.

To do so, EPA would likely first need to undo Trump-era revisions and policy changes, which would delay new control requirements on sources.

With third-round regional haze SIPs due in 2031, any new obligations driven by that planning cycle are likely to fall in the mid-2030s or later.



Thank You