



## CSAPR Remand Uncomfortable on Many Levels

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Last week, the US Court of Appeals for the DC Circuit sent the [Cross-State Air Pollution Rule \(CSAPR\)](#) back to the Environmental Protection Agency for revision. The court [found](#) that the rule, which would limit emissions from power plants in Texas and Eastern states, was unconstitutional because it went beyond EPA's statutory mandate.

The [ruling](#) is a setback for the Obama Administration on many levels. First, it reinforces charges that EPA has been exceeding its statutory authority. The agency has been a lightning rod for critics due to its aggressive regulatory approach to emissions from vehicles, electric utilities, energy and manufacturing sources, industrial boilers, and greenhouse gases, as well as its [zealous approach to enforcement](#).

It's also a setback because the EPA will have to invest additional time and resources to fix the regulation while continuing to enforce the Bush Administration [Clean Air Interstate Rule \(CAIR\)](#), which CSAPR would have replaced. Regulations issued under Clean Air Act often face judicial challenge, with courts intervening to interpret the statute's confusing language, and this set of rules is no exception. The same court [struck down](#) the CAIR rule in 2008, but then apparently had second thoughts, and [subsequently ordered](#) EPA to continue enforcing the Bush rule because it was better than what came before. And now it has ordered EPA to continue enforcing the Bush rule because it was better than what came after.

Perhaps the most uncomfortable aspect of the vacature, however, is that it undermines the Administration's oft-repeated claims that its [smarter regulations](#) have generated much higher net benefits than have previous administrations. In its [fact sheet](#) announcing CSAPR last December, EPA claimed benefits of between \$120 billion to \$280 billion per year. The Office of Management and Budget (OMB) was a little more modest in its claims, [reporting](#) net benefits (benefits minus costs) of \$39.4 billion per year. Still, this is more than 40 percent of the \$90 billion in net benefits the Administration claims for *all* its regulations issued since January 2009.

Each year, OMB reports to Congress on the benefits and costs of the most significant regulations issued that year and over the prior decade. The graph below presents the upper bound benefits reflected in OMB's annual reports to Congress by calendar year. (Note that benefits are not net of the costs of the regulations issued in these years.) The final bar shows estimated upper bound regulatory benefits both before and after the remand of the CSAPR rule.

For the most part, OMB's annual reports repeat agencies' estimates of the impact of their rules, and as my analysis in the current issue of the journal [Business Economics](#) shows, these benefit estimates should be viewed with considerable skepticism. But even taking them at face value, the Obama Administration's claims of regulatory genius compared to its predecessors are on shaky ground, especially now that the court has found one of its signature rules to be illegal.

