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EPA Proposes Carbon Pollution Standards for Fossil Fuel-Fired Power Plants

May 19, 2023



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On May 11, 2023, the U.S. Environmental Protection Agency **issued a proposed rule** promulgating greenhouse gas (GHG) emissions standards for fossil fuel-fired power plants. The proposal, issued pursuant to Section 111 of the Clean Air Act, includes strengthening New Source Performance Standards for new fossil fuel-fired stationary combustion turbines and establishing emission guidelines for certain existing fossil fuel-fired stationary combustion turbines. The proposal would also establish emission guidelines for states to limit carbon pollution from existing fossil fuel-fired power plants.

In an **announcement** accompanying the proposal, the EPA stated that in developing the proposed carbon pollution standards, the EPA “considered a range of technologies including [carbon capture and storage], utilizing low-GHG hydrogen, and adopting highly efficient generation technologies.” The agency acknowledged that certain technologies are more effective for different types of power plants, and therefore, the proposal establishes standards “for different subcategories of power plants according to unit characteristics such as their capacity, their intended length of operation, and/or their frequency of operation.”

The agency estimates that the proposed rule would “avoid up to 617 million metric tons of total carbon dioxide (CO₂) through 2042” and “deliver up to \$85 billion in climate and public health benefits over the next two decades.” Expected health benefits, according to the EPA, include the prevention of roughly 1,300 premature deaths, over 800 visits to the hospital and emergency room, over 300,000 asthma attacks, 38,000 missed school days, and 66,000 missed workday. Even as it issued the proposal, however, the EPA also acknowledged the power sector’s progress to date in reducing emissions, stating: “The proposed standards build

on the momentum already underway in the power sector to move toward a cleaner future. Since 2005, the power sector has **reduced carbon dioxide emissions 36 percent** while continuing to keep pace with growing energy demand.”

Taking the Temperature: The EPA’s proposed rule is the latest in a series of moves by the Biden Administration to address climate change. Other actions include securing passage through Congress of the Inflation Reduction Act; **implementing** a Department of Labor rule on ESG investing; **vetoing** efforts to overturn the rule; and **pledging** \$500 million to combat deforestation in the Brazilian Amazon region. The EPA’s latest proposal comes against the backdrop of anticipated litigation challenging the rule, particularly in light of the Supreme Court’s 2022 decision in *West Virginia v. EPA*, where the Court held that a prior EPA regulation exceeded the agency’s powers. That prior regulation, which sought to implement a “generation shifting” approach that would have required power plants to transition to renewable energy sources, did not constitute a “best system of emission reduction,” as required under the Clean Air Act. Perhaps anticipating another challenge, the EPA’s proposal states that, as required by Section 111 of the Clean Air Act, its proposed standards and emission guidelines “reflect the application of the best system of emission reduction that, taking into account costs, energy requirements, and other statutory factors, is adequately demonstrated” to improve the emissions performance of the sources. We will continue to monitor developments, including the EPA’s issuance of a final rule and any ensuing litigation challenges.