

CLIENT ALERT

EPA Proposes Rule to Regulate Carbon Emissions From Existing Fossil Fuel-Fired Power Plants

June 2, 2014

Today, the U.S. Environmental Protection Agency (EPA) issued a much-anticipated proposed rule setting emission standards for carbon dioxide emissions from existing fossil fuel-fired power plants that provide the vast majority of the nation's electricity. The proposed rule sets a goal of cutting carbon emissions from power plants by 30 percent below 2005 levels by 2030. EPA estimates annual incremental compliance costs by 2030 to be as high as \$9.8 billion.

The rule's ultimate impact – if enacted – would be felt well beyond the power sector. Relying on a little known and seldom used section of the Clean Air Act – Section 111(d), 42 U.S.C. § 7411(d) – to exact substantial emissions reductions from the electricity generation industry, EPA has set a precedent for applying similar rules to additional carbon-emitting sectors, such as oil and gas, steel, cement, and other manufacturing sources.

EPA has set a public comment period of 120 days from the date the rule is published in the Federal Register, which likely will occur in the next few weeks. EPA plans to finalize the proposed rule by June 2015.

Key Aspects of Today's Rulemaking

Under EPA's proposed rule, each state must submit an implementation plan that achieves its state-specific emission reductions set forth in the proposed rule. EPA establishes both an interim compliance period from 2020 through 2029, as well as a final performance level that must be met by 2030 and maintained thereafter.

EPA proposes to allow states to achieve their emissions targets through an array of compliance options that include initiatives both "inside" and "outside-the-fence line" – *i.e.*, initiatives beyond those directly affecting the power plant itself. EPA identifies four main "building blocks" or categories of compliance options:

1. Cutting carbon intensity of generation at individual power plants through heat rate improvements.
2. Reducing emissions from the most carbon-intensive power plants by substituting electricity from less carbon-intensive plants (*i.e.*, re-dispatch), such as natural gas combined cycle units under construction.
3. Substituting low- and zero-carbon generation for generation from affected fossil fuel-fired power plants.
4. Reducing emissions through demand-side energy efficiency programs.

States would be obligated to develop plans for achieving their emission targets using these "building blocks" or other compliance mechanisms. A compliance plan could, for instance, include renewable portfolio standards, transmission efficiency improvements, the retirement of certain high-emitting facilities, and market-based trading programs – *e.g.*, "cap-and-trade."

EPA's guidelines would provide states with some discretion in deciding when to achieve reductions. States may vary the timing and magnitude of reductions to address state-specific challenges faced by utilities and the local power grid. Moreover, states may build on current initiatives, such as investments being made to upgrade aging infrastructure and existing demand-side efficiency programs. EPA encourages states to collaborate and form regional programs – *e.g.*, interstate cap-and-trade regimes – that would achieve each state's reduction targets. States, however, will be far more limited in being able to vary from the overall reduction in carbon dioxide emissions that EPA has specified. While they may vary from rigid requirements on individual facilities, EPA indicates that state plans will need to meet the required reductions it has proposed unless they can demonstrate that they are unable to meet such levels using all of the four "building blocks."

States must submit their implementation plans by June 30, 2016, but they are eligible for a one-year extension to June 30, 2017, and multi-state plans are eligible for a two-year extension to June 30, 2018, depending on the complexities associated with the plan. For states that fail to submit and receive EPA approval for an implementation plan within the required time frame, EPA will impose a federal implementation plan.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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