EPA Greenhouse Gas Emission Limits:
What they Mean for State Legislatures

By Glen Andersen and Jocelyn Durkay

The U.S. Environmental Protection Agency (EPA) released regulations in August 2015 for greenhouse gas emissions from both existing and new power plants to comply with federal court rulings and the Clean Air Act. While many states have already taken action to lower emissions through regional cap and trade programs or statewide emissions reductions mandates, the new EPA rules—known as the Clean Power Plan—will be the first federal action requiring states to enforce and meet strict carbon dioxide targets.

Setting the stage for the EPA action was a Supreme Court ruling from 2007 (Massachusetts v. EPA), which gave EPA the authority and duty to regulate greenhouse gases under the Clean Air Act. Specifically, the rule, implemented under sections 111(b) and 111(d) of the Clean Air Act, sets both interim and final individualized carbon dioxide emissions targets for the power sector in each state, with a final target in 2030. The final regulations differ substantially from the draft regulations EPA released in June 2014, with changes to state reduction targets and suggested methods for compliance. Since state legislation will likely be needed to ensure the reductions are met in the least costly manner, lawmakers are addressing a variety of questions, such as:

- Who will have authority to enforce the rule in the state, given a state plan may include energy efficiency or renewable energy requirements?
- Should the state begin compliance efforts, or wait until lawsuits against EPA are resolved?
- What is the best approach to satisfying the rule, given the multitude of compliance choices?

State Action

Given the major role lawmakers play in shaping state energy systems and creating regulatory frameworks, many are taking action in preparation for the new rules. More than 80 bills and resolutions related to 111(d) regulations were introduced in 31 states in 2015.

In the 2014 and 2015 sessions, several states enacted bills requiring legislative involvement in the 111(d) state plan process. For example, Arizona, Arkansas, Kansas, Nebraska, North Dakota, Pennsylvania, Tennessee and West Virginia established legislative review or approval of proposed state plans before they are submitted to EPA. Nebraska requires the Department of Environmental Quality to submit a state plan and a report on implementation impacts to the Legislature. West Virginia requires the Department of Environmental Protection to determine whether a state plan is feasible and submit it to the Legislature for approval.
Legislation enacted in at least five states would require a study or report on the regulation’s impacts. For example, Tennessee legislation requires the Department of Environment and Conservation to develop a report for the legislature assessing the regulation’s impacts on the electric power sector, electricity consumers, employment, economic development, state and local governments, and existing state laws.

Arkansas legislation establishes that if any customer class experiences “significant” electricity or gas rate increases, the Department of Environmental Quality may hold public hearings, revise a state plan and submit it to the Legislative Council co-chairs for approval. The legislation also requires an annual evaluation of the regulation’s impact on energy-intensive manufacturers.

States also are examining multistate compliance approaches. Pennsylvania legislation requires the Department of Environmental Protection to consider whether the state should participate in existing multistate programs, create a new multistate program, work in partnership with other states or include market-based trading programs in a state plan.

Additional legislative action to meet section 111(d) requirements or to engage in a multistate compliance effort is expected in 2016; however, it could present a challenge in some states due to the legislative calendar: In 2016, four state legislatures will not meet, and six others will have limited sessions.

Federal Action
Efforts are underway in both the U.S. House and Senate to either delay the rules’ implementation in 2022 or allow states to forego submitting an implementation plan. The House passed the Ratepayer Protection Act of 2015, which would delay implementation of the rule until all legal challenges against EPA have been decided. The bill also would exempt states that demonstrate how the rule would threaten electricity reliability or negatively affect ratepayers. Legislation has been introduced in the Senate and received committee approval. However, based on President Obama’s support of the Clean Power Plan, it is likely that either bill would have to overcome a presidential veto.

In addition, 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).

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NCSL, States’ Reactions to Proposed EPA Greenhouse Gas Emissions Standards

NCSL, The Legislative Role in Potential Interstate Collaboration on the Clean Power Plan

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