

Proposed Carbon Rules for New Power Plants: What They Are and What They Mean

The Environmental Protection Agency (EPA) released today its long-awaited proposed rule limiting carbon dioxide (CO₂) emissions from new power plants.

The proposed rule is important because it has the potential to dictate the fuel source for power plants for decades to come, which potentially could raise electricity prices for businesses and individuals. The rule also sets a major new environmental policy and is a high-profile step in the effort to limit carbon emissions. Most importantly, this rule sets the stage for the coming battle over CO₂ limits for existing power plants—a rule with even farther reaching implications.

What the Rule Does and What It Means for Coal:

This rule, a key part of President Obama's Climate Change Agenda, is a revision of a proposal released in April 2012. Under the new plan, CO₂ emissions would be limited to 1,100 pounds per megawatt hour (lbs/MWH) for coal-fired power plants, a standard that cannot be met unless a system of carbon capture and sequestration is integrated into the facility. Opponents argue that because such a system has not yet been proven and is not yet commercially available, this proposal would effectively prevent any new coal-fired power plants from being built.

The rule also imposes a limit of 1,000 lbs/MWH for large natural gas power plants, but this standard can be met easily by combined cycle natural gas plants and therefore the impact is negligible.

The rule limits CO₂ emissions for coal-fired power plants to 1,100 lbs/MWH. As a point of reference, the average emissions rate for the existing coal fleet is about 2,200 lbs/MWH. Newer coal plants can achieve lower rates—usually around 1,800—which are still substantially above the standard in the rule.

The rule also includes an averaging provision that would limit CO₂ emissions to 1,000–1,050 lbs/MWH over seven years. This is intended to give new power plants the opportunity to phase in CCS technology.

While the new proposal has a slightly higher limit than the April 2012 proposal and does provide some compliance flexibility, it would still require a robust CCS technology to meet the cap.

Although many pieces of CCS have been utilized at plants across the country, such technology has not been deployed in a comprehensive way. Therefore, the industry has argued that CCS is not a demonstrated technology, and even if it could be pieced together would be cost prohibitive. The industry has also argued that without new coal plants coming on line, there is no “laboratory” for new CCS technology and so the development of that technology will stall.

The administration and environmental groups have argued that the rule provides a glide path for implementation of CCS, and that without the pressure of a hard emissions cap, there is little incentive for the development and deployment of new technology. EPA also points to the Kemper County (MS) power

plant, a facility that is under construction that is designed to capture 65 percent of CO₂ emissions as evidence that it can be done. The plant is not yet operational and has faced significant cost overruns.

The Next Steps:

While there will be efforts in Congress to block the rule, the votes do not exist in the U.S. Senate to stop it. Opponents in Congress will take other steps—such as holding hearings, delaying EPA nominees who are subject to Senate confirmation from taking their positions, and cutting EPA funding—in an effort to derail the proposal. Realistically, there is little chance that Congress can substantially alter the regulatory path although there will be extensive public debate on it.

We expect robust push back from the coal industry and its supporters. Some trade associations are planning strong public relations campaigns against it and will be working to generate public opposition to it. As soon as the rule is finalized, we expect industry litigation against it.

While the president did not specify a date by which these rules must be finalized, the agency is required to finalize rules such as this within one year of the proposal.

Why It Matters:

This proposal only governs new power plants, not the existing coal fleet. The practical impact of this rule, even if finalized in its current form, would be relatively limited. Given the low price of natural gas and regulatory uncertainty regarding environmental controls for coal plants, there are very few coal-fired power plants in the planning stages right now.

So why does the proposal generate such a fierce debate?

- The rule is an important precedent because it lays out uniform national limits on the amount of carbon emissions that will be allowed by future power plants—a limit that does not now exist—and it signals how aggressive the federal government will be in its efforts to combat climate change through regulation. The environmental community sees this rule as a critical first step toward curbing greenhouse gases. Utilities see this as an effort to dictate fuel sources and the imposition of a major economic burden on a single sector. Some end-users have expressed concern that the rule would block new coal plants, limiting the diversity of feedstock for baseload electricity.
- Given the long-term ramifications of the proposal, many stakeholders see this as a critical economic issue. Some businesses see the increased regulations as driving energy prices up. Some perceive the strict requirements as a limit on the use of coal, an abundant and inexpensive fuel source, which will disadvantage the U.S. compared to other countries with fewer environmental controls. Supporters of the rule argue that pushing CCS technology through regulation will allow the U.S. to become a leader in this space, which will ultimately create thousands of “green jobs” and develop a significant export market in the decades to come.
- Most importantly, this rule is a prelude to another round of rule-making that will govern CO₂ emissions from existing power plants. This second rule is more significant because it will force utilities to make decisions about whether to install costly environmental controls, shutter their coal

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plants, or shift the fuel source to natural gas. Any of these paths have the potential to substantially increase energy costs for consumers and businesses. The rules governing existing power plants are scheduled to be proposed on June 1, 2014, and many people see this as the real battle about our energy future.

While the parameters of the rule for existing plants have not yet been determined by EPA, the agency is starting to seek input from stakeholders through public hearings, conference calls and individual meetings. Given the time frame, we would expect that EPA will start its internal process of developing standards for existing plants early next year.

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This document is intended to provide you with general information regarding EPA's new CO2 rule. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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