



State Reactions to Proposed EPA Greenhouse Gas Emissions Standards



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Final Rule for Future and Existing Power Plants



On Aug. 3, 2015, President Obama unveiled the final version of the [Clean Power Plan](#), which aims to regulate the amount of carbon dioxide emissions from both future and existing power plants. The proposed rule was originally introduced in June 2014.

Under the final rule, the U.S. Environmental Protection Agency (EPA) assigned each state a unique emission reduction target that it must meet based on a specific formula, resulting in an overall goal of reducing carbon emissions by 32 percent nationwide by 2030. There is also a set of interim goals assigned to each state to allow for a gradual reduction in carbon dioxide emissions from 2022-30. A state can choose to reduce its emissions however it sees fit, and has the option to comply individually or as part of a multi-state plan.

[To determine a state's goal](#), EPA divided the country into three regions, based on interconnected regional electricity grids. The agency then looked at three “building blocks” of reducing carbon emissions to determine the ranges of reductions that were feasible for each region.

The building blocks consist of:

- Improving the heat-rate of fossil-fuel fired plants so they run more efficiently.
- Switching to natural-gas powered plants from coal-powered plants.
- Increasing renewable power.

EPA applied each of these building blocks to all of the coal and natural gas power plants in each region to produce regional emission performance rates. EPA then applied equitable carbon dioxide emission performance rates to all affected electricity generating sources in each state to produce individual state goals. See EPA's [Technical Support Document](#) for more information on setting the state goals.

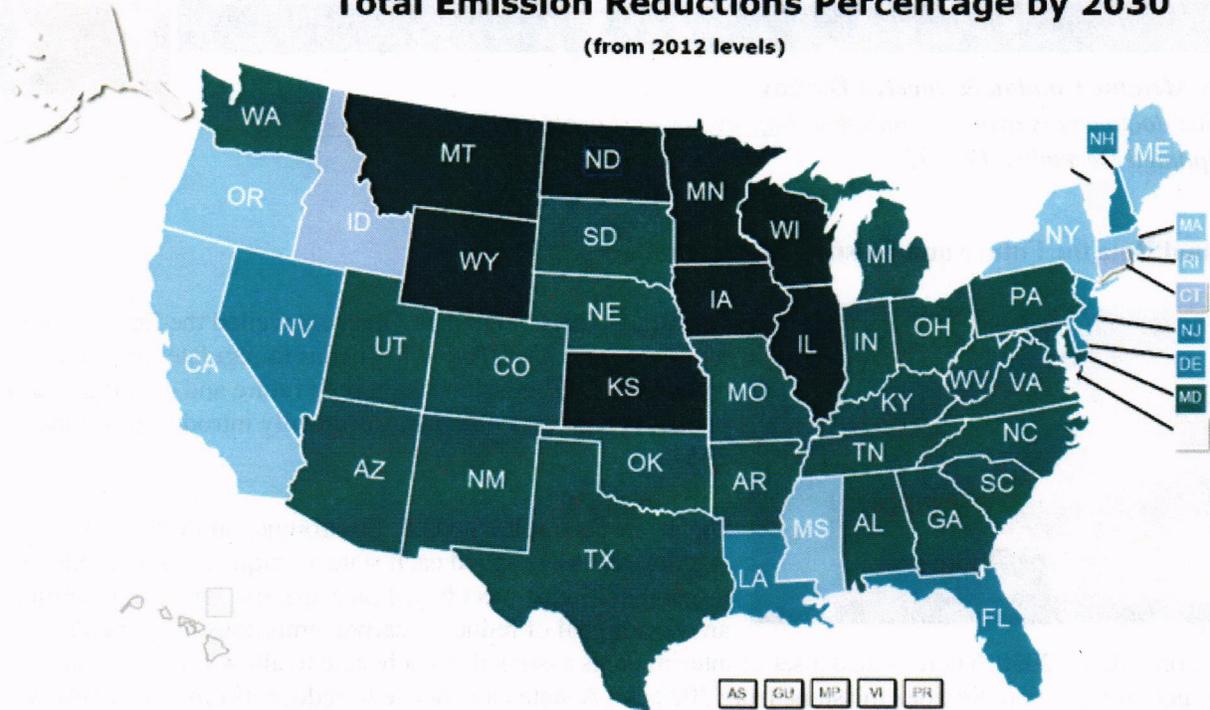
State goals vary and are all unique, but by 2030, all state targets fall in a range of 771 lbs./MWh (pounds of carbon dioxide per megawatt-hour of electricity generated) to 1,305 lbs./MWh. [See state-specific goals](#).

Vermont and Washington, D.C., will not be subject to the rules, as they do not have any large fossil-fuel powered plants. Also, according to EPA, more information is needed on the best system of emission reductions for Alaska and Hawaii because of their unique grid situations, so as of yet those two states are

not subject to the Clean Power Plan requirements. We can expect specific goals for Alaska and Hawaii in the near future.

Total Emission Reductions Percentage by 2030

(from 2012 levels)



State Compliance Plans

To demonstrate how a state plans to comply with its goal, all states, except as noted above, are expected to submit a final compliance plan, or an initial plan with a two-year extension request, by **Sept. 6, 2016**.

On Oct. 23, 2015, EPA released a [memo](#) to regional air directors providing assistance and information to states interested in seeking an extension. The memo details all the requirements needed to be granted an extension. To be granted an extension, a state must provide: a final plan approach or approaches under consideration, including a description of progress; an explanation for why the state needs more time; and a demonstration of how the state will be engaging with the public and vulnerable communities during the additional time.

A state's plan must demonstrate how it will advance toward interim emission reduction goals and accomplish final goals by 2030. For the period of 2022 to 2030, EPA separated interim emission goals into two-year "step" periods (2022-24, 2025-27 and 2028-29) in which the state must meet specific goals for that period. States may set their own step goals if they provide an explanation on how they will meet each goal, although such steps must align with an EPA-set average interim emissions rate.

Additionally, a state's plan can express its goal as a rate-based standard (pounds of carbon dioxide per megawatt-hour of electricity generated) or convert the goal to a mass-based standard (tons of carbon dioxide emission per year), which would enable a trading program or carbon tax mechanism.

Federal Implementation Plan

If a state fails to submit a plan or if EPA determines the state plan is insufficient, the state will be subject to a Federal Implementation Plan (FIP) imposed by the EPA within two years of noncompliance. Though a final FIP has not been issued, EPA [proposed two different plans](#) on Aug. 3. One would assign a cap on emissions and allow for the trading of emission credits and the other would require a state to meet an average emissions rate across its power generation units. Within each proposed plan a state could approach it through rate-based measures or mass-based measures. EPA plans to hold a period of public comments and public outreach meetings and then determine which option is best by the summer of 2016.

Clean Energy Incentive Program

As part of the final rule, EPA introduced the [Clean Energy Incentive Program \(CEIP\)](#), a voluntary program that will provide participating states with emission rate credits (up to the equivalent of 300 million short tons of carbon dioxide emissions) for reductions made in 2020-21 due to investments in renewable energy or energy efficiency measures. These credits can be used to offset targets during the 2022-30 steps. Specifically, wind or solar projects will receive 1 credit for 1 megawatt hour (MWh) of generation whereas energy efficiency projects implemented in low-income communities will receive 2 credits for 1 MWh.

U.S. Congressional Action

Efforts are currently underway in both the U.S. House and U.S. Senate to either delay implementation of EPA's final rule or allow states to forgo submitting an implementation plan without negative consequence, such as a forced federal plan. The U.S. House of Representatives, passed the Ratepayer Protection Act of 2015 ([H.R. 2042](#)), sponsored by Representative Ed Whitfield (R-Ky.), which would delay implementation of the rule until all legal challenges against the rule have been decided. The bill would also exempt states that demonstrate how the rule would threaten electricity reliability in the state or negatively affect ratepayers. In the Senate, the Environment and Public Works Committee passed a similar bill, the Affordable Reliable Electricity Now Act of 2015 ([S. 1324](#)), introduced by Senator Shelly Moore Capito (R-W.V.). Based on the president's support of the Clean Power Plan, it is likely that either bill would have to overcome a presidential veto.

Additionally, both the [House](#) and [Senate](#) EPA-Interior Appropriations bills for FY 2016 contain provisions that would prohibit EPA from using any appropriated funds to finalize, implement or enforce any rules or regulations related to Sections 111(b) or 111(d) of the Clean Air Act (the sections that apply to new and existing sources of carbon emissions). While the House bill was approved in early July, the Senate has yet to follow suit.

Regulatory Authority

According to the rule, the EPA is authorized to regulate greenhouse gas emissions under Section 111 of the Clean Air Act. This section requires EPA to develop regulations for categories of sources that cause or significantly contribute to air pollution that may endanger public health or welfare. EPA has regulated more than 70 stationary source categories and subcategories under Section 111.

The proposed rules for new power plants are being issued pursuant to Section 111(b) of the Clean Air Act, which directs EPA to establish emission standards for new and modified sources of air pollution. Under Section 111(b) EPA has promulgated standards for nitrogen oxides, sulfur dioxide and particulate matter emissions for new and modified electric generating units. These new actions represent the first time that EPA has attempted to regulate carbon dioxide emissions under Section 111(b).

The limits being developed for existing power plants are under authority of Section 111(d) of the Clean Air Act, which establishes a process for EPA and states to regulate emissions from already operating facilities. Under this section, whenever EPA promulgates a standard for a new source, states are required to develop plans for existing sources of pollutants for which there is no national ambient air quality standard.

While there are currently emission limits on power plants for mercury and arsenic, there are no limits on carbon dioxide. In a 2007 U.S. Supreme Court Case, [*Massachusetts v. EPA*](#), the court determined that the agency could regulate carbon dioxide emissions if it was able to conclude that the gas endangered public health or the environment. In 2009 EPA issued this “endangerment finding” for carbon dioxide.

The State Legislative Role

When EPA released proposed regulations for carbon dioxide emissions from existing power plants in June 2014—under section 111(d) of the Clean Air Act—a majority of state legislatures already had adjourned. Although several states produced legislative reactions following this release, a number of legislatures already had responded in expectation of the proposed rules earlier in their legislative sessions (see 2014 State Action).

All 50 state legislatures [convened](#) in 2015, and many weighed possible responses. For example, several states enacted legislation requiring legislative review of state plans, as agencies in other states may not involve legislative involvement in plan submission. Furthermore, state agencies and legislatures may be in disagreement regarding compliance approaches and states may be simultaneously pursuing legal action and exploring compliance plans.

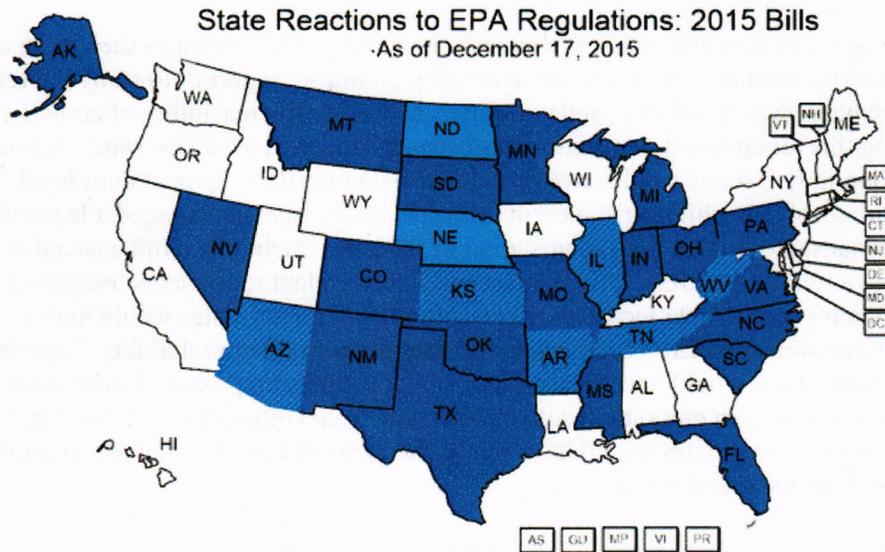
In 2015, numerous legislatures worked to determine their role and many more will continue to do so during the 2016 legislative session. Those options include approving a final state plan, barring state implementation until legal challenges are resolved, or enacting legislation to address compliance. In addition, many state legislatures and agencies’ are still determining the impacts of the final rule and what specific impacts the regulations will have on reliability, state economies and consumers.

2015 State Action

In the 2015 session, legislatures in 32 states introduced 94 bills or resolutions related to the Clean Power Plan and power plants carbon dioxide emissions regulations. Specifically, 27 states introduced 64 bills

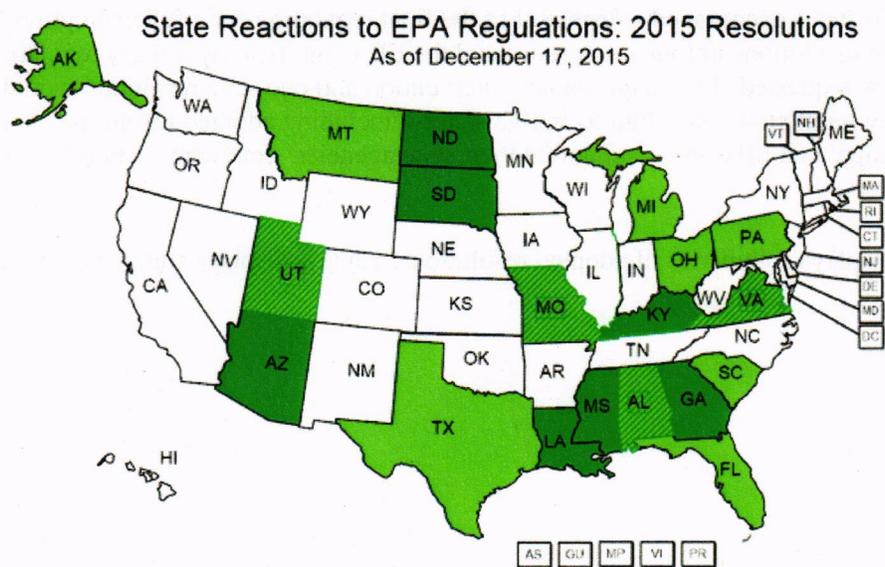
and seven states enacted legislation (see chart below). An additional 19 states introduced 30 nonbinding resolutions and 11 of these states adopted resolutions (see chart below).

In regards to executive action, Oklahoma Governor Mary Fallin issued [Executive Order 2015-22](#) in April 2015 barring the state from submitting a 111(d) state plan. Several governors, including [Indiana](#) Governor Mike Pence, have sent comments to EPA or letters to President Obama stating their state would not comply with EPA's regulations as they stand.



LEGEND

- Enacted legislation
- Introduced legislation
- Combination of enacted legislation and introduced legislation



LEGEND

- Adopted resolution
- Introduced resolution
- Combination of legislation adopted and introduced resolutions

Legislation

This session, a number of state legislatures looked to establish their role before the release of final regulations. Legislation introduced in more than a dozen states, for example, required the legislature's approval of a state plan prior to its submission to EPA; legislation was enacted in several states (see Table 1). Of this legislation, a portion completely restricted a state agency's authority to submit a plan without legislative approval while other states required a state plan to be submitted to the legislature, but not require legislative approval.

Another area being addressed in legislation this session would require an entity such as an environmental regulator, legislature, committee or task force to develop an impact report or to study the regulations impact on affordable power, reliability, and consumers as well as the feasibility of compliance. Of the states considering this requirement, legislation has been enacted in at least five states. Introduced, but not enacted, legislation in five states would have prohibited state plan development until legal challenges to the regulations are resolved, while legislation in one state would have encouraged a legislative committee to employ legal counsel to litigate EPA. Legislation in six states, including a bill enacted in Arkansas, proposed creating a reliability safety valve against early power plant retirements. Proposed legislation in four states would have capped rate increases. Legislation in additional states would have required state public utility commission and FERC certification of state plans to ensure reliability. Legislation introduced in several states would have established public hearings on proposed state plans and a bill introduced, but not enacted, in one state would bar the state from complying with implementation. Introduced legislation in two states would have established market-based compliance options, including cap-and-invest and carbon credit systems.

[Table 1](#) below displays summaries of enacted legislation. [Table 2](#) displays summaries of introduced but not enacted resolutions.

Resolutions

Resolutions in 10 states encouraged a dismissal of the final regulations or a full exemption from regulations while resolutions in four states requested the EPA significantly modify regulations. Four states' resolutions requested U.S. congressional intervention and one state resolution would have refused to implement any regulations. Resolutions in five states—including adopted resolutions in Alabama, Georgia, Mississippi and Missouri—supported their state agencies' comments submitted to EPA on the rules.

[Table 3](#) below displays summaries of adopted resolutions. [Table 4](#) displays summaries of introduced resolutions.