

IN THE
Supreme Court of the United States

KENTUCKY, *et al.*,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

CHAMBER OF COMMERCE, *et al.*,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF OF THE JOB CREATORS COALITION AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

E. DONALD ELLIOTT

Counsel of Record

JEFFREY S. LONGSWORTH

JOHN A. SHEEHAN

WILLIAM WEHR

EARTH & WATER LAW LLC

1455 Pennsylvania Avenue, N.W.,

Suite 400

Washington, D.C. 20004

(202) 256-4149

e.donald.elliott@

earthandwatergroup.com

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Attorneys for Amici Curiae

(Additional counsel listed at the end of the brief.)

QUESTIONS PRESENTED

These related petitions present the following questions:

1. Whether the Clean Air Act gives EPA the authority to revise NAAQS without conducting a thorough review merely because the revision occurs before the normal, five-year review.
2. Whether the Clean Air Act bars EPA from considering the costs and feasibility of revising NAAQS when deciding whether to exercise its discretion to undertake a revision before the normal, five-year review.

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STATEMENT OF INTEREST¹

The below associations, herein the “Job Creators Coalition,” are national associations representing a broad cross-section of the American economy.

The American Exploration & Production Council (“AXPC”) is a national trade association representing leading independent oil and natural gas exploration and production companies in the United States, whose members produce more than half of U.S. onshore oil and gas production.

The American Farm Bureau Federation (“AFBF”) is the nation’s largest nonprofit general farm organization, representing more than 5.5 million member families in all 50 states and Puerto Rico and advocating for American farmers and ranchers, including through *amicus curiae* participation in regulatory litigation.

The American Road & Transportation Builders Association (“ARTBA”) represents nearly 8,000 public- and private-sector members whose transportation-construction activities generate more than \$650 billion in annual U.S. economic activity and are directly affected by implementation of the PM2.5 NAAQS standard.

1. Counsel of record for all parties received timely notice of amici’s intent to file this brief. No counsel for a party authored this brief in whole or in part, and no such counsel or a party or entity other than amici, their members, or their counsel made a monetary contribution intended to fund its preparation or submission. See Sup. Ct. R. 37.2, 37.6

Associated Builders and Contractors (“ABC”) is a national construction-industry trade association with 67 chapters and 24,000 members representing all specialties of the U.S. construction industry, primarily in the industrial and commercial sectors.

The Associated General Contractors of America, Inc. (“AGC of America”) is the nation’s largest and most diverse commercial-construction trade association, representing more than 28,000 companies engaged in building, heavy, civil, industrial, utility, highway, transportation, and other public and private construction.

The Brick Industry Association (“BIA”) is the national trade association representing manufacturers and distributors of clay brick and suppliers of related products and services and has served as a national authority on clay brick construction since 1934.

GPA Midstream Association has represented the U.S. energy industry since 1921 and today represents 41 domestic corporate members with 57,000 employees engaged in gathering, transporting, processing, treating, storing, and marketing natural gas, natural gas liquids, crude oil, and refined products.

The Interstate Natural Gas Association of America (“INGAA”) represents 28 interstate natural-gas pipeline companies whose nearly 200,000 miles of pipelines transport the vast majority of the nation’s natural gas and connect producers with homes, businesses, power generation, and manufacturers.

The National Association of Home Builders of the United States (“NAHB”) is a federation of more than 800 state and local associations representing approximately 140,000 members whose residential-construction activities can be affected by NAAQS-related implementation measures, infrastructure constraints, permitting requirements, and regulatory costs.

The National Association of Wholesaler-Distributors (“NAW”) represents wholesaler-distributors affected by NAAQS-related permitting requirements, truck-fleet restrictions, and compliance costs and has an interest in ensuring that agencies observe statutory limits and required procedures when changing regulations on which businesses rely.

The National Federation of Independent Business, Inc. (“NFIB”) is the nation’s leading small-business association, representing its members’ interests in Washington, D.C., and all 50 state capitals and regularly participating as *amicus curiae* in regulatory and environmental litigation.

The National Rural Electric Cooperative Association (“NRECA”) is the national association for nearly 900 not-for-profit rural electric cooperatives and public power districts, including owners and operators of power plants significantly affected by revisions to the NAAQS.

The National Pork Producers Council (“NPPC”) represents the interests of the nation’s 67,000 pork producers and advocates for their social, environmental, and economic sustainability. NPPC has been deeply engaged in debates over air quality standards, including

litigation over the development of federal and state air quality regulations, in numerous courts around the country.

The National Asphalt Pavement Association (“NAPA”) represents over 1,000 companies across the nation supporting about 3,500 manufacturing facilities associated with the production and application of asphalt pavement mixtures which surface more than 94 percent of America’s roadways.

Together, Amici coalition’s members build and supply homes and infrastructure, grow food, distribute goods, generate and transport energy, and operate businesses that depend on predictable federal regulatory processes. The revised PM2.5 standard affects amici’s members through nonattainment designations, transportation-conformity requirements, project approvals, stationary-source permitting, and constraints on construction, manufacturing, and energy infrastructure.

Amici agree with petitioners that the two questions presented are important and worthy of review. And amici further agree that the decision below answered both questions incorrectly, erroneously allowing EPA to revise NAAQS without a thorough review and without considering costs or attainability. Amici write separately because this case presents important questions of federal law with consequences extending far beyond the parties. The questions presented are exceptionally important to amici and their members and have substantial nationwide consequences.

In addition to the reasons for granting certiorari expressed by petitioners, amici identify two further considerations: (1) the decision below failed to consider serious constitutional issues regarding the power of a President to reconsider the policies of his predecessors that should have guided its statutory interpretations; and (2) the practical effects on economic activity of leaving the rule in effect make review especially important at this time.

INTRODUCTION

In addition to the themes discussed in the petitions, this case is about whether one presidential administration may revisit its predecessor's execution of the Clean Air Act, when there is no statutory prohibition against doing so. The panel below prevented the incoming Trump administration from considering costs or attainability in deciding whether to amend the National Ambient Air Quality Standards off-cycle. See Pet. App. 36a–37a. This unprecedented intrusion into the constitutional prerogatives of an incoming presidential administration raises serious constitutional questions about the proper scope of Executive power that should have guided the lower court's statutory interpretation but were not even considered or addressed below. What prompts an inquiry and what answers it are different questions.

Article II makes the President accountable for execution of federal law. See U.S. Const. art. II, §§ 1, 3; *Trump v. Slaughter*, 609 U.S. ___, ___ (2026) (slip op., at 2) A successor administration must comply with the Clean Air Act, and it must decide whether costs, feasibility, reliance interests, and regulatory disruption warrant

reopening a prior NAAQS rule. *See Michigan v. EPA*, 576 U.S. 743, 753, 755-56 (2015). At minimum, construing the Clean Air Act to foreclose those considerations at the threshold stage raises a serious Article II question about the politically accountable Executive's control over its regulatory agenda.

Because of the far-reaching implications of this decision, Amici support granting both pending cert petitions and reversing the decision below.

SUMMARY OF ARGUMENT

As explained in the petitions, the decision below erred on two important questions. This brief addresses the second question, explaining why the decision below not only misreads *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457 (2001), but also raises constitutional and practical concerns.

First, the decision below improperly extends *Whitman* from the standards EPA may consider in setting National Ambient Air Quality Standards to the separate decision whether to conduct an optional off cycle reconsideration. In *Whitman*, this Court held that EPA may not rely on economic costs and practical consequences as a relevant factor when setting a national ambient air quality standard. But the considerations that may justify reopening a regulatory question need not govern its ultimate answer. The decision below improperly extends *Whitman* to also hold that the Administrator may not consider those consequences in deciding whether to *initiate* an optional, off-cycle reconsideration. Pet. App. 37a. That extends *Whitman's* holding to a different, separate decision by the

Administrator and raises a serious Article II question of the constitutional power of the Executive.

Second, the decision below also raises serious constitutional concerns. Article II vests the executive power in one President so that the administration of federal law remains accountable to the electorate. That accountability is diminished when a successor must answer for an inherited policy but may not consider its consequences in deciding whether an early review is warranted. Of course, a successor administration must comply with the Clean Air Act whenever it sets or revisits the National Ambient Air Quality Standards including by conducting the requisite “thorough review.” But when Congress leaves the timing of an off-cycle review to executive discretion, the President must consider whether the costs, feasibility, and practical consequences of an inherited rule warrant beginning a new proceeding. *See Michigan*, 576 U.S. at 753, 755-56 (consideration of costs and benefits is ordinarily permitted unless Congress provides otherwise). The decision below prevents the politically accountable Executive from considering consequences even at that antecedent stage of initiating reconsideration. If allowed to stand, this unprecedented ruling would open the door to a host of unconstitutional restrictions by courts and the Congress seeking to bind the incumbent Executive to policies that it does not support but for which it must take the responsibility and, potentially, the blame.

That constitutional concern is especially serious here because the panel itself acknowledged that the administrative record could support more than one policy judgment. Pet. App. 36a (noting that the Biden

EPA’s decision was not “the only permissible judgment on this record.”). If the same record permits different policy judgments, a successor administration should remain free to initiate a different, record-supportable policy and defend any final action on the statutory factors and administrative record. A predecessor’s permissible choice does not become the only permissible choice merely because it acted first. Otherwise, the predecessor dictates the policy while its successor bears political responsibility for the consequences. *But see Trump v. Slaughter*, 609 U.S. ___, ___ (2026) (slip op., at 2) (the President must be empowered to fire most subordinate officials because he or she may be held responsible for their actions by the public).

Finally, the decision below has substantial practical consequences for regulated entities and public infrastructure nationwide. In PM2.5 nonattainment and maintenance areas, Clean Air Act § 176(c) and 40 C.F.R. Part 93 connect the NAAQS standard to regional transportation plans, transportation improvement programs, and project-level approvals. New conformity analyses, mitigation commitments, and project revisions can affect the schedule and cost of public infrastructure. *See* 42 U.S.C. § 7506(c)(1)-(2); 40 C.F.R. §§ 93.102(b), 93.104, 93.109, 93.114-93.123 (2025). Moreover, if allowed to stand, this precedent-setting ruling by the D.C. Circuit will open the door to a host of unconstitutional restrictions on the power of the Executive to reconsider the policies of its predecessor. That anomaly is particularly troubling in cases like this in which the administration of one political party sets the policy and gets the credit, but its successors of a different party take the blame for the adverse effects when the standard is implemented on its watch.

The rulemaking record provides numerous examples of adverse effects on economic activity for which the current Administration is likely to be blamed by the public. For example, ARTBA explained that an off-cycle revision would undermine the predictability needed for transportation planning and place needed highway improvements and federal highway funds at risk. Comments of the American Road and Transportation Builders Association 1–2, EPA-HQ-OAR-2015-0072-2089 (Mar. 28, 2023) (“ARTBA Comments”). AGC likewise explained that a tighter standard would require time-consuming and costly conformity analyses and could delay highway, bridge, transit, and other public-infrastructure projects. Comments of the Associated General Contractors of America 3–7, EPA-HQ-OAR-2015-0072-2182 (Mar. 28, 2023) (“AGC Comments”). EPA conceded that the revised standard would require new permitting analyses for new and modified stationary sources and that emissions offsets may be expensive or difficult to obtain. EPA, Responses to Significant Comments on the 2023 Proposed Rule for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter 112–13 (2024) (“EPA Response to Comments”). A tighter standard can determine whether a transportation project satisfies conformity requirements, whether additional mitigation is necessary, and whether construction proceeds on schedule or must be revised or delayed. These consequences affect the transportation, construction, manufacturing, electric-power, and natural-gas interests represented by amici.

In addition to the comments in the administrative record, numerous published sources that are subject to judicial notice are listed in the appendix and document

serious adverse effects, including on many policy priorities of the incoming administration.

ARGUMENT

I. The D.C. Circuit’s Ruling Raises a Serious Article II Question That Should Have Guided Its Interpretation of the Statute.

Article II vests the executive power in a single President and charges the President with taking care that the laws are faithfully executed. U.S. Const. art. II, §§ 1, 3. That structure connects control over executive administration to democratic accountability. *Trump v. Slaughter* recently explained that, with one President in charge, the people know “on whom the blame or the punishment of a pernicious measure . . . ought really to fall.” 609 U.S. ___, ___ (2026) (slip op., at 2) (quoting *The Federalist* No. 70, at 428 (Clinton Rossiter ed., 1961)); see *Myers v. United States*, 272 U.S. 52, 163-64 (1926). In this case, however, the lower court issued a ruling that, if permitted to stand, would bar the Executive from considering economic effects or practicality in deciding whether to initiate reconsideration of an administrative rule promulgated by its predecessors. It held that costs and attainability may not inform even the ‘anterior decision to revise.’ Pet. App. 37a. That ruling raises serious constitutional questions that the lower court failed to consider.

The decision to begin an optional off-cycle review is analytically distinct from the decision of what standard to adopt at the end of that review. Section 109(d)(1) of the Clean Air Act requires periodic review and permits earlier

review under an appropriate schedule established by the Administrator. 42 U.S.C. § 7409(d)(1). That provision leaves the timing of an earlier review up to the Administrator.

The opinion below acknowledged that the Biden Administration’s decision to set the PM 2.5 NAAQS at a particular level was not “the only permissible judgment on this record.” Pet. App. 36a. That concession matters. If the record can support more than one lawful judgment, a successor administration should remain free to initiate a different policy, follow the required process, and defend any final action on the statutory factors and administrative record. *See Motor Vehicle Manufacturers Ass’n. v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983). Preventing even a proposal and the development of an administrative record in support of a possible change leaves the successor administration to bear political responsibility for its predecessor’s policies. The existence of more than one policy judgment is precisely why executive accountability matters: law constrains the range of permissible choices, but within that range the politically accountable Executive ordinarily chooses.

Practical consequences may properly inform the antecedent decision whether to begin an optional review. The record showed that the off-cycle change by the Biden Administration could disrupt transportation planning, require costly conformity analyses, delay public-infrastructure projects, and subject new or modified stationary sources to additional permitting analyses and difficult-to-obtain offsets. See ARTBA Comments 1–2; AGC Comments 3–7; EPA Response to Comments 112–13. The same regulatory mechanisms reach the business and operations of amici’s members,

including transportation contractors, home builders and materials suppliers, electric cooperatives, and natural-gas infrastructure operators. Amici do not contend that those burdens may determine the concentration level of a final NAAQS. Considering the cost of opening the proceeding is not the same thing as putting a price tag on public health. They bear instead on whether the Executive should devote public and private resources to an extraordinary off-cycle reconsideration or await the next mandatory review. Considering them at that threshold stage neither predetermines the outcome nor relieves EPA of its obligation to justify any final standard under the factors that the statute makes relevant, as interpreted in *Whitman*, and on the administrative record. Considering practical consequences in deciding whether to begin a discretionary review is not the same as balancing those consequences against public health in setting the ultimate standard. The former concerns whether to ask the question now; the latter concerns how the Clean Air Act directs EPA to answer it.

The court of appeals acknowledged petitioners' distinction between setting a standard and the "anterior decision to revise," but wrongly concluded that *Whitman* would not permit EPA to consider costs "at either stage." Pet. App. 37a. *Whitman* construed the factors governing the statutory standard under § 109(b) of the Clean Air Act. It did not decide what the Administrator may consider when choosing whether to commence a discretionary review under § 109(d). *See Whitman*, 531 U.S. at 471. Economic consequences, in other words, may justify asking the question without supplying the answer.

As Chief Justice Roberts recently wrote for this Court, agencies may have both stated and unstated reasons for rules, *Department of Commerce v. New York*, 588 U.S. 752, 781 (2019), but only in “extraordinary” cases where only “pretextual” reasons are given for a change may a court intervene. No such allegations were made in this case, and thus it provides a good opportunity for this Court to distinguish its decision in *Dept of Commerce v. New York* and clarify that in the usual case lacking any “extraordinary” circumstances, a court may not go behind an administrative agency’s stated reasons for its action on the administrative record to second guess the Executive’s motivations for proposing a change.

As an additional reason for granting certiorari as to the second question presented in both petitions, Amici maintains that the question of when a court may go behind the Executive branch’s stated rationale and review its motivations for proposing a change to a notice and comment rule has important constitutional implications in light to the Vesting and Take Care clauses of the Constitution.²

At minimum, the serious Article II question of the Executive’s constitutional power to initiate a reconsideration of its predecessor’s policies established only through a notice and comment rule should have informed the panel’s reading of the statute. The second question presented in both petitions supplies a route to correcting the arguably unconstitutional interpretation

2. See generally Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245 (2001) (outlining the role of the President in supervising the policies of administrative agencies).

by the court below that the other branches may eliminate the power of the Executive to reconsider the policies of its predecessors.

II. The Ruling Below Conflicts With Established Administrative Law Principles Governing Changes in Executive Policy.

An agency may change policy if it acknowledges the change, remains within the governing statute, and supplies a reasoned explanation. Both *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-16 (2009). *State Farm*, 463 U.S. at 42-43, and *Regents*, 591 U.S. at 30-33, likewise require reasoned decision-making and consideration of relevant alternatives and reliance interests; they do not freeze a predecessor administration's policy choices and make them immune from reconsideration by a successor administration even if the reconsideration was undertaken in part because of practical and economic concerns.

The court below conflated the Executive's motives for reconsideration with the justification for a change based on the relevant factors under the statute. *See Department of Commerce v. New York* 588 U.S. 752, 781 (2019) ("A court may not reject an agency's stated reasons for acting simply because the agency might also have had other unstated reasons.")

CONCLUSION

The petitions for writs of certiorari should be granted.

Respectfully submitted,

E. DONALD ELLIOTT
Counsel of Record

JEFFREY S. LONGSWORTH

JOHN A. SHEEHAN

WILLIAM WEHR

EARTH & WATER LAW LLC

1455 Pennsylvania Avenue, N.W.,
Suite 400

Washington, D.C. 20004

(202) 256-4149

e.donald.elliott@

earthandwatergroup.com

Attorneys for Amici Curiae

ADDITIONAL COUNSEL

ELLEN STEEN
TRAVIS CUSHMAN
MICHAEL D. THORP
AMERICAN FARM BUREAU FEDERATION
600 Maryland Avenue Southwest,
Suite 1000W
Washington, DC 20024

PRIANKA P. SHARMA
AMERICAN ROAD & TRANSPORTATION
BUILDERS ASSOCIATION
250 E Street Southwest,
Suite 900
Washington, D.C. 20024

ALLISON B. RUSNAK
J. SPENCER PHILLIPS
ASSOCIATED GENERAL CONTRACTORS
OF AMERICA
2111 Wilson Boulevard #1000
Arlington, VA 22201

THOMAS J. WARD
SABREN WAHDAN
NATIONAL ASSOCIATION OF
HOME BUILDERS
1201 15th Street, Northwest
Washington, DC 20005

KAREN R. HARNED
NATIONAL ASSOCIATION OF
WHOLESALE-DEALERS
1325 G Street, Northwest,
Suite 1000
Washington, DC 20005

ELIZABETH MILITO
ROB SMITH
NATIONAL FEDERATION OF
INDEPENDENT BUSINESS, INC.
555 12th Street, Northwest,
Suite 1001
Washington, DC 20004

MICHAEL C. FORMICA
NATIONAL PORK PRODUCERS COUNCIL
122 C Street, Northwest,
Suite 875
Washington, D.C. 20001

WILLIAM L. WEHRUM, JR.
WEHRUM ENVIRONMENTAL LAW LLC
COUNSEL FOR THE BRICK INDUSTRY ASSOCIATION
1629 K Street, NW, Suite 300
Washington, DC 20006

APPENDIX

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**APPENDIX OF PUBLISHED SOURCES
REGARDING EFFECTS OF BIDEN-ERA RULE**

Impact	Proposition	Citation
AI and data centers	Data centers use turbines and stationary engines for primary and backup power; those sources face air permitting and modeling requirements. Delays affecting either on-site generation or supporting grid capacity can delay deployment.	• U.S. EPA, <i>Clean Air Act Resources for Data Centers</i> (last visited Sept. 24, 2026). • Lawrence Berkeley Nat'l Lab., 2024 United States Data Center Energy Usage Report 5-6 (Dec. 2024), LBNL-2001637. • Exec. Order No. 14,318, §§ 1-2, 7(a), 90 Fed. Reg. 35,385, 35,385-87 (July 28, 2025). • U.S. EPA, <i>Effective Permitting Tools for Fine Particulate Matter Under the Prevention of Significant Deterioration Permitting Program</i> (updated Mar. 20, 2025).

Appendix

Impact	Proposition	Citation
Electric generation and grid reliability	New firm generation must be added quickly to meet rapidly increasing AI and manufacturing demand. Permitting constraints affecting turbines, engines, or power plants can complicate that buildout.	• U.S. Dep't of Energy, <i>Report on Evaluating U.S. Grid Reliability and Security</i> (July 7, 2025). • U.S. Dep't of Energy, <i>Department of Energy Releases Report on Evaluating U.S. Grid Reliability and Security</i> (July 7, 2025). • U.S. EPA, Responses to Significant Comments on the 2023 Proposed Rule for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter 112-17 (Feb. 2024) (rulemaking record; discussing turbines, reciprocating engines, energy projects, offsets, infrastructure, and grid-reliability concerns).

Appendix

Impact	Proposition	Citation
Manufacturing and critical materials	EPA's own illustrative control strategy reaches cement, chemicals, pulp and paper, mining, steel and other metals, refining, boilers, and oil-and-gas facilities.	• U.S. EPA, Final Regulatory Impact Analysis for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter 181, 185-89, 404-06 (Jan. 2024), EPA-452/R-24-006 (rulemaking record). • U.S. EPA, Responses to Significant Comments on the 2023 Proposed Rule 112-17 (Feb. 2024) (rulemaking record). • U.S. EPA, <i>Trump EPA Announces Path Forward on National Air Quality Standards for Particulate Matter (PM_{2.5}) to Aid Manufacturing, Small Businesses</i>(Mar. 12, 2025) (post-record statement of the current agency's position).

Appendix

Impact	Proposition	Citation
Construction, housing, and building materials	The RIA includes construction and road dust and industrial sources producing cement and other building materials. Controls, modeling, redesign, and permitting uncertainty can affect project schedules and costs.	• U.S. EPA, Final Regulatory Impact Analysis 181, 185-89, 253-56 (Jan. 2024), EPA-452/R-24-006 (rulemaking record; addressing cement and other industrial sources, construction and road dust, and illustrative annualized control costs). • Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16,202, 16,370-71 (Mar. 6, 2024) (rulemaking record; addressing application of the revised standard to pending and future PSD permits).

Appendix

Impact	Proposition	Citation
Roads, bridges, and transit	In PM nonattainment and maintenance areas, transportation plans, TIPs, and federally supported projects must demonstrate conformity. During a conformity lapse, federal funding is restricted and new nonexempt projects generally cannot proceed.	• Fed. Highway Admin., U.S. Dep't of Transp., Transportation Conformity: A Basic Guide for State & Local Officials — Executive Summary (Feb. 2017). • Fed. Highway Admin., U.S. Dep't of Transp., Transportation Conformity: A Basic Guide for State & Local Officials — Conformity Lapse and Lapse Grace Period (Feb. 2017) (explaining that federal-aid funds are restricted and new nonexempt projects generally cannot proceed during a lapse).

Appendix

Impact	Proposition	Citation
Pipelines and midstream infrastructure	Compressor stations and related expansions are stationary sources subject to air permits and PM modeling. Permitting difficulty can affect pipeline, storage, and gas-delivery capacity.	• Fed. Energy Regul. Comm'n, <i>An Interstate Natural Gas Facility on My Land? What Do I Need to Know?</i> (last visited Sept. 24, 2026) (explaining that gas-fired compressor engines and turbines emit regulated pollutants and that numerous federal and state air rules and permits may apply). • Fed. Energy Regul. Comm'n, <i>FERC Staff Issues Final Supplemental Environmental Impact Statement for the CP2 LNG and CP Express Pipeline Projects</i> (May 9, 2025) (addressing annual PM_{2.5} impacts from an LNG terminal and pipeline compressor station).

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Appendix

Impact	Proposition	Citation
		• U.S. EPA, Responses to Significant Comments on the 2023 Proposed Rule 112-14 (Feb. 2024) (rulemaking record; discussing permitting analyses and the difficulty and expense of obtaining offsets).

Appendix

Impact	Proposition	Citation
Freight, wholesalers, and small businesses	These entities experience downstream effects from delayed transportation projects, constrained industrial production, material costs, and fixed permitting or compliance expenses.	• U.S. EPA, <i>Trump EPA Announces Path Forward on National Air Quality Standards for Particulate Matter (PM_{2.5}) to Aid Manufacturing, Small Businesses</i>(Mar. 12, 2025) (official post-record statement describing the standard as a significant permitting obstacle). • U.S. EPA, Final Regulatory Impact Analysis 181, 185-89, 253-56, 404-06 (Jan. 2024), EPA-452/R-24-006 (rulemaking record; identifying affected industrial, construction, oil-and-gas, and commercial sectors).

Appendix

Impact	Proposition	Citation
		• Fed. Highway Admin., U.S. Dep't of Transp., Transportation Conformity: A Basic Guide for State & Local Officials — Executive Summary (Feb. 2017). The resulting effects on wholesalers and freight-dependent small businesses should be characterized as a supported downstream inference rather than a separately quantified impact.