

## MIDWEST OZONE GROUP STATEMENT REGARDING CSAPR UPDATE RULE

The CSAPR Update Rule is currently under review in all three branches of government. In addition to appeals of the Rule pending in court<sup>1</sup> the Rule is the subject of petitions for administrative review pending before USEPA. The Midwest Ozone Group (MOG) has conducted extensive technical and legal review of the CSAPR Update Rule and has found various issues that are of great concern to its members and affiliates. Consequently, MOG is among the parties that have petitioned both the court and USEPA<sup>2</sup> seeking review of the CSAPR Update. This Rule is a matter of particular concern because of the near-term direct impact of the Rule upon its utility and generation members, and also because of the precedent that will be set for subsequent transport rules.

**Objections to the CSAPR Update Rule:** Among MOG's most significant objections to the Rule are:

- EPA's failure to adequately acknowledge current, actual monitoring data in determining whether there are, or will be, future air quality problems to be addressed by the Rule.
- EPA's development of a regulation that relies solely on EGU reductions which likely leads to prohibited over-control of that single source category.
- EPA's reliance upon computer modeling results that fail to recognize the emission reductions and related air quality improvements resulting from legally mandated regulatory requirements already in existence. These omitted programs include, among others: a major portion of Pennsylvania RACT II, Connecticut RACT, High Energy Demand Day (HEDD) controls, Tier 3 gasoline requirements, and Boiler MACT implementation. Accounting for these control programs is critical to ensuring that upwind states are not unfairly penalized in order to make-up for another state's failure to timely implement Clean Air Act requirements.
- EPA's continued utilization of computer models that consistently over-predict ambient ozone concentrations at locations near land/water boundaries which are coincident with all remaining 2008 ozone NAAQS nonattainment areas in the Eastern U.S.
- EPA's failure to consider the overwhelming role of international emissions which alone accounts for all remaining nonattainment in the nation.
- Notwithstanding the Supreme Court's prohibition against over-control of sources in upwind states, the rule continues to impose disproportionate emission reductions (directly through reducing allowance allocations and indirectly by inequitably reducing the value of banked allowances) that achieve little or no air quality benefits and impose undue economic impact on the generation of electricity.

**Proposed Path Forward – Action Plan:** MOG is very appreciative of the interest and support for its concerns with the CSAPR Update Rule shown, to date, by the Senate (and in particular Senator Toomey's office). Because MOG's considerable concerns with the technical and legal flaws of CSAPR Update have been articulated in pending petitions for administrative reconsideration before USEPA, MOG would propose that the most efficient path for relief would be prompt administrative action following a meeting with the new officials at the USEPA, attended by key members of Congress. At such a meeting, MOG could articulate its assessment of the CSAPR Update Rule and identify specific technical and legal flaws in the Rule that must be addressed. We believe this approach will preserve the benefits of the Rule while providing the opportunity for swift administrative action to correct its well-documented flaws.

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<sup>1</sup> Wisconsin et al. v. U.S. Environmental Protection Agency et al., DC Circuit Case Number 16-1406, et al.

<sup>2</sup><http://www.midwestozonegroup.com/files/MOGPetitionforAdministrativeReviewofCSAPRUpdateRuleDecember232016.pdf>.