

A Watch List of Possible Changes in EPA's Final Clean Power Plan

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In August, EPA is expected to finalize and to modify its ambitious Clean Power Plan to reduce greenhouse gas emissions from existing power plants. Here is a Watch List of key areas for possible changes and clarification that EPA might make, after considering voluminous public comments on the Proposed Regulations, which were issued in June 2014:

- Timelines for State Implementation. Will EPA relax the level of interim requirements for emission reductions by 2020 (or 2022, as suggested in recent press reports) and allow each state a more gradual or back-loaded schedule to meet final targets by 2030?
- Timelines for Filing State Implementation Plans. Will EPA delay or ease the threshold for granting waivers of the one-year requirement for filing single-state implementation plans or two-years for multi-state implementation plans?
- Credits for Early Action. Will EPA enable states to obtain credits or adjustments in baseline periods for early emission reduction actions that have already occurred or for acceleration of emission reductions achieved prior to 2020?
- Adjustments to the Four Building Blocks. Will EPA modify the four building blocks used to calculate each state's achievable emission reductions, including changes in assumptions regarding achievable emission reductions under each building block?
- Treatment of Nuclear Generation. Will EPA differentiate nuclear generation from other types of existing carbon-free generation in determining state-wide emission standards?

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- Other Technology-Specific Rule Changes. Will EPA make changes to favor certain other low- or zero-carbon technologies, such as biomass, hydropower, energy storage, energy efficiency, wind, solar, or distributed energy?
 - Legal Rationale for “Beyond the Fence-line” Measures. How will EPA frame its legal rationale in the face of objections that it impermissibly regulates activities “beyond the fence-line” of a covered source? How will EPA support its positions that the best system of emission reductions encompasses the entire interconnected electricity sector and that emission performance standards may be determined on a state-wide basis?
 - Enforceability of Emission Standards under State Implementation Plans. Will EPA allow states to impose legally enforceable limits on entities other than affected electric generating units (EGUs) or on the States themselves? Or, will EPA require that each state’s emission standards be enforceable only against affected EGUs?
 - Multi-state Implementation Plans. Will EPA furnish new guidance on how states can operate multi-state plans or allow the trading of emission reductions across individual state plans? Will EPA establish common elements required of individual state plans or of trading in multi-state plans without a complementary requirement that states adopt joint goals?
 - Federal Implementation Plans. What will the federal implementation plan look like, for those states that do not adopt EPA-approved state implementation plans?
 - Coverage of New Power Plants. What flexibility will states have to count new natural gas power plants in their implementation plans and how will the plans address the potential for emissions backsliding?
 - Accounting for Interstate Electricity Grid. Will EPA clarify which state takes account of renewables generation — the state in which the generation is located or the state in which the renewable energy is consumed under a state renewable portfolio standard? Will EPA introduce flexibility for accounting for other changes in the electricity sector that are effectuated through interstate electricity trading and regional, ISO-managed dispatch?
 - Reliability safety valve mechanisms. Will states or FERC be required or expected to assess the reliability implications of a state implementation plan? Will states or individual power plants be able to obtain waivers of compliance deadlines and requirements if certain plants are needed for reliability?

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