

Proposed Withdrawal of the Determination that Compliance with Regional Emissions Trading Programs meets Clean Air Act Requirements to Control Emissions for the 1997 Ozone and Fine Particle Air Quality Standards

FACT SHEET

ACTION

- On May 29, 2014 the U.S. Environmental Protection Agency (EPA) proposed a rule that would revise how emission controls for power plants should be treated in state plans to attain the 1997 ozone and fine particle air quality standards. These plans require power plants in areas not meeting the 1997 standards to comply with emissions control requirements known as:
 - reasonably available control technology (RACT) and
 - reasonably available control measures (RACM)
- The EPA has reevaluated whether compliance with regional cap-and-trade programs could automatically constitute RACT or RACM for nitrogen oxides (NO_x) and sulfur dioxide (SO₂) for electric generating units (EGUs). According to the Clean Air Act, sources “in the area” must at a minimum adopt RACT controls for that area. The EPA has determined that it is no longer appropriate for a source to satisfy this requirement by merely participating in a regional cap-and-trade program such as the Call for Nitrogen Oxides State Implementation Plans (NO_x SIP Call) or the Clean Air Interstate Rule (CAIR).
- In addition, the EPA has determined that its Supplemental Technical Analysis for the reconsideration of the 2005 Phase 2 Ozone Implementation Rule does not adequately demonstrate that participation in the CAIR would achieve equal or greater annual emissions reductions from EGUs than source-by-source RACT for certain ozone nonattainment areas.
- States retain the option of conducting a technical analysis for the specific nonattainment area considering the emissions controls required by a regional cap-and-trade program, and demonstrating that compliance by EGUs participating in the cap-and-trade program results in actual emission reductions in the particular nonattainment area that are equal to or greater than the emission reductions that would result if RACT or RACM were applied to an individual EGU source or the EGU source category within the nonattainment area.

BACKGROUND

- The EPA refers to the requirement for “reasonably available control measures” as RACM, and refers to “reasonably available control technology” (RACT) as a subset of RACM. RACM and RACT measures apply broadly to a range of source categories located in designated nonattainment areas, including large stationary sources such as EGUs.
- The RACT requirements are specifically intended to impose emission controls for purposes of attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) within a specific local nonattainment area.

- In October 1998 and in May 2005, the EPA published the “NO_x SIP Call” and the CAIR, respectively. Both rules were intended and designed to eliminate interstate transport of pollutants that have impacts on attainment and maintenance of the ozone and PM_{2.5} NAAQS in downwind areas. Thus, they provide significant emissions reductions that assist downwind areas with attainment or maintenance of the NAAQS, and allow downwind states to develop SIPs in reliance on regional emissions reductions.
- In order to help states address the specific Clean Air Act requirement for SIPs for nonattainment areas for the 1997 8-hour ozone NAAQS and 1997 PM_{2.5} NAAQS, the EPA promulgated regulations and guidance applicable to each NAAQS in separate implementation rules.
- Within those actions, the EPA made presumptions and determinations that compliance by EGUs with the requirements of the NO_x SIP Call and/or the CAIR could also be construed as compliance with the RACT or RACM requirements for local nonattainment SIPs for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS .
- Several petitions were filed in 2006 and 2008 objecting to the EPA’s determination that, in certain circumstances, compliance with the requirements of the CAIR would constitute RACT for NO_x emissions for EGUs located in states within the CAIR region.
- In 2007, the EPA received a petition that raised an objection to the PM_{2.5} Implementation Rule, arguing that under the Clean Air Act, compliance with a regional cap-and-trade program, such as the CAIR, should not be presumed to satisfy RACT/RACM requirements for individual EGU sources located in nonattainment areas.
- In 2008, United States Court of Appeals for the District of Columbia Circuit (*NRDC v. EPA*) remanded the provision of the Phase 2 Ozone Implementation Rule determining that the NO_x SIP Call satisfies NO_x RACT for EGUs because the EPA had failed to show that compliance with the NO_x SIP Call would achieve at least RACT-level reductions in each nonattainment area.
- The issue as to whether the CAIR satisfies NO_x RACT for EGUs was not addressed by the court in the *NRDC v. EPA* case. However, following vacatur of the rule that was to replace the CAIR (i.e., the Cross State Air Pollution Rule), the EPA decided that it would be appropriate to reconsider this determination also in light of the earlier decision in *NRDC v. EPA*.
- On April 25, 2011, the EPA granted the petition for reconsideration of the presumption that compliance with the CAIR could satisfy RACT/RACM requirements for the 1997 PM_{2.5} NAAQS. Today’s action reflects this reconsideration.

HOW TO COMMENT

- EPA will accept comment on the proposal for 30 days after publication in the *Federal Register*. Comments, identified by Docket ID No EPA-HQ-OAR-2009-0897, may be submitted by one of the following methods:
 - *www.regulations.gov*: Follow the on-line instructions for submitting comments.
 - E-mail: Comments may be sent by electronic mail (e-mail) to a-and-r-docket@epa.gov.
 - Fax: Fax your comments to: 202-566-1741.

- Mail: Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery or Courier: Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

FOR MORE INFORMATION

- To download the action from the EPA's Web site, please visit:
<http://www.epa.gov/airquality/ozonepollution/actions.html>.
- Today's proposed rule and other background information are also available either electronically at <http://www.regulations.gov>, the EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
 - The Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
 - Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
- For more information, contact Kristin Riha, U.S. EPA, Mailcode C539-01, Research Triangle Park, NC 27711. Telephone: (919) 541-2031; email: riha.kristin@epa.gov.