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## United States Environmental Protection Agency Proposes Carbon Dioxide Emissions Limits for Existing Power Plants

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**On June 2, 2014, the United States Environmental Protection Agency (EPA) announced a proposed rule, called the Clean Power Plan, limiting nationwide carbon dioxide (CO<sub>2</sub>) emissions from existing<sup>1</sup> fossil fuel-fired stationary combustion turbines and electric utility steam generating units by 30 percent from 2005 levels by 2030 (the Rule).<sup>2</sup> Under the Rule, EPA would use its regulatory power pursuant to Section 111 of the Clean Air Act to set state-specific target emissions cuts that will be implemented at the state level beginning in 2020. While the Rule seeks a 30% reduction in emissions nationwide, each state would have a different goal based on its ability to implement the emission reduction methods available under the Rule. States that currently rely most heavily on coal-fired generation and will have the most difficulty introducing renewable generation will be required to make the smallest emission reductions.**

Under the Rule, states will be required to submit their implementation plans to EPA by June 30, 2016 (with the ability to apply to EPA for one- or two-year extensions). During the

<sup>1</sup> In a concurrently issued, separate rule, EPA has proposed limiting CO<sub>2</sub> emissions (on a pounds per megawatt-hour basis) from modified and reconstructed natural gas-fired stationary combustion turbines and fossil fuel-fired electric utility steam generating units.

<sup>2</sup> The full text of the Rule can be accessed at <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>.

“phase-in” period from 2020 through 2029, states will be required to meet interim emissions performance goals based on their average emissions throughout the period.<sup>3</sup> Unlike regulations for new power plants, however, the Rule does not set a firm emissions cap for generating facilities, instead allowing states flexibility in attaining the target reductions.

EPA has identified four “building blocks” for use in state plans: (1) heat rate improvements at existing plants, (2) substituting less CO<sub>2</sub>-intensive generation such as natural gas combined-cycle (NGCC) technology, (3) substituting renewable energy sources, and (4) demand-side energy efficiency measures. While it is uncertain how states will employ these “building blocks,” and EPA recognizes that no individual component will be sufficient to achieve the goal, it is anticipated that displacement of coal and oil/gas-fired steam generation with NGCC generation will constitute a substantial portion of reductions.<sup>4</sup> Existing coal facilities will not be required to install carbon capture and sequestration technology (CCS) under the Rule, but CCS may be among the tools state regulators use in their implementation of the Rule.

The Rule is the first federal regulation limiting CO<sub>2</sub> emissions from existing power plants. EPA regulates mercury, arsenic, lead, nitrogen oxide, and sulfur dioxide emissions from existing power plants under the Clean Air Act, but not CO<sub>2</sub>. In July 2013, President Obama introduced a Climate Action Plan that included directives for EPA to regulate CO<sub>2</sub> emissions from new and existing power plants, which lead to the Rule. Also in connection with the Climate Action Plan, in September 2013 EPA proposed New Source Performance Standards that adopt separate CO<sub>2</sub> standards for new coal and natural gas-fired power plants, effectively mandating CCS for newly constructed coal-fired facilities.<sup>5</sup>

In its Regulatory Impact Analysis, EPA estimates that the Rule will cost utilities up to \$8.8 billion, while leading to roughly \$80 billion in climate and public health benefits, and that in 2030, 30% of U.S. electricity will come from coal—a 10 percent reduction from today.

A 120-day public comment period will begin once EPA publishes the Rule in the Federal Register, and EPA will hold public hearings in Atlanta, GA, Denver, CO, Pittsburgh, PA, and Washington, DC during the week of July 28, 2014. It is expected that affected parties will submit comments to the Rule during this comment period in order to preserve arguments for potential litigation. The Rule is expected to be finalized by June 1, 2015.

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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<sup>3</sup> These interim goals vary by state, but are generally set at more than 50% of the average reduction required by 2030.

<sup>4</sup> In the Rule, EPA states that the proposed state goals are based on a target NGCC utilization rate of 70%.

<sup>5</sup> EPA issued a revised rule in January 2014 and a final rule is anticipated in June 2015. Various court challenges have been filed, but reviewing courts have typically rejected such challenges until a rule becomes final.