



Carbon Pollution Emission Guidelines for Existing Sources: Assisting States in Navigating, Analyzing, and Implementing the EPA Rule

Rishi Garg, Esq.

General Counsel & Principal Researcher

National Regulatory Research Institute

rgarg@nrri.org

July 2014



How We Got Here

Massachusetts v. EPA (2007)

Because greenhouse gases fit well within the Clean Air Act's capacious definition of “air pollutant,” we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.

If EPA makes a finding of endangerment, the Clean Air Act requires the Agency to regulate emissions of the deleterious pollutant from new motor vehicles.

Endangerment Findings for GHGs, CAA §202 (Dec. 2009)

[E]levated concentrations of greenhouse gases in the atmosphere...endanger the public health and...welfare

[E]missions of...greenhouse gases from new motor vehicles contribute to that air pollution

How We Got Here

President's Climate Action Plan (2013)

- Reduce GHG emissions 17% below 2005 levels by 2020
- Prepare US for impacts of climate change
- Lead international efforts to combat global climate change

Presidential Memorandum to US EPA (2013)

- Directed the EPA to complete carbon pollution standards, regulations or guidelines, as appropriate, for modified, reconstructed and existing power plants by June 1, 2015, and in doing so to build on state leadership in moving toward a cleaner power sector.

New:

Proposed January 8 2014

Modified & Reconstructed:

Proposed June 2014; Final June 2015

Existing:

Proposed June 2014; Final June 2015

EPA Proposal

- Proposal sets state-specific CO₂ goals that each state is **required to meet**, it does not prescribe how a state should meet its goal.
- Interim goal compliance period applies over a 2020-2029 phase-in period
- Balance between rigor/consistency with respect to emission reductions and flexibility with respect to range of measures allowable.
- EPA determined BSER and calculated amount of emission reduction achievable through applying BSER
- State identifies standards of performance that reflect that amount of emission reduction. (fn 7)



EPA Proposal

Best System of Emissions Reduction (BSER)

Under CAA §111(d), state plans must establish *standards of performance* that reflect the degree of emission limitation achievable through the application of the “best system of emission reduction” that, taking into account the cost of achieving such reduction and any non-air quality health and environmental impacts and energy requirements, the Administrator determines has been adequately demonstrated.

Building Blocks

- BSER based upon four “Building Blocks” which Administrator has determined have all been “adequately demonstrated”:
 - (1) Reducing carbon intensity of generation at individual affected EGUs through heat rate improvements;
 - (2) Reducing emissions from affected EGUs by substituting generation from less carbon-intensive affected EGUs (natural gas combined cycle under construction);
 - (3) Reducing emissions from affected EGUs by substituting generation from expanded low- or zero-carbon generation (Nukes and RE);
 - (4) Reducing emissions from affected EGUs from the use of demand-side energy efficiency



EPA Proposal

Timelines

- Finalization of Rule: June 1, 2015
- Submittal of State Plans: June 30, 2016
- Single-State Plan Extension: June 30, 2017
- Multi-State Plan Extension: June 30, 2018

State Plan design resources:

www2.epa.gov/carbonpollutionstandardstoolbox

Categories of Topics

- I. Is the Proposed Rule Equitable?
 - A. Are the state-specific rate-based goals equitable?
 - B. What are the state's relative burdens and benefits?
 - C. Does the 2012 base year penalize early-mover states?
 - D. Do states with aggressive RPS goals face additional burdens?

- II. Interplay of Sources under Climate Action Plan proposed rules
 - A. What are the interplays/distinctions between sources that fall under the existing, new and the modified and reconstructed source rules?
 - B. How will the treatment of natural gas under 111(b) impact its treatment under 111(d)?

- III. Building Block Concerns
 - A. Can Building Block 2 impact dispatch regionally?
 - B. How did the EPA develop its state-specific building block calculations?
 - C. Is building block 4 too aggressive and does it cause diminishing returns?
 - D. Does building block 2 raise takings and due process concerns for coal?

Categories of Topics

IV. Coordination and Credits

- A. How should states coordinate implementation plans, both interstate and intrastate?
- B. How can states structure an implementation plan using a mass-based approach and how are reductions credited?
- C. Will states be able to take credit for large plant closures before 2012?
- D. How does a state that sits in multiple RTOs decide upon a region?
- E. To what extent are alternative resources – CHP, DR, biomass and hydro - credited?
- F. Can reductions to transmission line losses be credited?
- G. If state A signs a PPA with state B , which state receives the emission reduction credit and how can states reach agreements on these issues?
- H. How can a state without mandated renewable energy or EE credit non-mandated resources in its compliance plan?

Categories of Topics

V. Legal Concerns and Interactions with Other Laws

- A. Will increased dispatch of natural gas cause the source to violate the 1-hour NO_x rule and will EPA modify or rescind it?
- B. Is the “outside-the-fence line” approach within the limits of what the EPA can do under the CAA?
- C. If the new source rule gets stricken, does the existing source rule get placed on hold?
- D. Is a carbon trading system permissible under §111 of the CAA?
- E. How is CPP impacted by recent Supreme Court rulings?

VI. Organized Markets and Limits of State Power

- A. What will the impact of CPP be on the structure of the organized markets?
- B. How can a state enforce building block 2 if it does not control dispatch?

VII. Other Questions

- A. Should the final rule contain a reliability safety valve (a la MATS)?
- B. What standard will EPA apply and enforce if it rejects a state compliance plan?
- C. Is the Clean Power Plan part of an international plan and if not, is it worthwhile?



Paper Proposals and Timelines

September 2014: Intra - and Inter-state Coordination: Best Practice Approaches to Coordinate Compliance with the Clean Power Plan

- (1) Summary of rule
- (2) Flowchart of comments requested by EPA
- (3) Survey of state dockets/coordination practices
- (4) Issues raising intra-state/inter-agency agreements
- (5) Issues raising interstate agreements

Future Papers:

November 2014: Interplays Between the EPA's New Source, Existing Source and Modified & Reconstructed Source Proposals

February, 2015: A Legal Analysis of the Clean Power Plan

May 2015: An Analysis of Approaches to Compliance with the Clean Power Plan

Questions?

Comment deadline: October 16, 2014 (120 days)

US EPA Docket ID: EPA-HQ-OAR-2013-0602

www.regulations.gov

Public Hearings

Washington DC week of July 28

July 29, 2014 – Atlanta, Denver

July 31, 2014 – Pittsburgh

Rishi Garg

rgarg@nrri.org

301-588-385