

Environmental Law and Policy Monitor

Analysis and commentary on developments in environmental and natural resources law

EPA Proposes Significant Expansion to Interstate Ozone Transport Regulations

By **Melissa Horne & Mack McGuffey** on March 25, 2022

In a **proposed rule** signed on February 28, but not yet published in the *Federal Register*, EPA proposed to significantly expand its current approach to regulating the interstate transport of ozone. Under the so-called “good neighbor” provision of the Clean Air Act, states are required to submit State Implementation Plans (SIPs) to EPA containing rules sufficient to prohibit emissions from their state that would either significantly contribute to another state’s nonattainment of national ambient air quality standards or interfere with another state’s maintenance of those standards. If a state submits a SIP that is insufficient to satisfy its good neighbor obligation, EPA must issue a Federal Implementation Plan (FIP) to fully address the problem.

EPA’s proposed rule addresses what it says are significant contributions from 26 downwind states to the failure of upwind states to either attain or maintain the 2015 ozone standard. The proposal, which imposes FIPs on those **26 states**, builds on EPA’s existing regulatory scheme for addressing good neighbor obligations for the 2008 ozone standard — the Cross State Air Pollution Rule or CSAPR (typically pronounced “Casper”). Under CSAPR, EPA imposed FIPs on affected downwind states in the form of statewide allowance

trading programs for emissions of nitrogen oxides (NO_x), an important precursor to ozone, from certain power plants, referred to as electric generating units (EGUs). EPA's current proposal extends the current CSAPR NO_x allowance trading program to additional states and ratchets down NO_x emission budgets for existing and newly covered states based upon emission reductions that EPA believes can be obtained by optimizing or installing pollution controls at EGUs during the ozone season (May through October), including Selective Catalytic and Non-Catalytic Reduction (SCR and SNCR), as well as by shifting generation to lower-emitting units.

Under the proposed rule, new ozone season NO_x emission budgets for EGUs would take effect in 2023. The proposed good neighbor rule will go well beyond previous CSAPR regulations by: (1) including a dynamic budgeting procedure that automatically establishes annual NO_x emission budgets beginning with the 2025 ozone season to reflect the current composition and utilization of the EGU fleet, instead of publishing future year budgets in the proposed rule; (2) establishing backstop emission limits during the ozone season for coal steam units 100 MW or greater (beginning in either 2024 or 2027 depending on the controls already in place), with additional allowances required to be surrendered for any exceedances of those limits; and (3) limiting the number of banked allowances to 10.5% of the state budget.

In addition to the trading program for EGUs, the proposed rule also charts new territory in the ozone transport regulatory regime by including non-EGUs in 23 of the affected states. However, instead of requiring non-EGUs to participate in the NO_x allowance trading system, the proposed rule simply establishes specific emission limits for certain types of units in specified industry sectors. New industry sectors covered by the proposal include:

- Pipeline transportation of natural gas.

- Cement and cement product manufacturing.
- Iron and steel mills and ferroalloy manufacturing.
- Glass and glass product manufacturing.
- Basic chemical manufacturing.
- Petroleum and coal products manufacturing.
- Pulp, paper, and paperboard mills.

The public comment period on the good neighbor rule will run for 60 days following publication of the proposal in the *Federal Register*, and EPA will hold a virtual public hearing 15 days following publication. For questions regarding the proposed rulemaking, contact **Melissa Horne** or **Mack McGuffey**.



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