

EPA Finalizes Supplemental CSAPR Rulemaking

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On December 15, 2011, EPA finalized its supplemental Cross-State Air Pollution Rule (CSAPR) rulemaking, concluding that “Iowa, Kansas, Michigan, Missouri, Oklahoma, and Wisconsin significantly contribute to nonattainment or interfere with maintenance of the 1997 ozone National Ambient Air Quality Standards (NAAQS) in other states.” EPA’s final rule establishes ozone season NOx Federal Implementation Plans (FIPs) for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin, as well as state emission budgets and unit-level allocations. The final rule requires the five states to comply with the ozone season NOx emission limits beginning in 2012. Although EPA had proposed to establish a FIP for Kansas as well, EPA concluded that it lacks authority to do so because Kansas currently has an EPA-approved § 110(a)(2)(D)(i) State Implementation Plan (SIP) in place for the 1997 ozone NAAQS. EPA proposed in January to find the Kansas SIP substantially inadequate to meet the requirements of § 110(a)(2)(D)(i) for the 1997 ozone NAAQS, and EPA plans to finalize its proposed SIP call in the coming weeks. Kansas will then have 12 months to revise its SIP to reduce Kansas’s contribution to downwind nonattainment with the 1997 ozone NAAQS, and if Kansas fails to submit an adequate SIP, EPA will have an obligation to promulgate an ozone season NOx FIP for the state.

EPA’s final supplemental rulemaking increased the state emission budgets for Michigan, Oklahoma, and Wisconsin based on corrections to unit-level assumptions, while the state emission budgets for Iowa and Missouri remain the same as proposed. In response to comments that the proposed emissions reductions in Oklahoma “could not be feasibly achieved by the 2012 ozone season” without jeopardizing electricity reliability in the state, EPA adjusted Oklahoma’s 2012 ozone season state emission budget so that it no longer takes into account the installation or upgrade of new combustion controls. EPA recognized that Oklahoma had not been subject to CSAPR’s predecessor, the Clean Air Interstate Rule, and therefore sources in the state have not had as much time to prepare for compliance with the ozone season NOx emission limits as sources in other states. In particular, EPA noted that it typically takes six months to install low-NOx burners, and with the 2012 ozone season less than six months away, sources would not have enough time to install them. Further, the EPA recognized that shutting down Oklahoma’s utilities in order to install low-NOx burners during the ozone season, a period that electricity demand peaks, would place electricity reliability in the southwest at risk. The final rule requires Oklahoma to comply with the ozone season NOx emissions limits as proposed beginning in the 2013 ozone season and beyond. EPA’s proposed corrective rule to CSAPR is still under consideration.

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