

CLIENT UPDATE

NEW EPA RULE SEEKS TO REDUCE GREENHOUSE GAS EMISSIONS FROM EXISTING POWER PLANTS

NEW YORK

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On June 2, 2014, the United States Environmental Protection Agency (the “EPA”) issued a proposed rule under which existing power plants would be required to reduce emissions of carbon dioxide. The proposed rule is part of the EPA’s efforts to reduce greenhouse gas emissions in the United States.

THE PROPOSED RULE

The proposed rule, issued pursuant to Section 111(d) of the Clean Air Act, would create carbon dioxide emissions reduction goals for individual states. The program would be implemented through a state-federal partnership under which individual states would identify and implement methods to meet the goals of the program. States can work individually or regionally toward reaching the carbon dioxide emissions reduction goals set forth in the rule. The proposed rule would require each state to create a plan designed to achieve the state’s specific carbon dioxide emissions rate provided in the proposed rule. State plans would then have to be approved by the EPA.

The EPA is proposing that states meet both an interim emissions rate target between 2020 and 2029 and a final goal to be applied in 2030. The EPA estimates that during the 2020 to 2029 period, the proposed rule would result in a 20% reduction in carbon dioxide levels below 2005 levels. Beyond 2030, the EPA estimates that the proposed rule would result in a 30% reduction below the 2005 baseline.

By using the year 2005 as its baseline for measuring the proposed emissions reduction goals, power generators that have steadily upgraded their facilities over the past decade would be credited for their investments.

COMPLIANCE WITH THE PROPOSED RULE

In drafting their implementation plans, states may comply with the proposed rule in various ways. States can require power generators to implement a combination of the following: increased efficiencies in their existing power plants; replacement of coal and oil generation facilities with cleaner generation facilities, such as those powered by natural gas, nuclear, or renewable energy; decreased demand for electricity through energy efficiency measures; or participation in cap-and-trade programs.

These compliance mechanisms include measures that allow regulated power generators to comply with a state implementation plan through changes made “outside the fence” of any given generator, rather than mandating that emissions reductions occur at individual power plants. For example, states may comply with the proposed rule by participating in existing regional cap-and-trade programs, such as the Regional Greenhouse Gas Initiative, or creating new regional cap-and-trade programs. Similarly, states could require power producers to ramp up development of renewable energy projects or energy efficiency measures. The EPA believes that this flexibility will result in lower costs to regulated entities.

In formulating the proposed rule, EPA has taken into account state and regional differences in electric power generation. For example, states that are heavily reliant on coal-fired power plants, which produce more carbon dioxide emissions than competing fuels, are asked to make fewer carbon dioxide emissions reductions than states that are more reliant on renewable energy. The EPA projects that the power industry will incur compliance costs of between \$5.4 and \$8 billion by 2030, with health and climate benefits totaling between \$48 and \$82 billion.

IMPLEMENTATION

After a period of public comment and public hearings, the EPA expects to issue a final version of the proposed rule in June 2015. States are required to submit implementation plans by June 2016. The proposed rule provides that the June 2016 deadline may be extended by one year for states that need additional time to draft implementation plans.

The long time period between the issuance of the proposed rule and the EPA’s approval of state implementation plans means that the full effect of the proposed rule on power

generators is not yet known. Given this extended timeline, it is unlikely that the Obama administration will oversee the ultimate implementation of the proposed rule; the next administration may have the opportunity to make substantial modifications to its principal terms.

This proposed rule, along with the EPA's January 2014 announcement of proposed regulations governing new fossil fuel-fired power plants, are part of a broader effort by the EPA to reduce greenhouse gas emissions. The proposed rule is expected to be subject to extensive litigation.

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We will continue to monitor developments related to the proposed rule and the EPA's efforts to regulate greenhouse gas emissions.

The proposed rule can be found at <http://www2.epa.gov/sites/production/files/2014-05/documents/20140602proposal-cleanpowerplan.pdf>.

Please do not hesitate to contact us with any questions.

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