

ENVIRONMENTAL

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EPA Proposes the Transport Rule to Replace CAIR

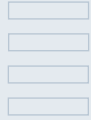


On July 6, 2010, the United States Environmental Protection Agency ("EPA") proposed the Transport Rule, a cap-and-trade program applicable to electric generating units in 31 states, including New York, with a nameplate capacity over 25 megawatts. The Transport Rule would replace the Clean Air Interstate Rule ("CAIR"), which is a cap-and-trade system that is currently in effect and was meant to reduce emissions of sulfur dioxide ("SO₂") and nitrogen oxides ("NO_x") that are associated with power plants and contributing to downwind states' nonattainment of the particulate matter 2.5 ("PM_{2.5}") and/or ozone National Ambient Air Quality Standards ("NAAQS"). On December 23, 2008, the United States

Court of Appeals for the D.C. Circuit in *North Carolina v. EPA* remanded CAIR to the EPA because, among other things, CAIR contains regionwide caps with no state-specific quantitative contribution determinations or emissions requirements and therefore violates the Clean Air Act. In its place, the EPA is now proposing to enact the proposed Transport Rule. Unlike CAIR, the proposed Transport Rule would affect 31 states instead of 28, increase the SO₂ and NO_x required emissions reductions and limit the trading of NO_x and SO₂ allowances.

In the proposed Transport Rule, the EPA provides its preferred approach and two alternative approaches to reducing the impacts on downwind states, for which it seeks public comments. The preferred approach sets emission budgets for each state, allocates allowances to power plants, and allows intrastate and limited interstate trading. In order to ensure that each state meets its budget, interstate trading would be limited by a provision that requires emissions from each state to meet that state's budget. The two alternative approaches provide less flexibility in meeting the emission requirements of the Transport Rule than the preferred approach. The first alternative approach would limit trading to intrastate only, while the second alternative would set allowable emission limits for each power plant in the affected states.

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In order to speed up the effect of the proposed Transport Rule, it will be implemented through Federal Implementation Plans, which is faster than waiting for the states to implement the rule through State Implementation Plans. Moreover, the initial phase of emissions reductions are required by 2012, with further reductions required by 2014. According to the EPA, the implementation of the Transport Rule, combined with other actions, will reduce emissions of SO₂ and NO_x in the affected areas by 71% and 52% below 2005 levels. The EPA indicates that the direct cost of compliance with the Transport Rule to electric generating units will be approximately \$2.8 billion annually.

The EPA will take public comment on the proposed Transport Rule for 60 days following its publication in the *Federal Register*. The EPA will also be holding three public hearings on the proposed Transport Rule, which locations and timing will be provided in the future. The EPA expects the proposed Transport Rule to be finalized by Summer 2011. CAIR will remain in place until the proposed Transport Rule is finalized. ■

The proposed Transport Rule is only one of the many new air regulations impacting businesses. Please contact us if you would like assistance with preparing comments on the Transport Rule or determining the potential impact of the proposed Transport Rule, or other new air regulations, on your business.