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# Particulate Matter/Revised National Ambient Air Quality Standard: 24 State Attorneys General (including Arkansas) Challenge U.S. Environmental Protection Agency Final Rule

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Twenty-four State Attorneys General filed a Petition for Review (“Petition for Review”) in the United States Court of Appeals for the District of Columbia Circuit challenging a United States Environmental Protection Agency (“EPA”) final rule which tightens the Clean Air Act National Ambient Air Quality Standard (“NAAQS”) for fine particulate matter.

The State Attorneys General challenging the rule include:

- Alabama
- Alaska
- Arkansas
- Florida
- Georgia
- Idaho
- Indiana
- Iowa
- Kansas
- Commonwealth of Kentucky
- Louisiana
- Mississippi
- Missouri
- Montana
- Nebraska
- North Dakota
- Ohio
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Utah
- West Virginia

- Wyoming

Particulate matter (“PM”) is a generic term of 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.

Primary particulates or soot are emitted directly into the atmosphere. Secondary particulates can also be formed through a secondary process. They might be formed from condensation of high-temperature vapor from vapors generated as a result of chemical reactions involving gas-based precursors.

Sections 108 and 109 of the Clean Air Act require EPA to 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 subject to NAAQS. Section 109 requires that EPA promulgate primary NAAQS for the pollutants identified under Section 108.

Section 109(b)(1) defines a primary standard as one “the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, are requisite to protect the public health.” The margin of safety requirement addresses the uncertainties associated with the inconclusive scientific and technical information available, as well as to provide a reasonable degree of protection against the adverse effects that may not have been discovered.

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 review of the PM and PM2.5 is an example of this review process.

The final rule tightened the level of PM2.5 standard to 9.0 micrograms per cubic meter. The previous PM2.5 standard was 12.0 micrograms per cubic meter.

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

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

In a news release issued by the Kentucky Attorney General he stated that the Petition seeks to revoke the final rule. The news release argues that the final rule could:

- Block the permitting of new manufacturing facilities and drive good-paying jobs out of Kentucky and overseas;
- Stop new infrastructure construction and leave Kentuckians on unsafe and congested roads and bridges; and
- Require small businesses, farmers, restaurants and even homeowners to pay for costly new equipment.
- Weaken the United States economy while strengthening our competitors

A news release announcing the Petition by the State of West Virginia argues that the United States already has some of the strictest air quality standards in the world.

A link to the Petition can be found [here](#).