



CITE AS
25 Energy & Min. L. Inst. ch. 4 (2005)

Chapter 4

EPA’s Regulatory Version of the Clear Skies Act – Interstate Air Quality and Mercury Rules

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Synopsis

§ 4.01. Introduction	79
§ 4.02. Overview of EPA’s Rulemaking Package	80
§ 4.03. Interstate Air Quality Rule	81
[1] — EPA’s Authority	81
[2] — Findings of “Significant Contribution”	82
[3] — EPA’s Proposed Remedy	83
[a] — Statewide Emission Caps	84
[b] — Suggested Cap and Trade Program	85
[c] — Integration with Existing Programs	86
[4] — Summary and Conclusions	87
§ 4.04. Mercury Rules for EUSGUs	88
[1] — Statutory Framework for Regulating Mercury from Electric Utility Steam Generating Units	88
[a] — Electric Utility Steam Generating Units	88
[i] — Section 112(d) MACT Approach	89
[ii] — Alternative Proposal Under 112(n)	91
[iii] — Alternative Proposal Under Section 111	92
[iv] — Section 111 Authority	93
[v] — Proposed Section 111 Rules	95
[b] — Summary and Conclusions	99
§ 4.05. Summary and Conclusions	99

§ 4.01. Introduction.

Environmental Protection Agency (EPA) Administrator Michael Leavitt proclaimed the EPA’s recent package of rulemakings to regulate emissions from the electric utility industry as the most productive period of air quality improvement in our nation’s history. Despite the significant emissions reductions projected by the EPA’s proposed rulemakings, environmental groups, states, and other opponents of the rules decry the rules and are advocating for a different approach. Why all the controversy over a

rulemaking package so highly touted by the EPA? This chapter summarizes the recent rulemaking activity and explores some of the legal issues with and objections to EPA's proposed approach.

§ 4.02. Overview of EPA's Rulemaking Package.

The EPA published two separate proposed rules on January 30, 2004.¹ The first rule, entitled Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule)(IAQR), proposed to find that 29 states plus the District of Columbia contributed significantly to nonattainment of the national ambient air quality standards (NAAQS) for PM^{2.5} and/or 8-hour ozone. The Interstate Air Quality Rule proposed statewide emission caps on sulfur dioxide (SO₂) and nitrogen oxides (NO_x), precursors to PM^{2.5}, as the remedy.² In addition, the Interstate Air Quality Rule provided an approach for states to meet the emissions caps, suggesting that states adopt a cap and trade system for SO₂ and NO_x covering electric generating units (EGUs) in the affected states.³

The second rule is the more controversial proposal. On the same date, EPA published Proposed National Emission Standards for Hazardous Air Pollutants, and in the alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units ("Mercury Rule").⁴ The Mercury Rule consists of three alternative proposals to regulate emissions from electric utility steam generating units (EUSGUs): (1) proposed maximum achievable control technology (MACT) standards pursuant to section 112(d) of the Clean Air Act (CAA); (2) a proposed cap and trade system as standards of performance for both new and existing sources under section 111 of the Clean Air Act; and (3) a proposed cap and trade system based on the section 111 proposal but promulgated pursuant to section 112(n) of the Clean Air Act. While both

¹ 69 Fed. Reg. 4566 (Jan. 30, 2004).

² *Id.*

³ Note that the Interstate Air Quality Rule uses the term EGUs while the Mercury Rule uses the term EUSGUs. For purposes of this paper, the terms are synonymous and generally encompass units with greater than 25 MW of electric output.

⁴ 69 Fed. Reg. at 4652.