

**American
Forest & Paper
Association**

AF&PA Meeting with EPA

April 9, 2025, 11am

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Overview

A. Key Priority Final Rules

1. PM NAAQS (standard and air permit program)
2. Good Neighbor Plan
3. 3 MACT revisions (2 pulp and paper; 1 wood panels)
4. CERCLA Listing of PFOA/PFOS
5. CWA Rules (WA HHWQC, Approval Rule, Tribal Reserved Rights Rule)
6. SDWA MCL on PFAS
7. Biomass – Treasury Clean Electricity Tax Credits

B. Loper Bright Regulatory Framework

C. Market Failure Analysis; Benefit-Cost Analysis; Sound Regulatory Science

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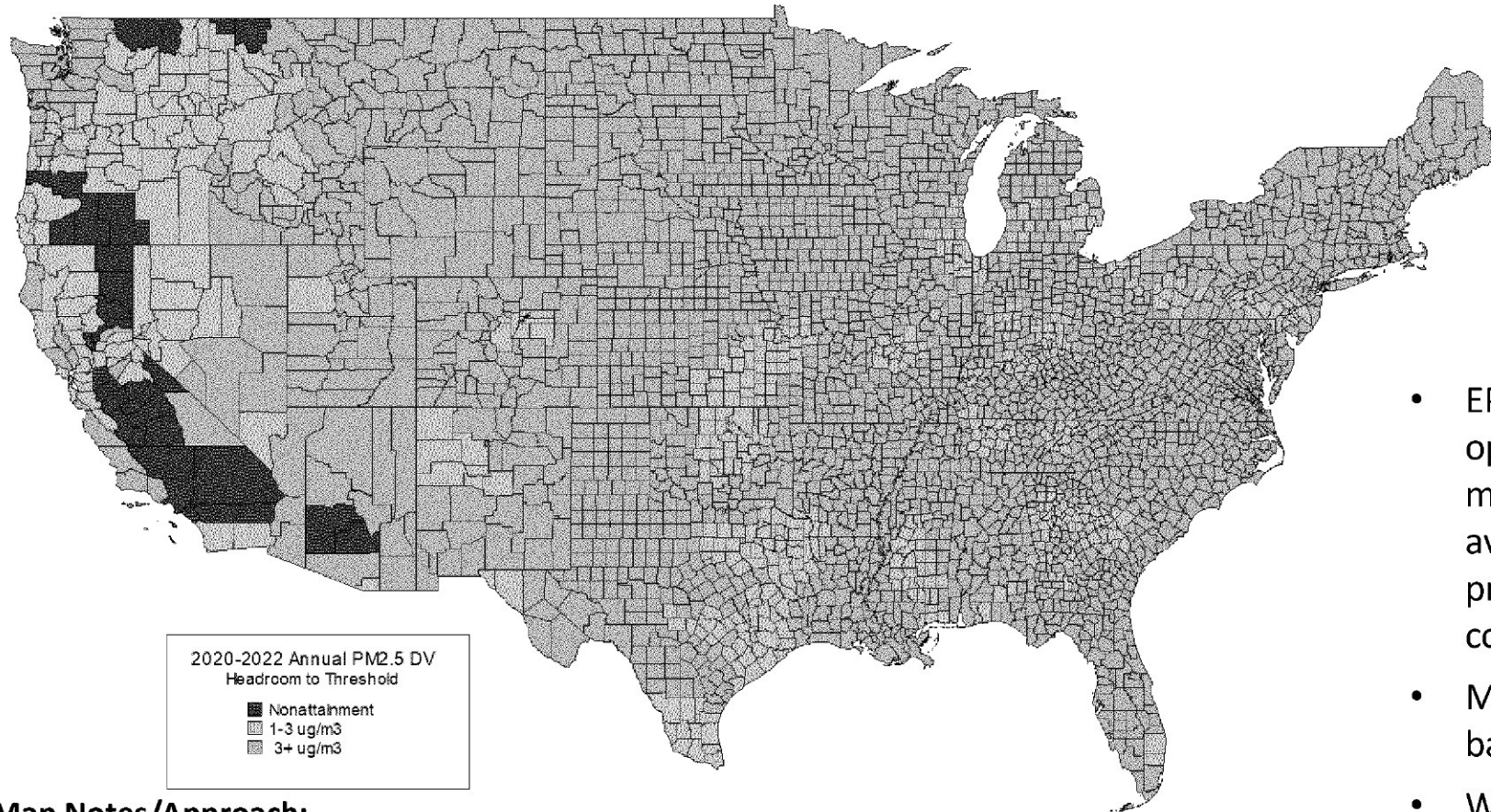
Administrator Zeldin's March 12 Deregulatory Initiatives

- We support the Administrator's goal for common sense, achievable regulations.
- We have a long track record seeking common sense solutions working with OAQPS
- Want timely and lasting rules.
- Our rules of greatest concern violate multiple EOs, including E.O. 14219,
- E.O. 14192, and E.O. 14154.
- Ambitious agenda – how can we help?

1(a) PM NAAQS Standard

- Please reconsider Biden EPA unattainable $9\text{ug}/\text{m}^3$ standard:
 - near average U.S. background ($8\text{ug}/\text{m}^3$) - no “headroom” (typically $3\text{ug}/\text{m}^3$) to allow modernizing U.S. manufacturing, even in attainment areas (pink on map).
 - Blocks efficiency upgrades that would both increase U.S. competitiveness and jobs + reduce emissions per ton of production.
- Use *Loper Bright* “best reading;” under CAA 109(d), consider “all relevant factors,” including attainability and cost.
- Scientific uncertainty kept standard at $12\text{ug}/\text{m}^3$ in 2020

Prior PM_{2.5} NAAQS (12 µg/m³) left room for economic growth



Map Notes/Approach:

- Used maximum PM_{2.5} Design Values (DVs) for each monitored county
- Calculated non-monitored counties values using geospatial statistical interpolation (“kriging”) “fills-in” estimates for locations between the monitors.
- Five (5) closest monitored values used to estimate non-monitored county values using inverse-distance weighted averaging method.

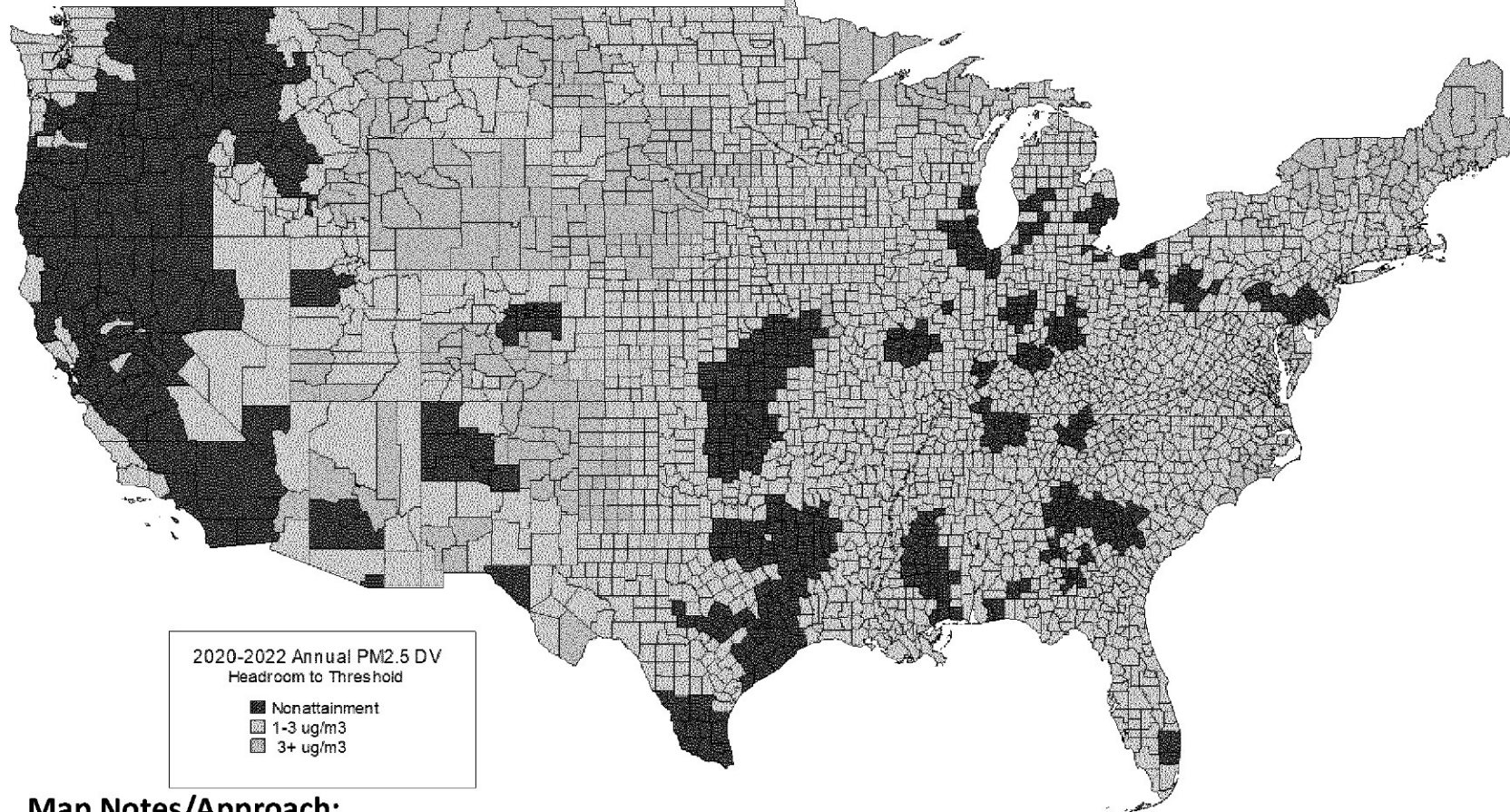


- Projects in non-attainment areas (red) will require LAER, offsets/alternatives NSR analysis, and SIPs with RACT.
- Before construction is permitted, new projects must use EPA models to show attainment with NAAQS.
- EPA’s modeling guidelines represent continuous operation of all new and modified sources at the maximum allowable emission rate after best available controls and typically simulated a project’s future annual PM_{2.5} ambient contribution to be 1-3 µg/m³.
- Many areas of the country (green) have background levels of 6 to 9 µg/m³.
- With a standard of 12 µg/m³, areas with background of 9 µg/m³ or less will have enough “headroom” to accommodate the typical contribution from the project (e.g., 3 µg/m³).
- **Impact: Most projects can be built.**



Immediate Impact of PM_{2.5} NAAQS at 9.0 µg/m³

New or expanded manufacturing projects unachievable in red + pink colored areas



Map Notes/Approach:

- Used maximum PM_{2.5} Design Values (DVs) for each monitored county
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- Five (5) closest monitored values used to estimate non-monitored county values using inverse-distance weighted averaging method.



- Before construction is permitted, new projects must use EPA models to show attainment with the NAAQS.
- EPA’s modeling guidelines require assuming **continuous** operation of **all** new and modified sources at the **maximum** allowable emission rate using best available controls and typically simulate a project’s future annual average PM_{2.5} ambient concentration to be 1-3 ug/m³.
- Many PM_{2.5} “attainment” areas have background levels of 6 to 9 ug/m³.
- With a standard of 9 ug/m³, attainment areas with background as low as 6 ug/m³ (pink) won’t have enough “headroom” to accommodate the ambient concentration conservatively simulated for the project (e.g., 3 ug/m³).
- **Impact: Violation of the NAAQS is predicted, which effectively stops the project.**



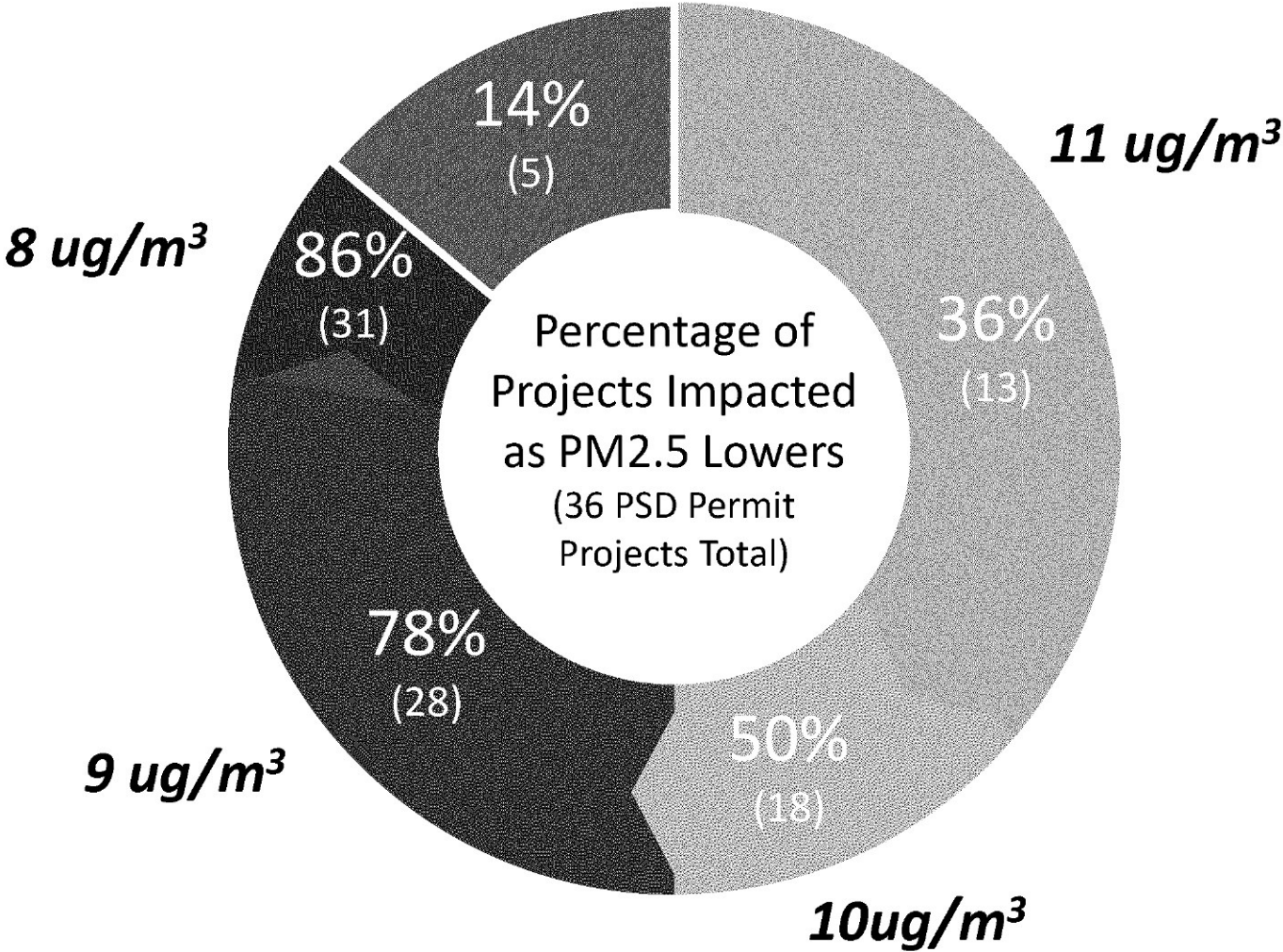
Failed Permits from PM_{2.5} NAAQS Changes

36 PSD permits from 13 industries in 19 states

Annual Average PM_{2.5} (µg/m³)

- At 11 ug, 36% fail
- At 10 ug, 50% fail
- At 9 ug, 78% fail EPA's new NAAQS
- At 8 ug, 86% fail
- Less than 8 ug

**Massive investments
and job losses at stake!**



1(b). Modernize PSD Air Permitting Program – Critical Steps

1. Adjust modeling receptors (considering true exposures based on time and duration); revise “ambient air” definition ("has access")
2. Authorize variability of emissions and operations in modeling – use probabilistic tools
3. Expand efforts to better estimate and measure PM emissions
4. Expand efforts to accurately reflect ambient background for designations and PSD permitting, such as exceptional events/ “atypical events” and monitor bias (FEM)

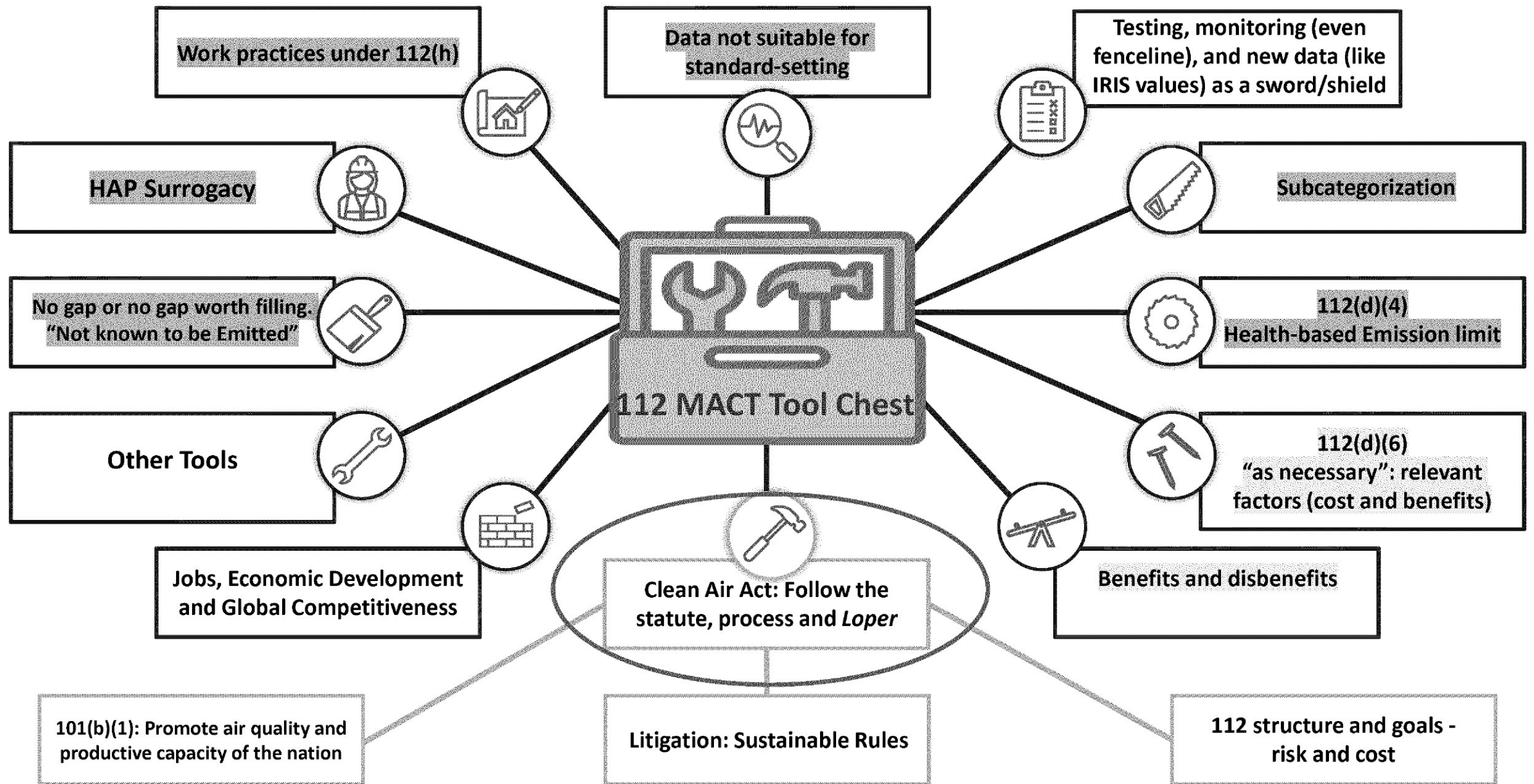
➤ Use Appendix W as vehicle – detailed NR3 comments 12/21/2023

2. Good Neighbor Plan: Paper Mill Boilers Reconsideration

- Supreme Court stayed GNP (*Ohio v. EPA*, June 2024).
- Appreciate March 12 EPA announcement – states should be given more discretion on interstate transport and their SIPs.
- EPA arbitrarily included Paper Sector in GNP under NPRM's 2-prong test:
 1. Not significant air quality contributors – impact fewer than 10 monitors
 2. Not cost-effective for Paper Sector to control NOx - \$50K/ton; >5X the threshold in the proposal (\$7,500); \$425 million in capital
- Possible controls for many gas and all coal boilers (SCR) are not proven.
- Poor quality inventory and assumptions for non-EGUs/paper mills.
- We recommend dropping paper boilers.

3. MACT Reviews: Use Tools in MACT Tool Chest for Three Forest Products rules

- Work practices and other approaches could result in cost-effective standards AND satisfy traditional “HAP gap-filling” requirement
 - CAA section 112(d)(6) says regulate as “necessary”: EPA must consider all relevant factors, such as costs and risk, in deciding WHETHER to set new MACT standards.
 - *Loper Bright* and *Michigan* require EPA to balance costs and risk reduction benefits, whereas here, statute does not explicitly prohibit.
- The data collection for pulp and paper mills needs a mid-course correction – less HAP testing and simpler questionnaire.
- EPA should finalize the wood products MACT with improvements.



4. CERCLA Listing of PFOA/PFOS

- Host of adverse consequences, including preventing safe and beneficial use of papermill residuals as substitutes for fertilizers. CERCLA not right tool for the job.
- We recommend EPA withdraw final CERCLA rule.
 - Use *Loper Bright* “best reading”
 - Consider all relevant factors, including costs (list as may be “appropriate”).

5(a). WA HHWQC Rule

- Biden EPA 2022 final rule on Human Health Water Quality Criteria for Washington State will lead to unattainable water permit limits for industrial and municipal facilities in Washington State. Would cause water permit gridlock, along with Tribal Reserved Rights Rule.
- We recommend EPA repeal and replace the 2022 WA HHWQC rule, which is legally flawed and unattainable.

Comparison of Risks of Dying to Regulatory Allowable Risk Levels						
Risk Level	Risk of Death	Allowable Risk (Cancer Risk)				
		<u>EPA 2000 Methodology</u>	<u>Washington Water Quality</u>	<u>Florida Proposed Water Quality</u>	<u>EPA Drinking Water</u>	<u>EPA Superfund & State Cleanups</u>
1 in 10 (1 x 10 ⁻¹)	Cancer (1 in 4)	EPA's previous risk policy				
	Heart Disease (1 in 5)					
	Car Accident (1 in 85)					
1 in 100 (1 x 10 ⁻²)	Falls (1 in 200)	EPA risk policy				
	Casino worker (1 in 250)					
	Acrylamide in food (1 in 1,800)					
1 in 1,000 (1 x 10 ⁻³)	Bike accident (1 in 5,000)					
1 in 10,000 (1 x 10 ⁻⁴)		Sub-populations (1 in 10,000)			Arsenic (5 in 10,000)	1 in 10,000
1 in 100,000 (1 x 10 ⁻⁵)	Lightning (1 in 174,000)	1 in 100,000			EPA Drinking Water	EPA Superfund Range
	Asteroid (1 in 333,000)	General Population				
		1 in 1,000,000				
1 in 1,000,000 (1 x 10 ⁻⁶)			Sub-population (1 in 1,000,000)	General population (1 in 1,000,000)	Benzene (1 in 10,000,000)	1 in 1,000,000 No action needed
1 in 10,000,000 (1 x 10 ⁻⁷)						
1 in 100,000,000 (1 x 10 ⁻⁸)						

Decreasing Risk



5(b). Midnight Approval Rule

- On December 20, 2024, EPA – improperly and contrary to Clean Water Act requirements – issued a federal rule ([EPA approval rule](#)) approving an extreme Washington State regulation to revise the state water quality standards (state rule).
 - The Washington State regulation was issued in a highly truncated and rushed process, without any analysis of cost or attainability.
 - EPA never should have approved this state rule because, contrary to the Clean Water Act, the standards in this state rule are neither measurable, ***nor attainable even with cost-prohibitive control technology.***
- EPA should repeal this midnight approval rule.

5(c). Tribal Treaties Reserved Rights Final Rule

- Biden EPA's final Tribal Reserved Rights Rule (RIN: 2040-AG17), like the WA HHWQC Rule, could lead to unattainable water quality standards in any states with tribal waters.
- November 2024: AF&PA joined an industry coalition amicus brief supporting legal challenge to TRR rule by a group of states, led by ID, in U.S. District Court for the District of North Dakota.
- February 2025: Court issued order granting States' motion to hold the case in abeyance for 90 days.
- We recommend EPA propose and finalize a new rule to withdraw the Tribal Reserved Rights Rule, which is legally flawed and jeopardizes water permits needed to operate U.S. manufacturing and municipal facilities.
- In the ongoing litigation, EPA should confess legal error, as the rule exceeds EPA's statutory authority and is arbitrary.

6. Safe Drinking Water Act PFAS Maximum Contaminant Level (MCL)

- April 2024: EPA final rule establishing PFAS maximum contaminant levels, including for PFOA and PFOS levels set at 4 parts per trillion.
 - Rule applies to public water systems. Paper mills sometimes serve as small public water systems for workers and local communities.
 - Any drinking water MCL should be consistent with SDWA's requirements, including for quality of science and data, as well as consideration of costs to all categories of public water systems.
- We recommend EPA ensure the National Primary Drinking Water Standards for PFAS are set at workable levels.

7. Biomass – Treasury Clean Electricity Tax Credits

- Pulp, paper and wood products mills are the largest industrial producers and users of highly efficient bioenergy (electricity and heat), including bioelectricity for the grid.
- Since its 2010 Tailoring Rule, EPA created -- and left unresolved -- lingering regulatory uncertainty for the carbon neutrality of our bioenergy. This leaves U.S. mills at a competitive disadvantage and impedes innovation.
- In a midnight rule on clean electricity tax credits (RIN: 1545-BR-17), the Biden Treasury Department refused to include our mills, contrary to:
 - *Loper Bright's* required “best reading” of the Inflation Reduction Act,
 - Congressional intent,
 - Science and rational policy, and
 - President Trump’s policy for U.S. energy dominance.
- This disrupted a longstanding energy efficiency tax credit our industry had always qualified for.
- Treasury should list energy systems at forest products mills as qualified facilities in its Annual Table and provide clarifying guidance.



Loper Bright Regulatory Framework Part 1: Legal/Policy Overview



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Opportunity: New Loper Bright Framework Can Be Implemented Through Benefit-Cost Approach

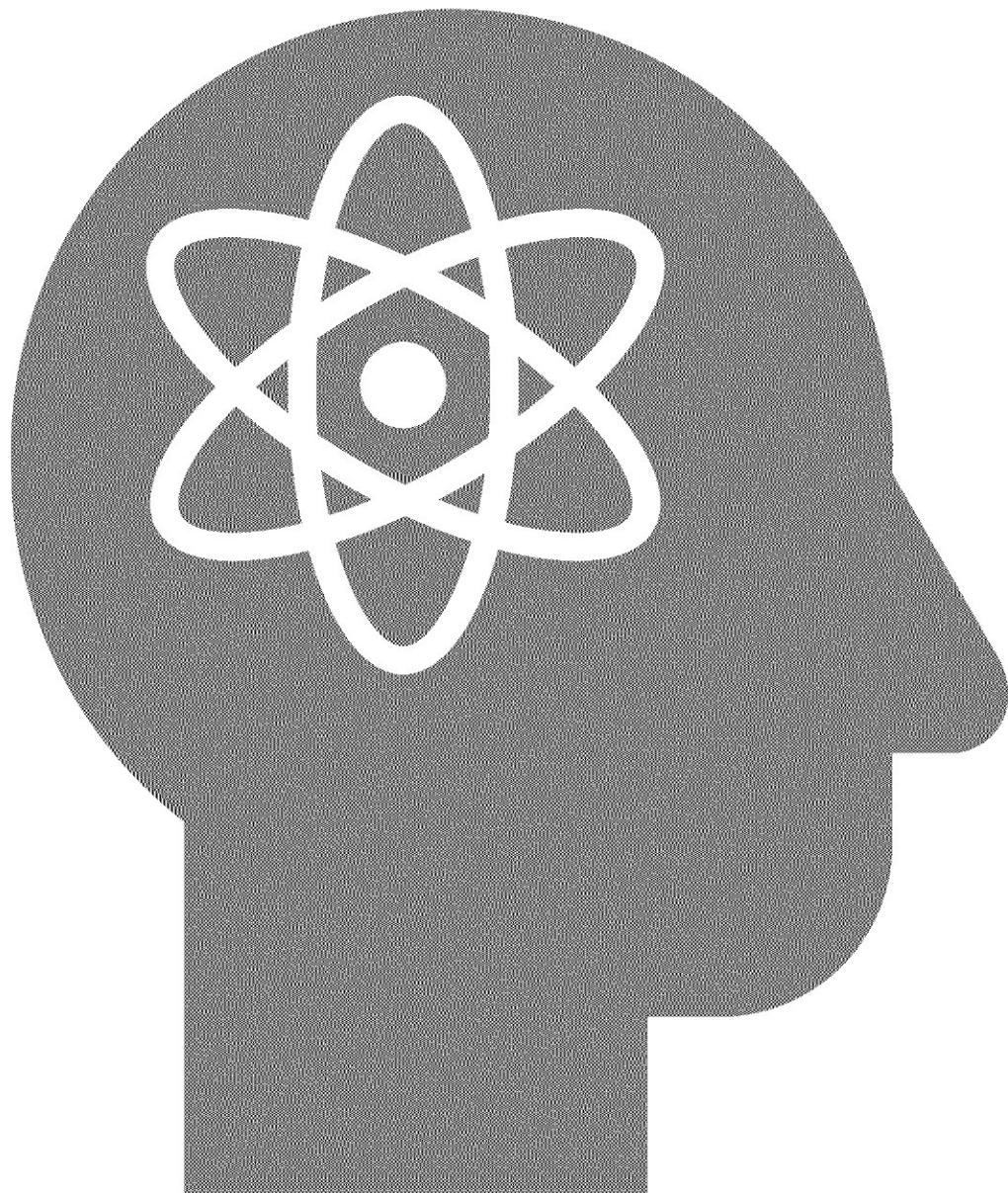
Loper → Courts:

- (1) ensure the “best reading”;
- (2) fix the bounds of delegated authority and ensure “reasoned decisionmaking”; and
- (3) may accord “due respect” if agency statutory interpretations consistent, thorough, valid, persuasive.

State Farm (1983) to *Entergy v. Riverkeeper* (2009) to *Michigan v. EPA* (2015) - established emerging cost-benefit default rule: to avoid arbitrariness, agencies must consider all relevant factors - including costs - unless clearly prohibited by Congress.

In *Loper Bright* – citing *Michigan* -- the cost-benefit default rule informs both the “best reading” of statutes and “reasoned decisionmaking.” Use of BCA also should merit “due respect.”

Thus, agencies implementing regulatory programs through BCA should thrive under *Loper Bright*.



Loper Bright, Part 2: Case Study Review of Three Regulations



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Case Study Overview

- *Loper-Bright* requires courts to determine “best reading” of statutory language.
- Some statutory text in the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Safe Drinking Water Act refer to the science of risk assessment and the use of data from underlying scientific disciplines such as toxicology and epidemiology.
- Some of the statutory text has technical and scientific meaning, which can be characterized from the technical and scientific literature.

A Practical Approach: Combining “best reading” and Science/Technical Information

A joint effort, AF&PA and NCASI will produce case studies that both:

- 1) analyze specific agency rulemakings to determine if scientific and technical elements are consistent with a ‘best’ scientific interpretation of the statute;
- 2) provide an example framework that can be used to examine additional rulemakings for scientific and technical aspects of ‘best’ interpretation of statute.

Three rules will be reviewed:

- OAR, PM2.5 National Ambient Air Quality Standard (NAAQS)
- OLEM, CERCLA designation of PFOS and PFOA as hazardous substances
- Office of Water, Maximum Contaminant Levels (MCLs) for Per- and Polyfluoroalkyl Substances (PFAS)

Project Goals and Preliminary Results

Bring technical/scientific definitions to inform interpretations of statutory text to guide how rulemakings, analyses, and other technical information are developed at EPA.

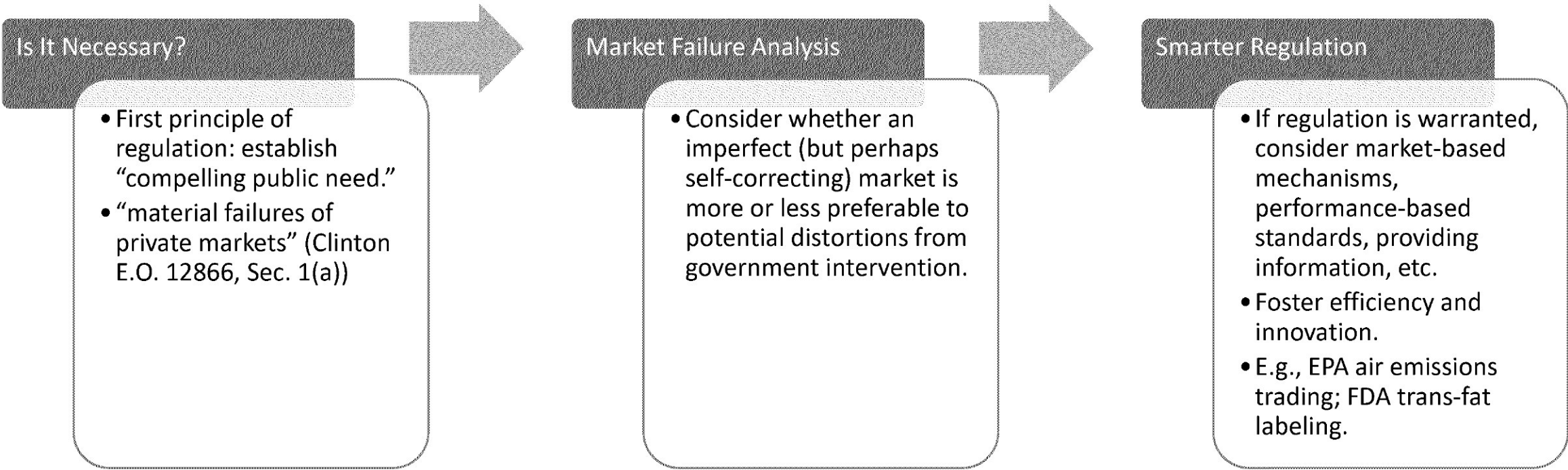
Assist stakeholders to offer a scientific perspective for determining “best reading” of statutory text supporting regulatory decisions.

Preliminary results reviewing 12 scientifically-meaningful terms defined in the Clean Air Act (CAA) and an additional three from the Safe Drinking Water Act (SDWA) show inconsistent usage across key guidance and implementation materials. For example, of the 12 CAA terms, only two are found in key guidance materials.

Market Failure Analysis; Benefit-Cost Analysis; Sound Science

Market Failure Analysis

Before Benefit-Cost Analysis, Market Failure Analysis is essential to ensure intervention is necessary.



Improve Benefit-Cost Analysis, and Regulatory Science

- BCA: Address limits to current agency BCAs.
 - E.g., EPA focus is only on engineering costs.
 - Add, e.g.,: competitiveness benefits, job savings, efficiency gains that can improve performance (lower emissions per ton of production).
 - Consider full opportunity cost (e.g., real return on investment), discount rate, etc.
- Science: Address foundation of regulation – ensure process for determining whether a chemical/substance causes an adverse effect to health or environment includes systematic review to base decisions on evidence with acceptable confidence (i.e., sound statistical methods, model assumptions, and objectivity, minimizing uncertainty and bias).