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EPA Issues Final Clean Power Rule

On August 3, 2015, President Obama announced the Environmental Protection Agency's ("EPA") final rule to cut carbon emissions from the nation's power plants under the Clean Air Act. The so-called Clean Power Plan (the "Plan") sets forth the first national standards for addressing carbon pollution from power plants. The Plan aims to cut covered emissions by 870 million tons—nearly a third of all current carbon pollution—by 2030. According to the EPA, carbon emissions account for 82 percent of U.S. greenhouse gas emissions, and power plants account for 31 percent of U.S. carbon emissions. Once the Plan has taken full effect in 2030, carbon emissions from the power sector are expected to be 32 percent below 2005 levels. In addition to cutting emissions of carbon dioxide, the EPA expects the Plan to bring sulfur dioxide emissions 90 percent below 2005 levels, and nitrogen oxide emissions 71 percent below 2005 levels. The EPA asserts that the Plan will result in net benefits ranging from \$26 to \$45 billion.

To achieve these objectives, the Plan establishes interim and final carbon dioxide performance rates for both fossil fuel and natural gas-fired electrical generating units. The EPA established interim and final goals for states in several forms, including a rate-based goal (pounds per megawatt hour), a mass-based goal (total short tons of carbon dioxide), and a mass-based goal with a new source complement (total short tons of carbon dioxide).¹ Each state must then develop and implement specific plans to ensure that power plants within its borders achieve these rates within the established timeframe.

The EPA developed performance rates for each state based on the following concepts, which the agency views as being the "best system of emissions reduction":

- 1) Reducing the carbon intensity of electricity generation by improving the heat rate of existing coal-fired power plants,
- 2) Substituting increased electricity generation from lower-emitting existing natural gas plants for reduced generation from higher-emitting coal-fired power plants, and
- 3) Substituting increased electricity generation from new zero-emitting renewable energy sources (like wind and solar) for reduced generation from existing coal-fired power plants.

¹ The EPA did not establish performance rates for power plants in Alaska, Hawaii, Guam or Puerto Rico in the final rule as the agency is still collecting data on power plants in these locations.

The Plan then gives each state two options for meeting its established performance rates. The state can adopt a plan that includes source-specific requirements or it can adopt a more flexible plan that will include a mix of measures (such as renewable energy standards, emission trading and energy efficiency programs) to achieve the required performance rates.

States will be required to submit either a final plan or an initial submittal with extension requests by September 6, 2016. Final complete state plans are due by September 6, 2018. Once state plans are approved, implementation must begin by 2022 and be completed by 2030. The EPA has proposed a model plan that states can choose to adopt as well as a federal plan that will be implemented in any state that does not meet its obligations under the Plan.

In its proposed form, the Plan drew a large public response, including 4.3 million public comments on the proposal. The final rule has already met similar interest and skepticism. Twelve states have sued to stop the EPA from implementing the Plan, and additional lawsuits are expected. Attorney General Patrick Morrisey of West Virginia has spoken publicly in response to President Obama's announcement of the final ruling, stating that the rule "blatantly disregards the rule of law and will severely harm West Virginia and the U.S. economy."

All data and figures above were retrieved from epa.gov. For more general information, see the [EPA's Clean Power Plan Factsheet](#). For a detailed look at the changes between the proposed and final rule, see the [EPA's Key Changes and Improvements Factsheet](#).

For More Information

For more information, please contact Kristin Parker (312.845.3481), your primary Chapman attorney, or visit us online at chapman.com.

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