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Legal Sidebar

Cooperative Federalism and the Clean Air Act: EPA's Good Neighbor Interstate Air Pollution Rule

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The Clean Air Act (CAA) has been described as a model of *cooperative federalism*, whereby states share authority with the federal government by regulating within a federally established legal framework. In particular, under Title I of the CAA, the U.S. Environmental Protection Agency (EPA) sets nationwide standards related to ambient air quality. States regulate within that framework, such as by preparing statewide plans and issuing permits for sources of emissions, in order to achieve federally prescribed policy goals. While the statute imposes consequences—including the backstop of federal regulation—on states that fail to fulfill their obligations, states retain considerable discretion to adopt locally appropriate approaches or even to resist federal policy.

This Legal Sidebar focuses on the CAA's framework for implementing national ambient air quality standards through state implementation plans. This framework has received considerable recent attention in the context of efforts to address interstate ozone pollution consistent with the CAA's "Good Neighbor" provision, which requires upwind states to ensure that their emissions do not interfere with the ability of downwind states to meet or maintain federal air quality standards. In March 2025, EPA announced that it intended to reconsider actions taken by the Biden Administration to implement the Good Neighbor provision. While EPA has expressed a "commitment to advance cooperative federalism" and "give power back to states to make their own decisions," it is not yet clear how the proposed changes might impact the federal-state balance with respect to air quality regulation.

Cooperative Federalism and Environmental Law

Federalism refers to the division and sharing of power between the national and state governments. The boundaries between national and state authority are derived from various constitutional principles, including Article VI's Supremacy Clause, which provides that federal law supersedes conflicting state law, and the Tenth Amendment, which provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Congress may alter the balance of federal and state authority by expressly or impliedly preempting state law.

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Federalism can take many forms. For example, under a *dual federalism* model, federal and state governments each regulate in their own distinct spheres of authority without coordinating with the other. In a *preemptive federalism* model, a unitary federal regime preempts state regulatory authority.

Cooperative federalism, by contrast, provides for shared state and federal regulatory authority, typically by empowering states to be the primary implementers of policies established at the national level. A cooperative federalism system might provide for conditional grants that are available to states that implement desired federal policies or conditional preemption if states do not adequately implement federal programs. The precise relationship and balance of power between federal and state authorities in cooperative federalism systems is the subject of debate. Some scholars have analogized states under such systems to federal agencies in that they function as agents of Congress to administer or implement federal laws. Others have emphasized the role of state law and highlighted the joint and interdependent administration of cooperative programs. Some have also highlighted the ways in which states might resist federal authority, in what one article referred to as "uncooperative federalism."

Proponents have identified numerous reasons why Congress may wish to adopt a cooperative federalism scheme as opposed to directly regulating in support of national policies, on one hand, or leaving all regulation to the states, on the other. For example, the federal government may lack the political or fiscal capability to implement a policy or regulate on a state-by-state level. As state governments have increased their capacity for public administration, cooperative federalism models allow them to assume responsibility commensurate with that capacity. Delegation of regulatory authority as to politically sensitive issues may also allow Congress to shift responsibility for controversial laws to the states. Cooperative federalism can preserve state sovereignty when the federal government regulates in an area that is traditionally the domain of state or local government or where accountability to local interests is particularly important, thus potentially allowing greater local participation in the regulatory process. Finally, cooperative federalism both allows for a level of national uniformity (and guards against a "race to the bottom" by the states in an effort to boost economic development) and frees states to develop regulations that are tailored to address local needs.

Critics of cooperative federalism argue that it undermines accountability and public engagement and, in the context of environmental law, discourages the adoption of more protective or more effective regulations. Some emphasize the coercive nature of the imposition of federal policies on the states as well as the "one-way" character of the cooperation involved in implementing such policies. By contrast, where a federal scheme provides more leeway for state-by-state implementation, regulated entities operating in more than one state may find themselves subject to different state-level standards across jurisdictions. Additionally, where federal requirements are not accompanied by sufficient funds to cover the cost of implementation, states with differing budgets may also differ in their ability to carry out or enforce those requirements.

Cooperative federalism is particularly prevalent in environmental law. Traditionally, regulation of pollution and environmental protection was left to state and local governments as part of their traditional police powers. The passage of several major environmental statutes beginning in the late 1960s and the creation of EPA established a more significant role for the federal government while preserving some state regulatory authority. To effectuate this federal role, EPA has issued numerous internal memoranda articulating its goals with respect to its oversight of federal environmental programs administered by the states, including a 1984 memorandum issued by Administrator William Ruckelshaus, 2018 guidance from Administrator Andrew Wheeler intended to complement the 1984 memorandum, and a 2023 memorandum from Administrator Michael Regan rescinding the 2018 guidance and adding a discussion of states' compliance with federal civil rights laws. The memoranda address topics including federal deference to states and Tribes, communication around issues of policy development, EPA review of state programs, and the exercise of shared enforcement authority.

Federal and State Roles in the CAA

Prior to 1970, the federal government's role in regulating air pollution was largely limited to conducting research and addressing interstate pollution under the Air Pollution Control Act of 1955, the Clean Air Act of 1963, and the Air Quality Act of 1967. During this period, some local and state legislatures adopted air quality standards and air pollution control plans as an exercise of their police powers. The Clean Air Act of 1970 significantly expanded the federal government's role, directing the newly created EPA to develop a comprehensive regulatory scheme to address emissions from stationary and mobile sources.

In describing the CAA as "an experiment in cooperative federalism," courts have juxtaposed the "overarching federal role" in setting standards with the states' role in implementation. The CAA envisions a shared federal-state role in implementing numerous programs, including regulation of certain existing stationary sources, protection of visibility in national parks and wilderness areas, and certain emissions standards for motor vehicles. Additionally, as amended in 1970 and thereafter, the CAA establishes a framework whereby EPA is responsible for establishing various nationwide standards, and—as specified in CAA Sections 107(a) and 101(a)(3)—states bear primary responsibility for implementing those standards, including by regulating on a source-by-source basis. The balance of federal and state authority varies with each program. This Sidebar focuses on the federal-state relationship established in Title I of the CAA.

State Implementation Plans

A key element of the CAA's cooperative federalism model is the state implementation plan (SIP) framework. Under CAA Section 109, EPA sets and periodically revises national ambient air quality standards (NAAQS) for several common and widespread pollutants. Under Section 110, states then have three years after the issuance of a new or revised NAAQS to adopt SIPs to implement, maintain, and enforce that standard. A SIP must specify what mix of federal, state, and local air pollution control measures the state will implement to reach or maintain the NAAQS. The text of Section 110 and EPA's regulations specify numerous elements states must include in their SIPs, such as enforceable emissions limitations, monitoring, enforcement, and permitting provisions. States may also impose more stringent standards than those set at the federal level.

EPA works collaboratively with states during the SIP development process. States must submit their SIPs to EPA for approval. If a SIP meets all applicable CAA requirements, under Section 110(k)(3), the EPA Administrator must approve it. If EPA determines that a SIP does not meet applicable requirements, it must disapprove the SIP, either in full or in part.

Consequences for Noncompliance: Automatic Sanctions and Federal Regulation

The CAA imposes consequences on states that fail to comply with the statute's SIP requirements. Under Section 179(a), EPA's disapproval of a SIP or finding that a state either has failed to submit an adequate SIP or is failing to implement an approved SIP triggers a "sanctions clock," or a timeline by which EPA must impose sanctions if a state does not correct the deficiency. Under Section 179 and EPA's regulations, if a state has not resolved the problem within 18 months, EPA must impose "offset sanctions," which apply more stringent emissions-reduction requirements to any new or modified sources for which a CAA permit is required. While emissions from those sources must normally be offset by reductions in emissions from other sources at a ration ranging from 1:1 to 1.5:1 in nonattainment areas (i.e., areas that have not attained NAAQS for one or more pollutants), the offset sanction imposes a 2:1 emissions reduction ratio.

Second, if the problem remains within six months after offset sanctions are imposed, EPA must impose "highway sanctions" to prohibit the approval of federal funds for any transportation projects or grants

within nonattainment areas, with an exception for certain safety-related projects and several other specified categories of projects and grants. Additionally, if EPA finds that a state is not adequately implementing its SIP in a nonattainment area, the state may not issue CAA permits for the construction, operation, or modification of major sources in that area. Under Section 110(m), however, where only certain subdivisions of a state are principally responsible for the deficiency, EPA may not apply the sanctions on a statewide basis.

The sanctions are automatic once the clock has run, though EPA has the discretion to impose them sooner. EPA also has some discretion to apply sanctions statewide or only to a more limited area. Often, the threat of sanctions is a sufficient incentive for states to come into compliance with applicable SIP requirements, in which case EPA may determine that the deficiency has been corrected and defer the imposition of sanctions pending final agency action on the corrective or revised SIP.

Section 110(c) also provides a backstop of federal regulation by requiring that EPA issue a federal implementation plan (FIP) within two years of disapproving a SIP or finding that a state has failed to submit an adequate SIP if the state has not corrected the deficiency. FIPs are issued through notice and comment rulemaking. Once final, they are subject to judicial review and are enforceable by EPA and through citizen suits.

FIP development is a lengthy, resource-intensive process that EPA has at times resisted. Scholars have observed that EPA's use of FIPs has evolved over time. EPA initially expressed reluctance to impose federal regulations, and eventually began to use more modest FIPs to target narrower issues with or fill gaps in states' proposed control measures. More recently, EPA has affirmatively developed FIPs to regulate sources that states could not and FIPs that assumed a synergistic relationship with state plans. EPA has also prepared FIPs earlier in the two-year period, with an increasing emphasis on regulatory uniformity and EPA's technical expertise. At the same time, states have found ways to push back against federal oversight. This "uncooperative federalism" has taken various forms, including refusal to submit adequate SIPs in light of short deadlines in the 1970 CAA amendments and lawsuits challenging EPA's disapproval of SIPs and issuance of FIPs (such as in the implementation of the 2015 ozone NAAQS discussed below). In some instances, though, states have collaborated with EPA in the development of FIPs.

While commentators have occasionally questioned the lawfulness of the CAA's sanction scheme, courts appear not to have shared those concerns. The Supreme Court has not addressed the constitutionality of the SIP, FIP, and sanctions framework, but the Court recognized in 1992 that, even if Congress could not "commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program," Congress could "offer States the choice of regulating [private] activity according to federal standards or [have] state law pre-empted by federal regulation," including in numerous environmental statutes.

Additionally, while the U.S. Court of Appeals for the D.C. Circuit held in 1975 that EPA could not compel states to enact and submit regulations after finding their SIPs to be inadequate, in 2015, the D.C. Circuit upheld the constitutionality of the CAA's provision for highway fund sanctions for noncompliant states. In *Mississippi Commission on Environmental Quality v. EPA*, state and local governments argued that the CAA unlawfully permitted EPA to coerce state regulators to enforce a federal program in violation of the "anti-commandeering" doctrine. The court held that the CAA did not compel states to implement a federal regulatory program but rather authorized EPA to promulgate and administer a federal plan of its own if a state failed to submit an adequate SIP. The court reasoned that the CAA's scheme, under which the full regulatory burden is borne by the federal government in the event a state fails to submit an adequate SIP, was consistent with other previously upheld federal programs that provided for direct federal administration if a state chose not to administer a federal program. The court further concluded that the highway sanction provision was not unlawfully coercive, in contrast to a provision of the Affordable Care Act that had been struck down by the Supreme Court in *National Federation of Independent Business v.*

Sebelius, because noncompliant states risked losing only some federal funding for existing programs and because the sanctions would affect a relatively small percentage of a state's budget.

Interstate Air Pollution and the Good Neighbor Plan

The CAA requires states to include measures in their SIPs to address cross-state air pollution, which is emitted upwind and then blown downwind to another location. In many states, air quality is so affected by emissions from other states that it is difficult or impossible for the downwind state to attain federal standards. Section 110(a)(2)(D), the "Good Neighbor" provision, requires that a state prohibit stationary sources within its borders from emitting air pollutants in amounts that will "contribute significantly" to NAAQS nonattainment or "interfere with maintenance" of a NAAQS in any other state. In recent years, EPA's exercise of federal authority with respect to interstate ozone pollution has been highly contested, particularly by the upwind states that have been subject to federal regulation.

Since the 1990s, EPA and states have implemented Good Neighbor requirements in compliance with each revised federal ozone standard. In 2015, EPA again revised the ozone NAAQS. States then had until 2018 to submit revised SIPs that complied with the new, more stringent standards. EPA took two actions in 2023 to address states' Good Neighbor obligations under the 2015 NAAQS. First, in February 2023, EPA disapproved 21 states' submissions. Each of those states proposed to take no action to revise their SIPs, having concluded that existing controls were adequate or that they did not contribute significantly to nonattainment or interfere with maintenance of federal ozone standards in other states. Second, on March 15, 2023, EPA issued a FIP—the *Good Neighbor Plan*—covering those 21 states, as well as two additional states that had not submitted any revisions to their plans. The Good Neighbor Plan imposed requirements on fossil-fuel-fired power plants in 22 states and industry-specific emissions requirements for categories of industrial sources in 20 states.

Various parties filed lawsuits challenging the SIP disapprovals, the Good Neighbor Plan, or both. Lawsuits challenging the SIP disapprovals have proceeded in the U.S. Courts of Appeals for the Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits. All seven of those courts stayed EPA's SIP disapprovals for a total of 12 states, after which EPA administratively stayed the Good Neighbor Plan as to those states. To date, two courts have reached the merits of the SIP disapprovals: The Fifth Circuit upheld the disapproval of Louisiana's and Texas's SIPs but vacated EPA's disapproval of Mississippi's SIP, and the Sixth Circuit vacated the disapproval of Kentucky's SIP. Additionally, the Supreme Court has agreed to review whether, under the CAA's venue provision, challenges to EPA's SIP disapprovals must be brought in the D.C. Circuit or in the relevant regional circuits.

Meanwhile, suits challenging the Good Neighbor Plan proceeded in the D.C. Circuit. On September 25, 2023, a divided panel of the court denied the motions to stay the litigation without analysis. The court later unanimously denied an additional stay motion by another party. After the D.C. Circuit denied their stay motions, the states, natural gas pipeline companies, various industry associations, and a steel producer sought an emergency stay from the Supreme Court. On June 27, 2024, the Court issued a 5-4 decision granting the stay applications. Focusing on the applicants' likelihood of success on the merits, the majority stated that the Good Neighbor Plan was likely arbitrary and capricious. Specifically, the majority held that EPA failed to respond to concerns that the agency's calculations as to which emissions contributed significantly to downwind nonattainment—and therefore the specific requirements it imposed in the Good Neighbor Plan—might change if fewer than 23 states (or a different group of states) were covered by the rule.

Following the Supreme Court's ruling, EPA issued an interim final rule in November 2024 that administratively stayed the Good Neighbor Plan as to all remaining covered states and modified other regulations to ensure compliance with the earlier 2008 ozone NAAQS. Additionally, the D.C. Circuit remanded the record to EPA to permit the agency to respond to the comments the Supreme Court held it

had not sufficiently considered. In December 2024, EPA issued a supplemental response to comments addressing whether the agency's conclusions would change if the Good Neighbor Plan covered fewer or a different group of states than the 23 that were initially included.

With the transition to the second Trump Administration, the future of the Good Neighbor Plan is uncertain. In December 2024, EPA withdrew from pre-publication review a rule that would have finalized an earlier proposal to expand the coverage of the Good Neighbor Plan to five additional states. On March 12, 2025, EPA announced that it intends to review and potentially revise the Good Neighbor Plan as part of the agency's "commitment to advance cooperative federalism." At EPA's request, the D.C. Circuit placed the Good Neighbor Plan litigation in abeyance on April 14, 2025. Until EPA or the courts take further action, states' Good Neighbor obligations are governed by the November 2024 interim final rule.

Considerations for Congress

EPA's regulation of interstate air pollution has been a frequent topic of interest to Congress. The Senate Committee on Environment and Public Works held a hearing on the Good Neighbor Plan, and Members have issued statements supporting or opposing EPA's approach. A bicameral group of Members also filed an amicus brief supporting challenges to the Good Neighbor Plan, arguing in part that the application of a single FIP across 23 states upends the CAA's principles of cooperative federalism and the role of the states under the statute. In the 118th Congress, some Members introduced joint resolutions of disapproval of the Good Neighbor Plan under the Congressional Review Act in both the House and the Senate.

To address concerns regarding the scope of the interstate transport problem or the impact of new regulations on industry, Congress could provide additional direction to EPA, such as how to identify which states significantly contribute to downwind air pollution or how to weigh the cost-effectiveness of emissions reductions. Such legislation could be specific to the Good Neighbor provision or could more broadly address additional sources or types of pollution. For example, other CAA regulations issued or proposed during the Biden Administration address both emissions of additional pollutants from sources covered by the Good Neighbor Plan and nitrogen oxides (NO_X) emissions from sources not covered under the plan. These regulations likely would not be affected by the current challenges to the Good Neighbor Plan. EPA initially issued the Good Neighbor Plan as part of a larger effort to regulate emissions from power plants, and the agency has since announced its intent to reconsider various CAA regulations. Accordingly, Congress may wish to direct EPA to take further action with respect to regulations other than the Good Neighbor Plan to affect EPA's overall policy strategy for power plants or other sources.

More broadly, Congress has numerous options for adjusting the CAA's cooperative federalism scheme, whether in the context of the SIP/FIP framework, with respect to specific SIP disapprovals or FIPs, or for other CAA programs not addressed here. For example, Congress could amend the CAA to impose more or fewer specific requirements that states must meet in their SIPs. Congress could also alter the scope of EPA's review of SIPs to provide more or less discretion to the agency to disapprove them. Additionally, Congress could conduct oversight on the relationship between EPA and states with delegated authority—something it has done in the past.

Congress may also adjust the funding appropriated to EPA to assist states in implementing federal laws. On May 2, 2025, the White House released President Trump's FY2026 discretionary budget request, which included a proposal to reduce EPA's budget in part by eliminating certain grant programs for states. The proposal stated that the reduction would "promote federalism by allowing States to achieve primary enforcement authority for these programs while also encouraging States to innovate and find more efficient ways to meet their responsibilities under delegated authority."

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