

EPA Issues Federal Implementation Plans Under the Cross State Air Pollution Rule

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On July 6, 2011, EPA finalized the Cross State Air Pollution Rule (CSAPR) to replace the Clean Air Interstate Rule (CAIR), which was invalidated by the U.S. Court of Appeals for the D.C. Circuit in 2008. CSAPR addresses emissions under section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA). This section, referred to as the “Good Neighbor” provision, prohibits a state from producing emissions that will significantly contribute to nonattainment or interfere with maintenance of NAAQS in any other state. Under the CAA, states are required to submit State Implementation Plans (SIPs) that meet the requirements of Good Neighbor provision within three years after the promulgation of, or revision of, a primary NAAQS. 42 U.S.C. § 7410 (a)(1).

In order to expedite the implementation of CSAPR, EPA took a potentially controversial step and issued 59 Federal Implementation Plans (FIPs) that will become effective on January 1, 2012. For each FIP issued, EPA has either determined that the state failed to make the required section 110(a)(2)(D)(i)(I) SIP submission, or disapproved a previous SIP submission addressing this section. Specifically, EPA found that any SIP it approved under CAIR did not eliminate its obligation to promulgate a FIP under 110(A)(2)(D)(i)(I) because compliance with CAIR does not satisfy the requirements of that section. Despite the fact that many states have been operating under what have been perceived to be approved SIPs under CAIR, states will not have an opportunity to revise these SIPs for the first year that CSAPR is in effect. Instead, states will be required to abide by the EPA state-wide emission budgets for NO_x and SO₂ under the CSAPR FIPs, which allocate emissions among individual electric generating units (EGUs).

In response to comments that questioned whether EPA has given states the appropriate opportunity to provide SIPs addressing the rule that was just finalized, EPA has simply responded that it is obligated to promulgate FIPs under section 110(A)(2)(D)(i)(I) because it does not interpret the CAA to give it the authority to extend the deadline for SIP submissions (which expired in 2000 for the 1997 ozone and PM_{2.5} NAAQS and in 2009 for the 2006 PM_{2.5} NAAQS). Beginning in 2013, states will have the opportunity to submit SIPs addressing section 110(A)(2)(D)(i)(I) with certain limitations. A state must inform EPA within 70 days of the rule’s publication that it intends to submit a SIP for 2013. From 2014 onward, states will have more flexibility to allocate emission allowances, but will be obligated to work within the emission caps provided by EPA.

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