

EPA Proposes to Limit Its Responsibility to Revise Hazardous Air Pollution Standards

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On April 22, 2026, EPA proposed substantive revisions to its oil and gas sector hazardous air pollution regulations for the first time since 2012.¹

Under Clean Air Act (CAA) section 112, EPA must set national emissions standards for hazardous air pollutants (NESHAP) for each category of major sources of hazardous air pollution, including the oil and gas sector. The CAA also requires EPA to review and revise those standards at least every eight years through a technology review, “taking into account developments in practices, processes, and control technologies” since it last reviewed the standards.²

In 2022, environmental groups sued EPA for unlawfully delaying its technology review of the oil and gas NESHAP.³ In 2023, EPA entered into a consent decree with the environmental groups, committing to complete its overdue review.⁴ EPA’s 2026 proposed rule aims to complete this mandatory review, yet, despite revising several portions of the oil and gas NESHAP for the first time in over a decade, EPA estimates its proposal would not reduce emissions of any hazardous air pollutant (HAP), and could, in fact, lead to “increased emissions.”⁵ The proposed rule also advances novel interpretations of CAA section 112 that would limit EPA’s obligation to address previously unregulated HAP emissions during technology reviews.

EPA’s proposed rule is broadly divided into three categories of action, based on the type of emission point or HAP being regulated, with subdivisions for: “(1) already regulated emission points of currently regulated HAP; (2) unregulated emission points; and (3) regulated emission points of HAP not currently regulated.”⁶ Although EPA proposes substantive revisions to the oil and gas NESHAP across all three categories, this paper focuses primarily on the second category – unregulated emission points – as EPA’s new interpretations of CAA section 112 advanced in that category, if finalized, would have implications for EPA’s technology review obligations for all source categories, not just the oil and gas sector.

¹ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21674 (April 22, 2026).

² 42 U.S.C. § 7412(d)(6).

³ See Complaint, *Cal. Cmty. Against Toxics, et al. v. Regan*, No. 22-01012 (D.D.C. April 12, 2022), Dkt. No. 1. In their complaint, the environmental groups also asserted that EPA “fail[ed] to consider new health risk and pollution control information and to assure an ample margin of safety to protect public health” when it performed its 2012 residual risk and technology review (RTR) of the oil and gas NESHAP. *Id.* at 9.

⁴ See Joint Motion to Enter Consent Decree, *Cal. Cmty. Against Toxics, et al. v. Regan*, No. 22-01012 (D.D.C. April 12, 2022), Dkt. No. 20.

⁵ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21702 (April 22, 2026). EPA attributes the potential increase in hazardous air pollution emissions primarily to its proposed new definition for “associated equipment” under Clean Air Act section 112(n)(4). *Id.* This definitional change is outside the scope of this analysis.

⁶ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21674 (April 22, 2026).

EPA offers two proposals for previously unregulated HAP emission points in the oil and gas sector. First, EPA argues the CAA does not require EPA to address these previously unregulated HAP emission points during a technology review. Accordingly, the agency chooses to defer setting standards for these emission points to an unspecified later date. In the alternative, EPA proposes to set standards for the previously unregulated HAP emission points in the oil and gas sector but uses a retrospective approach that would set baseline emission standards as if it were 1999, not 2026.

This analysis explains EPA's proposal to not set standards for previously unregulated HAP emission points and its alternative proposal to set standards retrospectively and highlights the legal risks EPA may face if it finalizes either proposal.

Background on the Oil and Gas NESHAP

The oil and gas NESHAP comprises two distinct source categories: (1) crude oil and natural gas production facilities, and (2) natural gas transmission and storage facilities.⁷ These two source categories are regulated, respectively, under 40 CFR part 63, subparts HH ("Production") and HHH ("Transmission and Storage").

EPA estimates there are 713 major source facilities regulated by the oil and gas NESHAP.⁸ The most common HAPs emitted from these facilities are "n-hexane, benzene, toluene, ethylbenzene, xylene, and methanol."⁹ Acute exposures to these HAPs can cause symptoms including irritation of the eyes, skin, and respiratory tract and nervous system effects such as headache, dizziness, and fatigue.¹⁰ Repeated or long-term exposure can lead to nervous system damage (e.g., hearing loss and peripheral nerve damage) and cancer (e.g., leukemia), among other symptoms.¹¹

Currently, the oil and gas NESHAP regulates five emission points at major source facilities. At Production facilities, EPA regulates HAP emissions from: (1) glycol dehydration units, (2) storage vessels with the potential for flash emissions, (3) compressors that service HAPs at natural gas processing plants, and (4) ancillary equipment that service HAPs at natural gas processing plants.¹² At Transmission and Storage facilities, EPA regulates HAP emissions from glycol dehydration units.¹³

EPA's 2026 proposal acknowledges several other HAP emission points in the oil and gas sector that are not regulated under the oil and gas NESHAP. At Production facilities, these unregulated HAP emission points are "acid gas removal units (AGRU), storage vessels without the potential for flash

⁷ See 40 C.F.R. §§ 63.760(a), 63.1270(a).

⁸ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21702 (April 22, 2026). Major source facilities are "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." 42 U.S.C. § 7412(a)(1).

⁹ EPA, *Economic Impact Analysis for National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities. Technology Review and Reconsideration 17* (April 16, 2026), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2025-1348-0123>.

¹⁰ *Id.* at 17-19.

¹¹ *Id.*

¹² 40 C.F.R. § 63.760(b)(1)(i)-(iv).

¹³ 40 C.F.R. § 63.1270(b).

emissions (PFE), and transport vessel loading operations.”¹⁴ At Transmission and Storage facilities, these unregulated HAP emission points are “storage vessels, transport vessel loading operations, controllers, and pumps.”¹⁵

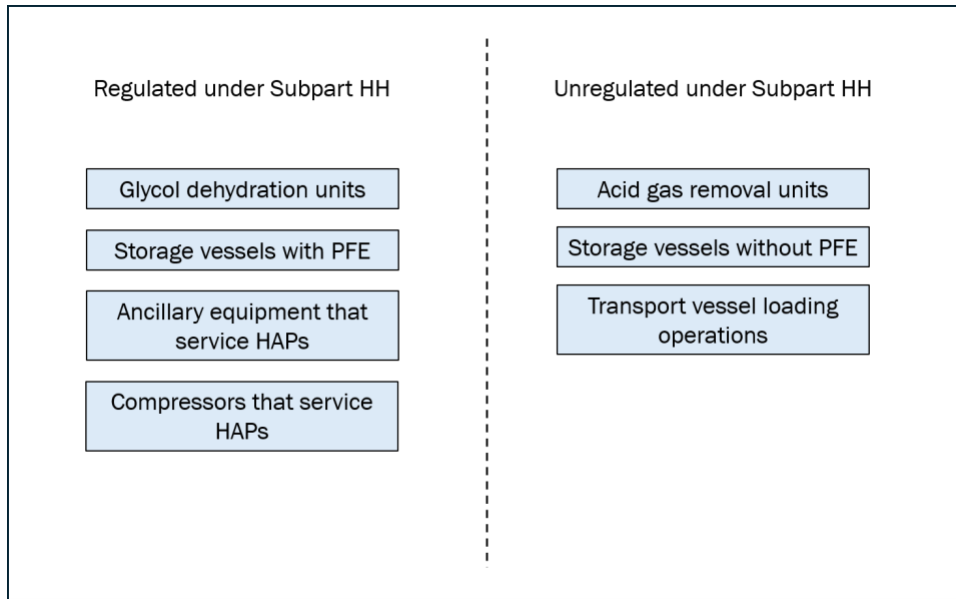


Figure 1: HAP Emission Points at Production Facilities Identified by EPA

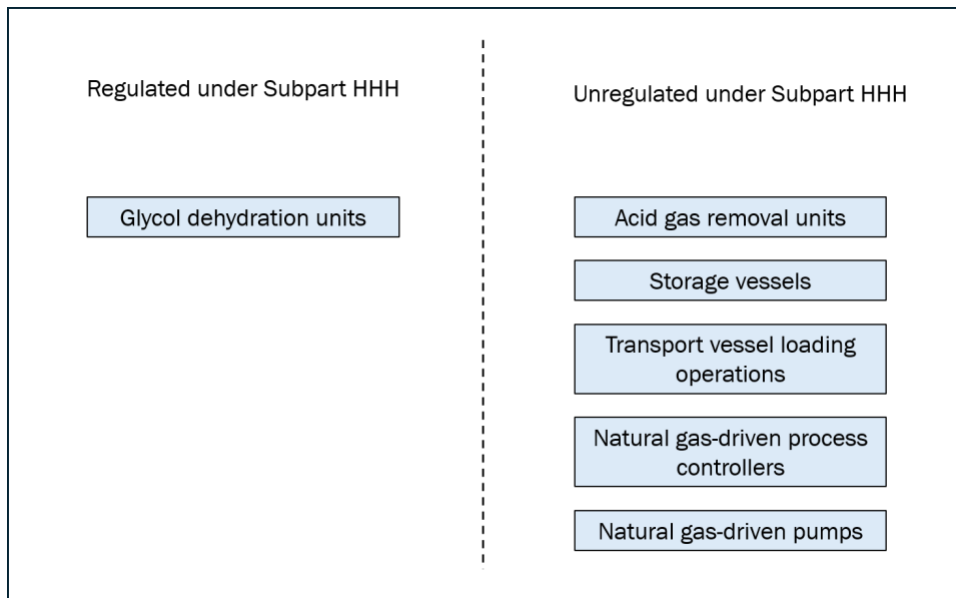


Figure 2: HAP Emission Points at Transmission and Storage Facilities Identified by EPA

¹⁴ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21675 (April 22, 2026).

¹⁵ *Id.*

EPA's Proposal Not to Regulate Previously Unregulated Emission Points

EPA proposes to not establish emission standards for the previously unregulated HAP emission points in the oil and gas sector as part of its mandatory technology review. EPA justifies its proposal on the basis that the technology review does not require it to address emission points that the existing NESHAP does not already regulate.

EPA offers two statutory arguments for this assertion. First, citing CAA section 112(d)(1) — the general emission standards provision — EPA asserts that although it is required to “establish standards for each category or subcategory,” of major sources of HAPs, the CAA does not expressly require that those standards “include emission limits for each emission point within the category.”¹⁶ EPA argues that this statutory silence affords the agency “reasoned discretion” to determine “whether particular emission points belong in one or another source category or subcategory.”¹⁷

Second, EPA asserts that while CAA section 112(d)(6) — the technology review provision — requires the agency to update the oil and gas NESHAP every eight years, the provision “does not mandate that the EPA expand the standards or reconsider the scope of the source category or subcategory to include additional emission points.”¹⁸ Again, EPA claims this statutory silence affirms the agency’s “considerable discretion to determine what emission points are included within a particular source category.”¹⁹

Putting these provisions together, EPA asserts that although it must update the emission standards for the two oil and gas source categories during the technology review, it has discretion to determine whether the previously unregulated emission points (e.g., acid gas removal units) belong in the two oil and gas source categories in the first place. Accordingly, EPA argues it has the discretion to exempt those emission points from section 112(d)(6)’s mandate to update the oil and gas NESHAP and proposes to “defer action on a potential expansion of the [oil and gas] NESHAP to include previously unregulated emission points” to an unspecified future date.²⁰

If EPA were to finalize this proposal, EPA’s narrow reading of its technology review responsibilities would likely face legal challenges. First, EPA’s legal reasoning is in tension with *Louisiana Environmental Action Network v. EPA (LEAN)*, a case in which the D.C. Circuit rejected a similar attempt by EPA to narrow its technology review obligations.²¹ Second, EPA’s argument that it has discretion to add emission points to the oil and gas source categories conflicts with its past statements suggesting that these emission points are already included in the two relevant source categories.

EPA’s proposal stands in tension with D.C. Circuit precedent — LEAN v. EPA

In *LEAN*, the D.C. Circuit held that, during a technology review, EPA must set “as many limits as needed to control *all* the emitted [HAPs] of a particular source category.”²²

In that case, EPA argued that during a technology review of the pulp mill combustion source NESHAP, its obligation to review and revise the emission standards was “textually confined to those [HAPs]

¹⁶ *Id.* at 21688 (internal quotation marks omitted).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 21688-89.

²¹ See 955 F.3d 1088 (D.C. Cir. 2020).

²² *Id.* at 1097 (emphasis added).

already limited” by the NESHAP.²³ As such, it could defer setting standards for other HAPs emitted by the source category that were not previously regulated by the NESHAP to a later date.

However, the D.C. Circuit rejected EPA’s argument, stating that “EPA’s [technology] review of a source category’s emission standard” requires EPA to “address all listed [HAPs] the source category emits.”²⁴ The court explained that Congress intended the technology review to serve as a “check” against EPA perpetually deferring its “statutory obligation to control *all* hazardous air pollutants.”²⁵ The court noted that the section 112(d)(6) technology review is the “sole periodic, ongoing review of emissions standards” required by CAA section 112.²⁶ As such, an overly narrow reading of the technology review provision could “implausibly leave[] no statutory prompt for the completion of statutorily deficient controls,” in contravention of the CAA’s “overall structure and purpose.”²⁷ Moreover, the court emphasized that “emission standards under section 112(d)(6) are not constrained” from being expanded “by past, potentially flawed and underinclusive agency action.”²⁸ The court thus remanded the pulp mill combustion source NESHAP to EPA, ordering the agency to address the previously unregulated HAPs.²⁹

Since the *LEAN* decision, EPA rulemakings have broadly interpreted the case to require EPA “to address regulatory gaps” during the technology review, “*such as*” (but not limited to) “missing [] standards for listed [HAP] with known emissions from the source category.”³⁰

In the 2026 proposal, EPA recognizes that the agency’s previous interpretation of *LEAN* would likely require it to expand the oil and gas source category “to include additional [HAP] emission points” as part of its technology review.³¹ Accordingly, the proposal distances itself from EPA’s prior reading of *LEAN*, concluding that the case only requires EPA “to promulgate emission limits for previously unregulated HAP emitted from *already regulated* emission points” during a technology review.³² In other words, EPA argues that *LEAN* does not *require* the agency to expand the source category to include previously unregulated emission points.

Notably, EPA’s new reading of the CAA section 112(d)(6) technology review provision leaves no clear statutory deadline for the agency to set standards for presently unregulated HAP emission points,

²³ *Id.* at 1096 (emphasis added).

²⁴ *Id.* at 1091.

²⁵ *Id.* at 1099 (emphasis added).

²⁶ *Id.* at 1099.

²⁷ *Id.* at 1098-99.

²⁸ *Id.* at 1097 (internal quotation marks omitted).

²⁹ *Id.* at 1100.

³⁰ National Emission Standards for Marine Tank Vessel Loading Operations: Technology Review, 91 Fed. Reg. 10559, 10564 (March 4, 2026) (emphasis added); see also National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors: Residual Risk and Technology Review; Withdrawal of Proposed Revisions to Standards for Periods of Malfunction, 90 Fed. Reg. 50814, 50823 (“Pursuant to the D.C. Circuit’s decision in *LEAN*, we also review available data to determine if there are any unregulated emissions of HAP within the source category and evaluate this data for use in developing new emission standards.”); National Emission Standards for Hazardous Air Pollutants: Mercury Cell Chlor-Alkali Plants Residual Risk and Technology Review, 86 Fed. Reg. 1362, 1376 n.22 (citing *LEAN*, 955 F.3d at 1091-99) (“The EPA not only has authority under CAA section 112(d)(2) and (3) to set MACT standards for previously unregulated HAP emissions at any time, but is required to address any previously unregulated HAP emissions as part of its periodic review of MACT standards under CAA section 112(d)(6).”).

³¹ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21688 (April 22, 2026).

³² *Id.* (emphasis in original).

raising the same risks *LEAN* identified that the agency could “perpetually defer[]” its obligation to “control all hazardous air pollutants.”³³ If EPA’s proposed rule is finalized, litigants are likely to argue that EPA’s new reading of *LEAN* is too constrained and contravenes the purpose and structure of the CAA.

Past statements from EPA suggest the unregulated HAP emission points are already part of the oil and gas source categories

If EPA finalizes this approach, challengers may also argue that the unregulated HAP emission points are already part of the oil and gas source categories and therefore must be regulated as part of the technology review.

Neither CAA section 112 nor EPA’s implementing regulations define the term “source category.”³⁴ However, in the past EPA described a source category as “a group of sources having some common features suggesting that they should be regulated in the same way and on the same schedule.”³⁵

In its 2026 proposed rule, EPA relies on the relative ambiguity of the phrase “source category” to assert that although the previously unregulated HAP emission points it identifies (e.g., acid gas removal units and transport vessel loading operations) are present at Production facilities and Transmission and Storage facilities, they are not necessarily included within the subpart HH and HHH source categories that these facilities belong to.³⁶ That narrow conception of the two oil and gas source categories may carry legal risks.

First, EPA’s past descriptions of the two oil and gas source categories suggest that the categories already incorporate all of the equipment onsite at oil and gas facilities, including the acid gas removal units, storage vessels, transport vessel loading operations, controllers, and pumps.³⁷ For instance, in its 2012 residual risk assessment for the oil and gas NESHAP, the agency broadly defined the Transmission and Storage source category (i.e., subpart HHH) as comprising “the pipelines, facilities, and equipment used to transport and store natural gas products.”³⁸ While EPA listed the (already regulated) glycol dehydration unit as “one HAP emission point” within the source category, it also listed “other possible emission points” within the source category, including process vents, storage vessels, and equipment leaks.³⁹ Notably, several of these potential HAP emission

³³ *LEAN*, 955 F.3d at 1099.

³⁴ See 42 U.S.C. § 7412; 40 C.F.R. Part 63 (EPA’s NESHAP implementing regulations).

³⁵ Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990, 57 Fed. Reg. 31576, 31578 (July 16, 1992); accord *Nat’l Min. Ass’n v. U.S. E.P.A.*, 59 F.3d 1351, 1355 n.5 (D.C. Cir. 1995) (endorsing EPA’s definition of source category).

³⁶ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21672 (April 22, 2026) (listing unregulated HAP emission points present at Production and Storage and Transmission facilities but proposing not to set emission standards).

³⁷ See EPA, *Residual Risk Assessment for the Oil and Gas Production and Natural Gas Transmission and Storage Source Categories* 22, 28 (April 2012), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2010-0505-4558> (describing the two source categories that comprise the oil and gas NESHAP).

³⁸ *Id.* at 22. The description of the Production source category is similarly broad: “The oil and natural gas production source category includes facilities involved in the recovery and treatment of hydrocarbon liquids and gases from oil and natural gas production wells.” *Id.* at 28.

³⁹ *Id.* at 22. EPA similarly listed both known and potential HAP emission points for the Production source category. *Id.* at 28. As another example, in the 1998 proposed oil and gas NESHAP rule, EPA listed several “potential HAP emission points” within the oil and gas sector that could be subject to regulation, including amine treating processes (another term for AGRUs) and sulfur recovery units, pipeline pigging and storage of pigging wastes, leaks from valves, pump seals, and other equipment that convey HAP. See National Emission

points that EPA identified within the source category in 2012 overlap with the emission points that EPA now proposes it has the discretion to add to the oil and gas source categories at a later date.

Second, EPA's previous oil and gas NESHAP rulemakings suggest that having adequate data on HAP emissions and controls is the trigger for section 112(d) regulation, not a discretionary choice by the agency to add an emission point to the source category. For example, in a 1997 technical memo in which EPA first calculated the maximum achievable control technology (MACT) standards for Production facilities, the agency proposed MACT standards for each emission point for which it had data available.⁴⁰ However, it proposed MACT standards of "no control" for other "potential HAP emission points" in the Production source category for which it had "insufficient data."⁴¹ EPA's 1998 proposed rule⁴² and EPA's response to comments on the 2012 technology review⁴³ used similar logic, proposing HAP emission standards for emission points that had sufficient data and declining to set HAP emission standards when additional data was needed.

In its 2026 proposed rule, EPA does not dispute that it has sufficient data to set MACT standards for previously unregulated emission points, like AGRUs. In fact, the agency acknowledges it collected information on HAP emissions and controls for these unregulated emission points from two information collection requests from 2023 and 2024.⁴⁴ Despite this data, the agency argues that it can defer setting MACT standards to a later date.

Third, EPA's alternative proposal weakens its stated reason for deferring regulation of these unregulated emission points – that the agency would like to consider assigning these emission points to "one or another source category" in the future.⁴⁵ As described in more detail below, EPA's alternative proposal already sorts each of the previously unregulated HAP emission points into either the Production or Transmission and Storage source categories. Nowhere does EPA's alternative

Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage, 63 Fed. Reg. 6288, 6304 (Feb. 6, 1998). However, the agency found it needed more data on HAP emissions and controls for these emission points before it could set standards. *Id.* Having insufficient data to regulate these emission points within the oil and gas sector is distinct from asserting that these unregulated emission points are not already included within the oil and gas source categories as EPA may now suggest.

⁴⁰ EPA, *Recommendation of MACT Floor Levels for HAP Emission Points at Major Source in the Oil and Natural Gas Production Source Category* 3-4 (Sept. 23, 1997), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2025-1348-0034> (discussing the data on HAP emissions and controls for glycol dehydration units, storage tanks, and equipment leaks).

⁴¹ *Id.* at 11-12.

⁴² See National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage, 63 Fed. Reg. 6288, 6304 (Feb. 6, 1998).

⁴³ See EPA, *Response to Public Comments on Proposed Rule August 23, 2011* (76 FR 52738) 411-412 (last accessed June 2, 2026), available at <https://www.regulations.gov/document/EPA-HQ-OAR-2025-1348-0027>.

In EPA's 2011 response to comments, a commenter had requested that EPA address additional emission points in the oil and gas NESHAP (including AGRUs), however, the agency declined to establish MACT standards for those emission points, stating they did not have "sufficient information to establish MACT standards" at the time. *Id.* at 411. In line with this reasoning, EPA proposed finalizing new MACT standards for emission points for which they had "sufficient information." *Id.* at 411-412.

⁴⁴ See National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21678 (April 22, 2026) (discussing the 2023 and 2024 information collection requests (ICRs) that EPA sent to regulated industry); see also, e.g., *id.* at 21690 (considering responses to its 2023 ICR when setting beyond-the-floor MACT standards for AGRUs at natural gas processing plants); *id.* at 21691 (same for storage vessels without the potential for flash emissions at natural gas processing plants); *id.* at 21693 (same for transport vessel loading operations at natural gas processing plants).

⁴⁵ *Id.* at 21688.

proposal suggest that these two source categories are a poor fit for the new HAP emission points, or that it needs to consider new or different source categories. In fact, EPA explains that these presently unregulated HAP emission points are located *at* the same facilities as the currently regulated emission points.⁴⁶

EPA's Alternative Proposal to Set MACT Floors Like It's 1999

Although EPA asserts it does not need to regulate previously unregulated HAP emission points as part of its technology review, in the alternative, EPA proposes emission standards for these emission points “to ensure the public has an adequate opportunity to comment.”⁴⁷

However, EPA proposes to set the baseline emission standard for each emission point as if it were 1999, the year EPA first promulgated the oil and gas NESHAP, rather than the year for which it has most recent data.⁴⁸

Background on the Clean Air Act's framework for setting MACT standards

The Clean Air Act lays out a multi-step framework for setting emission standards for each major source of HAP. First, pursuant to section 112(d)(3), EPA sets the MACT floor – the minimum level of emissions control that a new or existing source must achieve – by considering the levels of control already achieved by industry. Notably, EPA may not consider costs when it sets the MACT floor.⁴⁹

After EPA sets the MACT floor for a source, it then completes a “beyond the floor review” pursuant to section 112(d)(2) to determine whether a tighter MACT standard is “achievable,” considering costs and other statutory factors. Once EPA sets a MACT standard using this two-step process, EPA must periodically review and revise the MACT standard at least every eight years during the technology review “as necessary (taking into account developments in practices, processes, and control

⁴⁶ See *id.* at 21672 (describing the previously “unregulated emission points” as being located “at crude oil and natural gas production facilities” and “at natural gas transmission and storage facilities”) (emphasis added). Moreover, some of the unregulated emission points are likely directly adjacent to regulated emission points. For example, AGRUs (currently unregulated under subparts HH and HHH) are often located directly upstream from dehydration unit operations at natural gas processing plants (such as the glycol dehydrators currently regulated under subparts HH and HHH). See Björn Windén et al., *Offshore Thermal Power with CCS: An Alternative to CO₂ Transportation* 70-71 (2011), available at [https://www.researchgate.net/publication/344656525_Offshore_Thermal_Power_with_CCS_An_Alternative_to_CO₂ Transportation](https://www.researchgate.net/publication/344656525_Offshore_Thermal_Power_with_CCS_An_Alternative_to_CO2_Transportation) (describing how acid gas removal unit operations, including amine treatment, typically precede dehydration unit operations, including glycol dehydration units); Arthur J. Kidnay & William R. Parrish, *FUNDAMENTALS OF NATURAL GAS PROCESSING* 330-331 (CRC Press, 1st Ed. 2006) (same).

⁴⁷ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21688 (April 22, 2026).

⁴⁸ *Id.* at 21689.

⁴⁹ *Id.* (noting that EPA cannot consider costs when it sets the MACT floor).

technologies).⁵⁰ As with the beyond-the-floor review, EPA must consider costs during the technology review when it determines whether a revision to the MACT standard is necessary.⁵¹

EPA's proposed implementation of the MACT setting framework

In EPA's alternative proposal, the agency completes the two-step process for setting emission standards for each previously unregulated HAP emission point in the oil and gas sector.⁵² But instead of setting MACT floors for new and existing sources based on the levels of HAP control *currently* achieved in the oil and gas sector, EPA "proposes to set MACT floors that reflect the state of the industry at the time the Agency first promulgated the Oil and Gas NESHAP in 1999."⁵³ EPA asserts that this approach aligns with Congress's intent because section 112 required EPA to set MACT standards for listed source categories by the year 2000.⁵⁴

EPA further asserts that setting the MACT floors using 1990s data avoids creating "inequitable outcome[s]" for regulated oil and gas companies.⁵⁵ EPA states that it would be unfair for certain emission points at oil and gas facilities to be subject to stricter MACT floors "based on recent emissions data" simply because the Agency failed to "set MACT for [those emission points] in 1999."⁵⁶

EPA's alternative proposal thus approximates how the agency would have set the MACT floor for each previously unregulated emission point in 1999. EPA then performs a combined beyond-the-floor and technology review for each emission point using present-day data to determine whether the standard should be tightened.⁵⁷

However, because both the beyond-the-floor and technology reviews allow EPA to consider the costs of tightening standards, the agency determines that it is not cost justified to tighten any of its new 1999 MACT standards beyond the proposed floor, even when data from 2023 and 2024 show that tighter emissions controls are already achieved by industry.⁵⁸

Legal risks of EPA's implementation methodology

EPA's proposal to set MACT floors as if it were 1999 is likely to face legal challenges if finalized. First, challengers may argue EPA lacks legal authority to set MACT floors using decades-old data. Second,

⁵⁰ 42 U.S.C. § 7412(d)(6). Eight years after first setting the MACT floor, EPA must also perform a residual risk review and tighten MACT standards as required "to provide an ample margin of safety to protect public health." *Id.* § 7412(f)(2). EPA performed its residual risk review for the oil and gas NESHAP in 2012 and found it did not need to further tighten standards to adequately protect public health. See Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, 77 Fed. Reg. 49490, 49505, 49507 (Aug. 16, 2012).

⁵¹ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21689 (April 22, 2026).

⁵² *Id.* at 21689-21696.

⁵³ *Id.* at 21689.

⁵⁴ *Id.*

⁵⁵ *Id.* (quoting *U.S. Sugar Corp. v. EPA*, 113 F.4th 984 (D.C. Cir. 2024)).

⁵⁶ *Id.*

⁵⁷ See *id.* at 21689-21696.

⁵⁸ *Id.* For example, for AGRUs at Production Facilities, EPA proposes a MACT floor of 95 percent reduction of HAP emissions based on 1990s data. *Id.* at 21690. Yet, EPA's 2023 ICR showed that "several sources reported controls that achieved at least a 98 percent reduction in HAP emissions" from their AGRUs. *Id.*

challengers may argue that EPA's method for discerning its hypothetical 1999 MACT floors is arbitrary and capricious.

i. Legal authority to set MACT floors retrospectively

EPA offers two arguments to support its authority to set MACT floors for previously unregulated HAP emission points using a 1999 baseline. First, EPA argues that because CAA section 112(e) required EPA to regulate all listed source categories within 10 years of November 15, 1990, Congress intended EPA to set the MACT floors using data from 1990-2000. Second, EPA argues that *U.S. Sugar Corp. v. EPA* affirms the agency's discretion to set MACT floors using older datasets to avoid "inequitable outcome[s]." ⁵⁹

EPA's reliance on section 112(e) to justify using old data has legal risks. While section 112(e) requires EPA to establish emission standards for all categories and subcategories by November 15, 2000,⁶⁰ the provision that governs how EPA sets the MACT floors, section 112(d)(3), makes no mention of a timeline. Further, section 112(d)(3)'s use of the present tense suggests EPA is meant to set MACT floors using contemporary data. For example, when setting MACT floors for existing sources, the provision orders EPA to consider "the best performing 12 percent of the existing sources (for which the Administrator has emissions information)."⁶¹ Similarly, when setting MACT floors for new sources, the provision orders EPA to set the floors "not [] less stringent than the emission control that is achieved in practice by the best controlled similar source."⁶² The plain language of section 112(d)(3) thus suggests Congress expected MACT floors to reflect something close to contemporary performance, not technology from several decades earlier.

EPA's reliance on *U.S. Sugar Corp.* may also face challenges. In that case, EPA had promulgated 202 HAP emission standards for the boiler and process heater source category in 2011 and 2013.⁶³ In ensuing litigation, the D.C. Circuit invalidated and remanded 34 of those standards to the agency.⁶⁴ In response to the remand, EPA promulgated 34 replacement HAP emission standards in 2022.⁶⁵ When EPA recalculated those 34 emission standards, it used a "2013-era dataset" – the same dataset that underpinned its 2011 and 2013 rules – so it could "ensure consistency across all 202 standards, regardless of when the standards were proposed."⁶⁶

⁵⁹ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21689 (April 22, 2026) (citing *U.S. Sugar Corp. v. EPA*, 113 F.4th 984 (D.C. Cir. 2024)) (internal quotation marks omitted).

⁶⁰ 42 U.S.C. § 7412(e)(1)(E).

⁶¹ *Id.* § 7412(d)(3)(A).

⁶² *Id.*

⁶³ See National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 76 Fed. Reg. 15608 (March 21, 2011) (promulgating HAP emission standards for the boiler and process heater source category); National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 78 Fed. Reg. 7138 (Jan. 31, 2013) (making technical corrections to the 2011 rule in response to petitions for reconsideration).

⁶⁴ *U.S. Sugar Corp.*, 113 F.4th at 989-990.

⁶⁵ National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, 87 Fed. Reg. 60816 (Oct. 6, 2022).

⁶⁶ *U.S. Sugar Corp.*, 113 F.4th at 991.

The D.C. Circuit held that EPA’s decision to use the older 2013-era dataset in its 2022 rulemaking was “reasonable” given the limited nature of the court’s remand in the prior case, which instructed EPA to promptly revise certain standards without initiating a new standard-setting process.⁶⁷

EPA now cites *U.S. Sugar Corp.* for its authority to set the MACT floors for previously unregulated HAP emission points in the oil and gas sector using 1990s data. However, a court may find this rulemaking is too distinct from the facts underlying *U.S. Sugar Corp.* to justify reliance on the case. First, the time gap at issue is significantly different. In *U.S. Sugar Corp.*, EPA used a 2013-era dataset to underpin emissions standards it proposed in 2020 – a less than 10-year gap. By contrast, EPA now attempts to use data from the 1990s for its 2026 proposal – a nearly 30-year gap. Second, in *U.S. Sugar Corp.*, EPA proposed 34 revised emission standards in response to a time-sensitive and “limited” remand from the D.C. Circuit.⁶⁸ By contrast, EPA’s 2026 proposed rule does not propose revisions to the oil and gas NESHAP in response to a limited remand of its earlier 1999 or 2012 rulemakings, and instead represents an entirely new standard setting process for the source category.

ii. EPA’s method for discerning the 1999 MACT floors

Even if a court agrees that EPA has discretion to set MACT floors for previously unregulated HAP emission points as if it were 1999, EPA’s method for deriving its 1999 standards may also face legal risk.

Section 112(d)(3) requires EPA to set MACT floors for new and existing sources by determining “the level of control for the best performing similar source, and the level of control for the top performing 12 percent of sources,” respectively.⁶⁹ When it first set MACT floors for the oil and gas NESHAP in 1999, EPA relied on “site visits, meetings with industry, and industry studies,” as well as responses to a 1993 industry questionnaire to determine the levels of control attained by industry.⁷⁰ Today, these “30-year-old raw data are unavailable for detailed analysis.”⁷¹ Because EPA lacks access to this raw data and the data did not address several of the previously unregulated emission points, EPA derives its estimated 1999 MACT floors for previously unregulated HAP emission points from other sources. These sources include: analogous NESHAP rulemakings;⁷² analogous New Source Performance Standard rulemakings;⁷³ data from EPA’s 2023 and 2024 information collection

⁶⁷ *Id.* at 997-1002.

⁶⁸ *Id.* at 1000-1001. The court had specifically “directed EPA to correct its prior standards, not to initiate a new standard-setting process altogether.” *Id.* (citation omitted).

⁶⁹ National Emission Standards for Hazardous Air Pollutants: Crude Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities; Technology Review and Reconsideration, 91 Fed. Reg. 21672, 21690 (April 22, 2026) (describing the process for setting MACT floors).

⁷⁰ *Id.* at 21685.

⁷¹ *Id.*

⁷² See, e.g., *id.* at 21691 (referencing the 2008 NESHAP rulemaking for bulk gasoline plant area sources to set the MACT floor for storage vessels without the potential for flash emissions at natural gas processing plants); *id.* at 21693 (referencing the 1995 NESHAP rulemaking for marine vessel loading operations to set the MACT floor for transport vessel loading operations at natural gas processing plants).

⁷³ See, e.g., *id.* at 21690 (referencing the 1985 New Source Performance Standards (NSPS) rulemaking for acid gas removal at natural gas processing plants to set the MACT floor for AGRUs); *id.* at 21694 (referencing the 2012, 2016, and 2024 NSPS rulemakings for Crude Oil and Natural Gas Facilities to set the MACT floor for natural gas-driven process controllers).

requests to industry;⁷⁴ and the 1999 MACT floors it set for analogous emission points.⁷⁵ For example, to derive its hypothetical 1999 MACT floor for transport vessel loading operations at natural gas processing plants, EPA considered the HAP standards it set for marine vessel loading operations in 1995 and the standards it set for gasoline distribution bulk terminals, bulk plants, and pipeline facilities in 2008.⁷⁶ Across the eight MACT floor determinations EPA makes, the agency relies on data points that spans 1977 to 2024.⁷⁷

It is unclear whether a court would find that deriving hypothetical 1999 MACT standards using analogous rulemakings over a several decade span constitutes reasoned decision making under the CAA's arbitrary or capricious review standard,⁷⁸ particularly when the agency has ready access to HAP emissions and controls information for these emission points that it collected from industry in 2023 and 2024.⁷⁹

Looking Ahead

EPA's proposed rule, if finalized and affirmed by courts, would allow the agency to indefinitely defer regulating previously unregulated HAP emission points during a technology review, or alternatively allow the agency to set weaker MACT floor standards for those emission points using decades-old data.

EPA is taking [public comment](#) on its proposed rule until June 22, 2026. EELP will continue tracking the proposed rule and legal challenges that may follow if finalized.

⁷⁴ See, e.g., *id.* at 21692 (citing the 2023 ICR data to support its MACT floor determination for storage vessels without the potential for flash emissions at Transmission and Storage facilities); *id.* at 21694 (same for natural gas-driven process controllers).

⁷⁵ See, e.g., *id.* at 21689-90 (asserting that the MACT floor EPA set for glycol dehydration units in 1999 is likely similar to the MACT floor it would have set for AGRUs in 1999).

⁷⁶ See *id.* at 21693.

⁷⁷ See *id.* at 21691 (citing EPA's analysis of bulk gasoline terminals from 1977); *id.* at 21694 (citing EPA's NSPS rulemaking for crude oil and natural gas facilities from 2024).

⁷⁸ 42 U.S.C. § 7607(d)(9).

⁷⁹ See *supra* note 44 and accompanying text.