

The statute places guardrails on EPA's discretion to revise the existing standards. EPA does recognize that § 7412(d)(6) provides the Agency with authority to revise emission standards but only on specific grounds. This is most evidently reflected in a mere footnote that EPA inserted in the Proposed Rule, where EPA explains that the term "developments" could encompass "getting new or better information about the performance of an add-on or existing control technology (e.g., emissions data from affected sources showing an add-on control technology performs better than anticipated during development of the rule)."²² Such an interpretation of the term "developments," however, impermissibly stretches the statutory authority EPA has in revising emission standards.²³ Nowhere does the statute provide EPA the discretion to make such revisions for any other reason not enumerated in the statute. To establish a sufficient basis for tightening the fPM limit, EPA needs to point to a *change* in practices, processes, or control technologies and equipment that justifies the corresponding change to the fPM limit. EPA has not done so. As such, EPA does not have authority to promulgate the revised fPM standards.

2. EPA's proposal to tighten the fPM limit is arbitrary and capricious.

a) EPA's evaluation of current fPM emission levels is flawed.

EPA's proposal to tighten the fPM limit is arbitrary and capricious because its evaluation justifying the proposed tightening of the fPM limit relies on questionable methods of analysis and is flawed. EPA states that its proposal to tighten the fPM standard is based on its review of "developments in the current emission levels of fPM from existing coal-fired EGUs, the costs of control technologies, and the effectiveness of those technologies, as well as the costs of meeting a standard that is more stringent than 3.0 E-02 lb/MMBtu and the other statutory factors."²⁴ According to EPA:

Currently, 96 percent of existing coal-fired capacity without known retirement plans before the proposed compliance period already have *demonstrated* an emission rate of 1.5E-02 lb/MMBtu or lower, 91 percent of existing coal-fired capacity have *demonstrated* an emission rate of 1.0E-02 lb/MMBtu or lower, and 72 percent of existing coal-fired capacity have *demonstrated* an emission rate of 6.0E-03 lb/MMBtu or lower."²⁵

The statistics above appear to be based on the evaluation summarized in the 2023 Technology Review for the Coal- and Oil-Fired EGU Source Category ("Technical Memo"). EPA should not rely on the 96% threshold as justification for setting the proposed fPM limit at 0.010 lb/MMBtu. EPA's reliance on that evaluation is problematic for several reasons and likely overstates the universe of units that will be able to meet the proposed standard.

²² See 88 Fed. Reg. 24,863 fn. 15.

²³ See e.g., *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 328 (2014) ("We reaffirm the core administrative-law principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.").

²⁴ See 88 Fed. Reg. at 24,857.

²⁵ *Id.* at 24,868 (emphases added).