

## INSIGHTS

## EPA Proposes Rule Seeking to Curb GHG Emissions and Dampen U.S. Appetite for Electricity

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On June 2, 2014, EPA issued a proposed rule to control carbon dioxide emissions from existing coal-fired power plants. In its public outreach, EPA presents the rule as requiring a 30% reduction in carbon emissions by 2030 from the baseline year 2005. It is true that the rule would result in CO<sub>2</sub> emissions that are 30% lower than in 2005, but the actual state-by-state emission reduction requirements are based on a 2012 baseline, which may disadvantage certain states or companies that made significant CO<sub>2</sub> reductions before that year. The proposal establishes GHG emission targets for each State (except the District of Columbia and Vermont, which do not have any coal-fired power plants), and the targets represent very different levels of emission reduction in different states based on what EPA believes is economically feasible in each state. It appears, for example, that nearly 25 percent of all the emission reductions are required from Texas alone. Interim emission targets must be obtained in the 2020-2029 timeframe with final targets obtained by 2030. The proposal does not require or even recommend emission limits on particular plants but requires each state to develop a plan for its overall "electricity system," including all power generating facilities (coal, natural gas, nuclear, hydropower and other renewables) and potentially energy users as well (in the form of demand response or energy efficiency mandates). The only penalty for noncompliance is that EPA would impose an EPA-developed plan for any state that fails to develop a plan that meets the mandated target. While EPA has not dictated any particular approach a State may employ, the proposal favors cap and trade or carbon tax system as the primary manner to obtain GHGs emission reductions. The proposal explains how EPA derived each of the State budgets and the assumptions EPA made in developing those budgets. In the proposal, EPA describes four "building blocks" it used to proposed the targeted emission reductions. They are:

- Improving the efficiency of existing coal-fired power plants by 6% (averaged over all the coal-fired units in the state).
- Adjusting dispatch order to favor natural gas and nuclear power generation and less usage of coal.
- Expanding low or zero-carbon generation, such as wind and solar energy.
- Developing energy efficiency or demand response programs to reduce the statewide consumption of electricity.

Many industry experts suggest that it is nearly impossible to obtain a 6% efficiency improvement at existing coal-fired power plants without major capital improvements, which could require complex Clean Air Act permitting under other provisions of the law. EPA also assumes that natural gas-fired power plants will be running at 70% capacity year-round, which may be difficult to achieve in practice. Finally, EPA assumes that energy efficiency improvements at the consumer level will be obtained at rate of 1.5% every year until 2030 "" an ambitious goal. The rule would give states until June 2017 to submit plans, although they would have an additional year, until June 2018, if they are developing regional programs. Once a state submits a plan, the rule would require EPA to approve or disapprove it through notice and comment rule making within 12 months. As a practical matter, however, it will be very difficult to meet this deadline. If a state doesn't submit a plan or EPA disapproves the plan, EPA must make a plan for the state. State plans must begin to meet an interim goal in 2020 and must achieve their final goal by 2030. This proposed rule is the beginning of a long process. The proposal will be open for comment 120 days from publication in the Federal Register, which will likely happen in mid-June. EPA has promised to issue a final rule by June 1, 2015. There will almost certainly be litigation on the final rule; there will likely be litigation on many of EPA's decisions regarding state plans; and there will almost certainly be litigation on any EPA-created plans that are imposed over a state's objection.