



ENVIRONMENTAL UPDATE

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**For further information on our
Environmental Practice, please
contact:**

David T. Buente
+1.202.736.8111
dbuente@sidley.com

Robert M. Olian
+1.312.853.7208
rolian@sidley.com

Judith M. Praitis
+1.213.896.6637
jpraitis@sidley.com

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EPA Proposes New Air Emission Transport Rules for Power Plants in Eastern U.S.

Yesterday, the United States Environmental Protection Agency (EPA) proposed updated and corrected rules that would require sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emission reductions from fossil fuel fired power plants across 31 eastern states and the District of Columbia. The proposed rule is called the Clean Air Interstate Rule (CAIR) and, if finalized, would replace the original version of the CAIR rule that EPA issued in 2005. EPA estimates that the rule will affect 5,000 fossil-fuel fired units, which account for 84% of nationwide SO₂ emissions and 73% of nationwide NO_x emissions. The comment period will be open for 60 days after the proposed rule is published in the Federal Register.

CAIR Background

Goal to Reduce Power Plant SO₂ and NO_x Emissions. EPA claimed the original CAIR rule would reduce the impact of upwind states on downwind states' ability to comply with the national ambient air quality standards for fine particulate matter (PM_{2.5}) and ozone. The rule sought to accomplish this by requiring power plants to reduce SO₂ and NO_x, two pollutants that EPA has found react with other gases in the air to form PM_{2.5} (SO₂ and NO_x) and ozone (O₃).

Original Rule Encouraged Interstate Allowance Trading. The original CAIR rule limited emissions not by setting specific emission rates, but by setting SO₂ and NO_x emissions caps for each state covered by the rule. The states in turn were to be responsible for distributing the allotted emissions among the power plants within their borders. States could choose to implement command and control emission limits or, building upon the successful trading of SO₂ allowances under Acid Rain provisions of the Act, could allow sources to participate in an interstate allowance trading program for SO₂ and NO_x, the path chosen by most states.

Court Challenge to Original CAIR Rule. The original CAIR rule was challenged by stakeholders. In *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), the D.C. Circuit held that CAIR and the federal rules to implement the program (the CAIR FIP), if

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needed, were not authorized by the Clean Air Act. Accordingly, the Court vacated CAIR and the CAIR FIP. The D.C. Circuit later amended its ruling to remand the rules to EPA but allowed the rules to remain in effect until EPA issued revised rules correcting the underlying problems. *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008).

Major Changes in New Proposed CAIR Rule

New SO₂ and NO_x Reductions Proposed. The revised CAIR proposal would require further SO₂ and NO_x emission reductions from electric generating units with a capacity of 25 megawatts or more. EPA claims that by 2014, the requirements of the proposed rule would result in SO₂ reductions of 71% compared to 2005 levels and NO_x reductions of 52% compared to 2005 levels. In addition, the number of states proposed to be covered has expanded to 31 states and the District of Columbia, although not all must address both pollutants and some states will only need to reduce emissions during the summer ozone season. The original CAIR rule applied to 28 states and the District of Columbia.

Request for Comment on EPA Preferred Option and Two Alternatives. The proposal contains an EPA preferred option and two additional options. Under all three options, EPA would set an emissions budget for each covered state. The alternatives differ on the type and extent of emissions trading that would be allowed.

- **Alternative 1:** The EPA option: EPA's preferred option would allow for intrastate trading of allowances but only limited interstate trading. Notwithstanding a limited interstate trading market, each state would still be required to meet its cap by limiting emissions from sources within its borders.

- **Alternative 2:** The second alternative does not allow any interstate trading of emissions, although some intrastate trading among power plants would be allowed.
- **Alternative 3:** The third alternative would not allow either interstate or intrastate trading of emissions. Instead, EPA and the state regulatory bodies would apply command and control emission limits for each power plant, possibly allowing some averaging among units at each station.

Both the annual and ozone season NO_x reduction requirements would be effective for year 2012 under the proposal. The first phase of the SO₂ reductions would take effect for the states categorized as Group 1 states by 2012, while a second phase with a lower SO₂ cap would take effect in 2014. For Group 2 states, there is a single 2012 compliance deadline. The 2012 compliance dates would provide a very short planning window for sources that would have to install new control equipment in order to meet the new emission reductions.

Expected Compliance Methods and Cost-Benefits. According to EPA, sources will achieve emission reductions by operating existing control equipment more frequently, switching to lower sulfur coal, and/or installing new emission control equipment. These steps, EPA has estimated, would cost approximately \$2.8 billion per year. In contrast, EPA's proposal claims the emission reductions would achieve projected benefits ranging from \$120-290 billion each year.

Additional information on the proposed rule including the text of the rule, EPA Fact Sheet and Regulatory Impact Analysis can be found at <http://www.epa.gov/airtransport/>.

If you have questions about any of these items, please contact your regular Sidley Austin LLP contact.

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