This brief explores the implications of state legislation as foundational to multi-state compliance approaches for the U.S. Environmental Protection Agency’s (EPA) proposed Clean Power Plan. It examines the role played by state legislatures and offers a checklist of questions about legislative authorities that can be used by policymakers seeking interstate coordination. This document provides examples of “where to look” language in different state statutes that may guide policymakers interested in exploring the potential for interstate collaboration.

This document originally appeared as Appendix A in “Multistate Coordination Resources for Clean Power Plan Compliance: Sample Documents for Consideration,” released by the National Association of Regulatory Utility Commissioners (NARUC). View the entire publication on the NARUC website.
State policymakers—driven by the desire to make the electric grid reliable, cost-effective and efficient—have acted on a number of fronts to promote interstate collaboration on energy resource planning and infrastructure development. Since state efforts to reduce carbon emissions are likely to have infrastructure and operational impacts beyond state borders, states may wish to consider a number of existing state policies as a jumping off point for creating a multi-state approach to EPA Clean Power Plan compliance.

Most legislative examples of interstate activity in this area have involved renewable energy credit trading and carbon emissions trading. States have chosen multi-state approaches since they allow states to meet their policy goals at lower costs. States that can cheaply reduce emissions or build renewable energy can sell their credits to states with higher compliance costs. These states can, in turn, attain credits for less than it would cost them to reduce emissions or build renewable generation themselves. As mentioned earlier, economic modelling has demonstrated that, for most states, a regional approach to the Clean Power Plan will also result in economic benefits and lower compliance costs.1

States have created multistate programs either through a formal interstate agreement or by coordinating less formal stakeholder agreements. States can utilize existing multistate programs to meet Clean Power Plan requirements at lower cost. Any degree of collaboration requires planning to reach a consensus or develop common components and tracking systems across participating states. Following are several examples of state policies that could be harnessed to facilitate multi-state coordination for Clean Power Plan compliance.

The Legislative Role and Authority

The compliance plans that states will propose for the Clean Power Plan will be submitted by state air agencies and environmental regulators with significant input from state public utility commissions and energy offices. While the role of state legislatures in this process is critical, even though it may not be obvious. State legislatures across the nation are taking a more active role in shaping state and regional energy systems affecting energy generation, efficiency and grid infrastructure. They create the regulatory framework and enforcement authority for public utility commissions, air offices and other state agencies. Legislative action will likely be required to effectively meet Clean Power Plan requirements and to engage in multi-state compliance efforts.

Legislatures in nine states review their air offices’ section 110 of the Clean Air Act state implementation plans (SIPs) and an additional two legislatures review section 110 SIPs only in certain instances. As detailed in “Recent State Legislative Action,” several states have recently enacted legislation ensuring legislative review or involvement in the Clean Power Plan state plan process.

Legislatures are determining their role in the Clean Power Plan but face challenges due to the legislative calendar. When EPA releases finalized carbon dioxide emissions regulations under section 111(d) in the summer of 2015, a majority of state legislatures will already have adjourned for the year. Next year in 2016, the Montana, Nevada, North Dakota and Texas legislatures will not meet while legislatures in six states—Arkansas, Connecticut, Maine, New Mexico, North Carolina and Wyoming2—will have limited sessions.3

Approaches for Collaboration

States that are interested in coordinating or collaborating with other states on Clean Power Plan compliance have numerous approaches to consider. For example, two or more states could develop compliance plans for a joint goal, develop individual compliance plans but formally collaborate on specific components (such as renewable energy) or develop individual compliance plans but informally collaborate on specific components (such as through regional tracking systems). States could also complete joint analyses or share administrative entities for tracking and enforcement.

State entities can review the following Legislative Action Checklist to assess potential policy needs in their states. Following the checklist, these topics—along with state legislative examples—are explored in greater depth in this Appendix.

Examples of Legislative Components for Collaboration

Regardless of the form, successful interstate collaboration includes several components.4 For example, a state entity must be authorized to engage in interstate collaboration, whether through emissions trading, renewable energy credit trading or other mechanisms. Authorization will likely come from the legislative branch but may originate in the executive branch as well. The framework for the collaboration, whether it be for renewable energy or carbon credit trading, and shared definitions of trading units must also be established. For example, renewable energy credit (REC) trading programs set one REC equal to one megawatt-hour of renewable energy; carbon markets set units at one ton of carbon dioxide emissions. Lastly, EPA requires state plans to be legally enforceable and states must ensure all emissions reductions—intrastate or interstate—meet EPA’s requirements for evaluation, measurement and verification (EM&V). States may develop their own methodologies, modify existing systems or use a federal system, such as the
Legislative Action Checklist

1. Does your state have legislation enabling multistate efforts for:
   a. Trading of renewable energy credits for renewable energy standard compliance?
   b. Cap and trade participation and tracking of carbon credits?

2. Can the existing systems above accommodate greenhouse gas emissions reductions or be modified to accommodate reductions?

3. Will these systems comply with EPA’s evaluation, measurement and verification (EM&V) protocols and what changes might be needed to enable compliance?

4. How were these systems created? What legislation might be needed to tailor these systems for 111(d) compliance?

5. Does your state engage in regional activities for:
   a. Fulfilling Clean Air Act requirements?
   b. Comprehensive state energy planning activities?
   c. Integrated Resource Planning or other utility generation and transmission planning?

   If yes, how will they be involved in state efforts to comply with 111(d)? All regional energy planning entities should have some involvement in state 111(d) discussions.

6. What legislation might your state need to accommodate compliance with EPA greenhouse gas reduction regulations?
   a. Designation of authority for plan implementation.
   b. Policies that create energy efficiency or renewable resource standards, or policies that increase these standards.
   c. Policies that promote interstate planning and credit trading, or allow for future collaboration if a state does not include multistate efforts in its initial plan?
   d. Will policies name specific groups of states to collaborate with or allow this to be open-ended?

7. Does your state have shared policy definitions and programs with potential collaborators?

8. Does your state have legislation in place that places specific requirements on 111(d) compliance, such as adherence to a rate-based standard, requirements to consider multistate collaboration, etc.?

9. Will partner states be required to meet certain criteria? Must they have equivalent or stricter enforcement approaches? Does each state maintain enforcement authority over regulated state entities? Do any agreements specify liabilities that may or may not exist for failures that might occur within the partnership?
Avoided Emissions and Generation Tool (AVERT). Adopting standard elements will allow states to collaborate more easily, either immediately or down the road.

Existing state legislation that speaks directly to Clean Power Plan compliance may not exist. However, state laws establishing interstate coordination on cap-and-trade programs, renewable energy credit trading, renewable portfolio standard resource definitions, transmission and generation planning, and participation in regional compacts may provide the foundation for coordination moving forward. The sections below provide legislative examples exploring these concepts.

**Cap and Trade Programs**

Cap and trade programs establish a cap on emissions and either provide an allotment of emissions credits to regulated entities, or simply require all entities to buy credits on a market that was created to trade these credits. Cap and trade programs put a price on each unit of emissions. Emitters will either reduce emissions or buy credits from entities that can reduce emissions at a lower cost. This approach provides emitters with the flexibility to design emissions reduction strategies, which can include the sale or purchase of allowances, emissions control technology or efficiency measures. Emitters are required to measure and report emissions and are penalized for non-compliance. Cap and trade policies encourage regional collaboration and often result in lower compliance costs, efficiency, innovation and advanced action.5

Multiple cap and trade programs exist at the federal and state levels. For example, EPA has implemented cap and trade programs for sulfur dioxide, oxides of nitrogen (NOx) and other emissions through the Clean Air Interstate Rule, the Clean Air Visibility Rule, the Acid Rain Program and the NOx Budget Trading Program. State-level cap and trade programs have been developed through the nine-state Regional Greenhouse Gas Initiative in the northeast and mid-Atlantic, California’s Assembly Bill 32 program and the Western Climate Initiative.7

**Regional Greenhouse Gas Initiative**

The Regional Greenhouse Gas Initiative (RGGI) is the oldest mandatory, market-based carbon dioxide emissions reduction program in the country.8 RGGI is a multi-state approach to carbon dioxide emissions reductions that uses a shared tracking system and allowance process, facilitating cross-state recognition of emissions reductions efforts. Program administration, however, operates largely on the state level through individual state carbon dioxide budget trading programs. As detailed below, participating states have adopted or developed legislation and regulations enforcing their participation in the regional strategy. Since the adoption proceeded on a state-by-state basis with a memorandum of understanding, rather than through an interstate compact, the initiative did not require Congressional approval.

RGGI was developed in 2003 by governors in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. Seven governors signed a memorandum of understanding in 2005, which outlined the program and established a framework for a model rule. Beginning in 2006, all nine states, with Maryland joining, adopted the model rule by legislation and regulation.9 Legislation was enacted in Vermont in 2006; Connecticut, Maine, New Jersey and Rhode Island in 2007; and Connecticut, Delaware, Maryland, Massachusetts and New Hampshire in 2008. Only regulations were adopted in New York; no legislation was enacted. In 2011, New Jersey withdrew from the memorandum of understanding.

States’ rulemaking processes included adopting legislation, except in New York, that created commonalities between state programs. State legislation or regulations defined RGGI or state-specific budget trading programs, as well as defining other participating members in the initiative. For example:

“CO₂ Budget Trading Program” means the multi-state CO₂ air pollution control and emissions reduction program established pursuant to this section and corresponding regulations in other states as a means of reducing emissions of CO₂ from CO₂ budget sources (Conn. State Agencies Reg. §22a-174-31).

“Participating state” means a state that has established a regulation implementing a CO₂ Budget Trading Program consistent with the Regional Greenhouse as Initiative model rule (Conn. State Agencies Reg. §22a-174-31).

“Regional greenhouse gas initiative” means the initiative referred to in the Memorandum of Understanding and the corresponding model rule that memorializes the ongoing cooperative effort by the State and other states to design and implement a regional carbon dioxide cap-and-trade program covering carbon dioxide emissions from electrical generating units in the signatory states (Me. Rev. Stat. Ann. tit. 38, §580a).

Included in RGGI statutes is enabling legislation for states to participate in RGGI and engage in a cap and trade pro-
Representatives of the RGGI states have formed a non-profit corporation called “RGGI Inc.” to assist in the development of the regional program for reducing CO₂ emissions. The General Assembly explicitly authorizes and sanctions the prior and ongoing participation in RGGI Inc. by the Secretary of the Department of Natural Resources and Environmental Control, and the Chair of the Public Service Commission, and their duly authorized representatives, as part of their official duties. The State may contract with RGGI Inc., pay dues to RGGI Inc., and transfer funds to RGGI Inc. to facilitate implementation of the RGGI program (Del. Code Ann. tit. 7, §6044).

The department shall monitor and regulate emissions of greenhouse gases with the goal of reducing those emissions. The department shall adopt regulations to require the reporting and verification of statewide greenhouse gas emissions and to monitor and enforce compliance with this chapter (Mass. Gen. Laws Ann. ch. 21N, §2).

Lastly, states have explicitly authorized interstate collaboration and coordination through the RGGI program. Statutes from Massachusetts and New Hampshire are included below.

The executive office and the department may work with the participating regional greenhouse gas initiative states and other interested states and Canadian Provinces to develop a plan to expand market-based compliance mechanisms such as the regional greenhouse gas initiative to other sources and sectors necessary or desirable to facilitate the achievement of the greenhouse gas emissions limits (Mass. Gen. Laws Ann. ch. 21N, §7).

The department may establish and enforce the CO₂ emissions budget trading program in cooperation and coordination with other states or countries that are participating in regional, national or international CO₂ emissions trading programs with the same or similar purpose including: (a) Entering into any agreement or arrangement with the representatives of other states, including the formation of a for-profit or non-profit corporation, any form of association or any other form of organization, in this or another state; and (b) Participating in any such corporation, association, or organization, and in any activity in furtherance of the purposes of this subdivision, in any capacity including, but not limited to, as directors or officers (N.H. Rev. Stat. Ann. §125-O:21).

California and the Western Climate Initiative
California enacted Assembly Bill 32 (AB32), “The California Global Warming Solutions Act,” in 2006, requiring the state to reduce greenhouse gas emissions to 1990 levels by 2020 through a cap and trade program. The legislation required the state to “adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit GHG emissions.” This system took effect in 2012. The act required the state air regulator, the California Air Resources Board, to develop reporting and verification mechanisms and authorized enforcement authority through civil and criminal penalties.

California participates in the Western Climate Initiative currently, along with the Canadian provinces of British Columbia, Manitoba, Ontario and Quebec. The goal of the initiative is to implement a multi-state and multi-province regional emissions trading program. The initiative was launched in 2007 as a collaboration between governors of five western states and grew to encompass seven western states and four Canadian provinces. The 11 partner states and provinces collaborated in developing program design documents for a regional trading program, which were released in 2008 and 2010. In 2011, six states—Arizona, Montana, New Mexico, Oregon, Utah and Washington—formally left the Western Climate Initiative.

The Western Climate Initiative includes emissions from the electricity, transportation and residential and commercial fuel sectors. Before successfully joining the initiative, states or provinces must adopt an economy-wide greenhouse gas reduction goal for 2020 that is at least as stringent as the current Western Climate Initiative regional goal. The Western Climate Initiative currently uses the Compliance Instrument Tracking System Services for carbon credit monitoring.

To clarify participation in multistate agreements on trading, the California Legislature enacted Senate Bill 1018 in 2012. The legislation declared that “a state agency, including, but not limited to, the State Air Resources Board, shall not link a market-based compliance mechanism… with any other state, province, or country unless the state agency notifies the Governor that the agency intends to take such action.” Additionally, the governor must determine that 1) the linked entity’s greenhouse gas emission reductions are equivalent or stricter than California’s requirements, 2) California maintains enforcement authority over entities regulated by the program in California and in the linked jurisdiction, 3) the
linkage maintains equivalent or stricter enforcement authority as California law, and 4) the proposed linkage will not impose any significant liability on the state for any failure associated with the linkage (Cal. Government Code §12894). This legislation provided the basis for California and Quebec to successfully link their cap and trade programs in 2013. In April 2015, Ontario announced it plans to link their carbon market with California’s and Quebec’s markets.

**Renewable Energy Credit Trading**

States track the generation of renewable energy with sophisticated tracking mechanisms. All 48 contiguous states and the District of Columbia fall within 10 renewable energy credit (REC) trading markets. States that participate in these markets benefit from buying and selling RECs and may fulfill state mandates for renewable generation.

Twenty-eight states and the District of Columbia have renewable energy mandates and an additional nine states have set renewable energy goals. The mandates—also referred to as renewable portfolio standards or an RPS—require utilities to sell a specified percentage or amount of renewable electricity. In many states, standards are measured by percentages of kilowatt-hours of retail electric sales. Iowa and Texas, however, require specific amounts of renewable energy capacity rather than percentages, and Kansas requires a percentage of peak demand.

Successful components of—or barriers to—interstate interactions include definitions of renewable energy and credits, as well as the tracking systems themselves. Uniform definitions and practices between states encourage greater interstate collaboration; on the other hand, states that define renewable energy and RECs differently may experience more complications in interstate trading. States with variations in definitions do currently participate in interstate REC tracking. Although many states currently coordinate renewable energy credit transfers across state boundaries, the incorporation of carbon dioxide emission tracking in these systems may be further complicated by variances in definitions and systems. Consistency and clarity across states are important for accurate measurement and verification to avoid double counting credit for generation, a requirement for Clean Power Plan compliance. It is possible that EPA may release guidance or instructions regarding renewable energy and credit definitions.

**Renewable Energy Definitions**

While states’ definitions of renewable energy include common technologies (such as solar photovoltaic, solar thermal or wind energy), state statutes are not uniform. Differences in renewable energy definitions have implications for interstate trading of renewable energy. A renewable energy technology recognized by two states, such as wind energy, could be generated in State 1 and sold to meet a requirement in State 2 for renewable energy. However, if a resource is considered renewable in State 1, such as animal waste, and not considered as a renewable resource in State 2, credit for energy from that generation source would not be recognized as renewable energy in State 2. While states currently buy and sell credit for renewable energy based on differing definitions, if EPA designates a definition for renewable energy compatible for section 111(d) of the Clean Air Act compliance, this could impact both intrastate and interstate renewable energy markets.

**Renewable Energy Certificates and Tracking Systems**

Renewable energy generation includes two components: the physical electricity generated and a credit of the environmental, social and other non-power attributes of renewable energy. When entities purchase renewable energy for renewable portfolio standards they are purchasing the property rights to the credit for generation, known as a renewable energy credit or REC. RECs serve as a means of verifying renewable energy purchases or generation. Most sources consider one REC equivalent to one megawatt-hour of renewable energy generation, or 1000 kilowatt-hours. However, Arizona (Ariz. Admin. Code §14-21803) and Nevada (Nev. Rev. Stat. §704.78215) authorize one renewable energy credit as equivalent to one kilowatt-hour.

If states are adapting renewable energy tracking systems for 111(d) compliance, clarity on how states address environmental attributes—such as CO₂ emissions—will be required for successful interstate trading and Clean Power Plan compliance. Several states describe a REC as generally containing all environmental attributes, including Montana: “a tradable certificate of proof of 1 megawatt-hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production” (Mont. §69-3-2003). However, some states place restrictions on which environmental attributes are included in RECs. For instance, California excludes solid waste treatment benefits of biomass or biogas (Cal. Public Utilities Code §399.11). By contrast, several state REC definitions do not mention whether environmental attributes are included. States may find it helpful to review or modify REC definitions depending on their approach since environmental attributes may have to be incorporated or altered. For example, a state that does not include environmental attributes in a REC would not be able to use the REC for Clean Power Plan compliance. Including CO₂ emissions
in REC definitions would be an important step in including renewable energy standards as part of an enforceable Clean Power Plan compliance plan.

RECs are subject to the interconnected nature of the electric transmission grid. Many states accept RECs generated in other states, especially if a state is in the service territory or REC trading system. For example, Minnesota statutes (Minn. Stat. §216B.1691) require all renewable energy credits to be recorded and tracked through the Midwest Renewable Energy Tracking System (M-RETS) for compliance. M-RETS is implemented in Illinois, Indiana, Iowa, Minnesota, Montana, North Dakota, Ohio, South Dakota, Wisconsin and the Canadian province of Manitoba.¹⁸

Although state definitions of renewable energy and RECs differ, these differences are often small enough not to interfere with cross-state tracking or collaboration. However, these differences may have more significant impacts when accounting for interstate and intrastate greenhouse gas emission tracking. Currently, states fall into 10 different renewable tracking system regions, except Hawaii which does not use a tracking system or have a definition for a REC (see map on page 7). These tracking systems serve as flexible, market-based trading mechanisms for RECs. Tracking systems account for individual RECs through unique certificate numbers, facilitate REC trading, retire used RECs to avoid double counting or resale, and verify RPS compliance. Using existing tracking systems for Clean Power Plan compliance could be beneficial to states as these systems already have mechanisms to avoid double counting. Additionally, five existing tracking systems currently serve multiple states, allowing for a degree of interstate coordination without requiring a formal joint emissions goal or compliance plan. Cost allocation for these systems is currently shared, which can lower compliance costs for individual states.¹⁹


Several states, such as Nevada and North Carolina, implement both a state tracking system and participate in a larger regional system for REC tracking outside of RPS obligations. Some states, including Illinois (Ill. Rev. Stat. ch. 20 §3855/1-56), Montana (Mont. Code Ann. §69-3-2006) and Ohio (Ohio Rev. Code Ann. §4928.645) fall within the boundaries of multiple REC tracking systems, often because these states fall within different generation control areas.²⁰

In these states, statutes defer tracking system designation or development to the public utility commission, which can develop a state-specific system, determine use of an existing tracking system or systems, or allow for multiple third-party organizations to administrator credit tracking and aggregation. Individual states and groups of states have developed these tracking systems; the North American Renewables Registry (NARR) is an available tracking mechanism if states do not participate in a regional or state tracking systems.

Currently, tracking systems do not incorporate greenhouse gas emission tracking. However, NARR announced in May 2015 that they will be adding functionality to support Clean Power Plan implementation.²¹ Two other tracking systems used in RGGI states, the PJM General Attributes Tracking System and the New England Power Pool General Information System, track emissions data for other attributes, such as sulfur dioxide and nitrogen oxides.²² REC tracking systems that overlap with cap and trade program states already have experience in coordinating renewable energy and CO₂ emissions reduction program data.
Interstate Generation and Transmission Planning

Regional planning takes place on multiple levels. Large multi-state utilities plan for generation and transmission needs across their territories, while Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) coordinate transmission across large regions to ensure a balance between energy supply and demand. Since federal, regional, state and local entities are all involved in the development of transmission, states have made efforts to coordinate on a multistate level to streamline planning, siting and building of transmission lines and energy generation.

Rhode Island empowers its office of energy resources to coordinate with other states and regional entities, including the New England States’ Committee on Electricity and ISO-New England Inc., in the development of transmission, generation and gas pipelines (R.I. Gen. Laws §39-31-4 through §39-31-7). The Alabama state energy office also coordinates regionally, and is empowered to enter into interstate agreements for energy research or planning (Ala. Code §41-6A-4). Michigan requires its public utility commission to “[engage in] regional load management efforts to reduce the annual demand for energy whenever possible” (Mich. Comp. Laws §460.1095).

Many states have statutes requiring utilities to create integrated resource plans (IRPs), which emphasize evaluating generation and efficiency options while encouraging choices that promote reliability and minimize cost. Some of these plans reference a regional approach and encourage interstate cooperation during plan development. South Carolina’s
plan (S.C. Code Ann. §58-37-40), for example, requires the State Energy Office to coordinate with regional groups, including the Southern States Energy Board, when preparing the integrated resource plan. Nebraska legislation (Legislative Bill 469) enacted this spring requires the state energy office to develop a state energy plan and that the plan must include an “analysis of other state energy plans and regional energy activities that identify opportunities for streamlining and partnerships.”

In the West, which has no RTOs or ISOs, states have created the Northwest Power Pool Corporation, a non-profit corporation with eight northwestern member states and two Canadian member provinces that seeks to achieve maximum benefits from coordinated energy operations. While participation is contingent on a voluntary general services agreement, the state of Washington’s statutes include references to interstate collaboration through the Northwest Power Pool Corporation. The state describes their net system power mix as including “any declared resources in the Northwest Power Pool identified by in-state retail suppliers or out-of-state entities that offer electricity for sale to retail customers…” (Wash. Rev. Code §19.29A.010).

Interstate Compacts
States have the ability to formally coordinate policy efforts through interstate compacts, which require congressional approval. Interstate compacts allow states to partner in developing a collaborative strategy for addressing a shared, broad concern, such as oil and gas conservation or interstate transmission siting. Compacts can either be initiated by Congress or proposed by a select group of states. Stakeholders define powers and duties, definitions, organization, oversight, enforcement and withdrawal procedures that member states must in turn adopt via legislation.

Several interstate compacts relating to energy have received Congressional approval and state participation. For example, the Western Interstate Nuclear Compact formed the basis for the Western Interstate Energy Board (WIEB) in 1969. WIEB serves to coordinate energy resources, development and exchange between 11 states and three Canadian provinces. Ten states enacted legislation adopting the compact between 1963 and 1977; one state participates in WIEB but has not enacted legislation. Another example, the Interstate Compact to Conserve Oil and Gas was established in 1935 and includes 30 member states, eight associate states and 10 international affiliates. All member states adopted the compact between 1935 and 1982.

In the Energy Policy Act of 2005, Congress authorized three or more contiguous states to enter into an interstate electric transmission siting compact without the need to receive Congressional approval for future compacts. While two states—Kansas and Washington—have considered legislation to adopt an interstate transmission siting compact, no state has actually adopted the compact.

Other Regional Actions
Agencies in 15 states have the legal authority to participate in the Western Regional Air Partnership, a voluntary agreement between EPA, federal land managers and state, local and tribal entities concerning regional haze. The partnership offers access to data tracking and technical resources. Other executive-branch regional agreements include the Transportation & Climate Initiative in northeast and mid-Atlantic states and the Pacific Coast Collaborative.

Legislative Action on the Clean Power Plan
In the 2014 and 2015 sessions, state legislatures are considering a number of bills that would affect a state’s compliance with the Clean Power Plan. In the 2014 legislative session, 23 states introduced bills or resolutions that related to the Clean Power Plan and 32 states did so in 2015. A number of enacted and pending bills would effect a state’s compliance options and pathways. A common theme explored by many state legislatures is requiring approval of a state plan by the legislature or a portion thereof. These compliance requirements should be factored into multi-state coordination. Examples are included below.

- Legislation enacted in Arizona (Senate Bill 1007, 2015) establishes a Joint Legislative Review Committee. The committee is tasked with reviewing a proposed state plan, receiving public comment and to “consider whether submission of the plan…is in the public interest.” Additionally, the legislation authorizes the director of the Department of Environmental Quality “may participate in one or more full or partial multijurisdictional plans or agreements, including plans or agreements with Indian Tribes, for the purposes of complying with this section.”

- Legislation enacted in Arkansas (Senate Bill 183, 2015) states that the “submission of a state plan is the preferred method of compliance with federal emission guidelines.” The legislation requires approval of a state plan by the governor and the legislative council, a decision-making body of legislators that meets between legislative sessions. Also contained in the bill is the text stating, “the Arkansas Department of Environmental Quality shall not submit a state plan to the United States Environmental Protection Agency… if the state plan: (1) Results in a sig-
significant rate increase annually for any rate class of the total delivered electricity cost per kilowatt hour or of the total natural gas cost per thousand cubic feet; or (2) Results in unreasonable reliability risks.”

- **A Kansas bill enacted in 2014** (House Bill 2636) authorizes the Secretary of Health and Environment to establish separate standards of performance for carbon dioxide emissions based on adequately demonstrated technology, cost, efficiency and other measures that can be undertaken without requirements for fuel switching, co-firing or limiting the utilization of the unit. The bill also authorizes the secretary to “implement such [performance] standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading or other alternative implementation measures that the secretary determines to be in the interest of Kansas.” Legislation enacted in 2015 (House Bill 2233) establishes additional requirements for compliance plans.

- Legislation in **Kentucky** (House Bill 388, 2014) requires separate standards of performance for coal-fired and gas-fired units on a unit-by-unit basis through measures that can be undertaken without requirements for fuel switching, co-firing or limiting the utilization of the unit.

- **Louisiana legislation** (Senate Bill 650, 2014) requires separate standards of performance for coal-fired and gas-fired units and measures that can be undertaken without requirements for fuel switching, co-firing or limiting the utilization of the unit. The bill also authorizes the Department of Environmental Quality to implement “regulatory mechanisms that provide flexibility in complying with such standards, including the averaging of emissions, emissions trading, or other alternative implementation measures that are determined to further the interests of Louisiana and its citizens.”

- Enacted legislation in **Missouri** (House Bill 1631 and Senate Bill 664, 2014) authorizes the Air Conservation Commission to develop emissions standards for generating plants on a unit-by-unit basis. Legislation also requires that “[t]he commission shall not establish the following compliance actions in any state implementation plan: (1) An allowance system or any other system based in any way upon an emission baseline or cap and trade system; or (2) Any system that requires emission reductions of a fixed percentage on a local or statewide basis.”

- **Pennsylvania legislation** (House Bill 2354, 2014) requires the Department of Environmental Protection to consider “whether the Commonwealth should participate in multistate programs that already exist, or whether a new multistate carbon dioxide reduction program should be created,” whether the state should “work in partnership” with other states or whether market-based trading programs should be included in the state plan. The bill also requires the legislature's approval of a state plan, except in one specific series of events.

- Legislation in **West Virginia** (House Bill 4346, 2014) states “[t]he Department of Environmental Protection may implement, to the extent permissible, the standards of performance established under subsection (a) through regulatory mechanisms that provide flexibility in complying with the standards (of performance), including averaging of emissions, emissions trading, or other alternative implementation measures that are determined to further the interests of West Virginia and its citizens.” The bill also requires separate standards of performance for coal-fired and gas-fired units that do not require switching from coal to other fuels or limiting the economic utilization of the unit. Another bill (House Bill 2004, 2015) reiterates the establishment separate performance standards and requires the legislature’s approval of a state plan.
• **Wyoming** legislation (Senate File 75, 2014) authorizes the attorney general to take action to stop the enforcement, administration or implementation of Clean Power Plan regulations, following approval by the governor.

• As of mid-June, legislation remains pending in a number of states that has impacts on possible multi-state coordination.
  - Pending legislation in Illinois (House Bill 2607 and Senate Bill 1485) would establish a market-based or cap-and-invest program for reducing carbon dioxide emissions. Legislation in North Carolina (House Bill 571) would require the Department of Environment and Natural Resources to consider market-based trading in a state plan.
  - Another pending Illinois bill (House Bill 3293) would establish a low carbon portfolio standard and allow for out of state generation to qualify for credits.
  - Pending legislation in South Carolina (House Bill 3707) would prohibit state agencies from develop a compliance plan until all legal challenges are resolved.
  - Legislation sent to the governor in Missouri (Senate Bill 142) and pending legislation in North Carolina (House Bill 571) would require the state to take into account how other states are formulating state plans or opportunities for partnerships.

• Legislation has been introduced in a number of states that would increase greenhouse gas emission goals or establish taxes or fees for fossil fuels, carbon reduction bonds, carbon credits programs, cap and trade or cap and dividend programs, or other financial incentives for carbon reductions.

• In addition to legislation, **Oklahoma** Governor Mary Fallin issued Executive Order 2015-22 in April 2015 barring the state from submitting a 111(d) state plan and possibly hindering or delaying multi-state compliance options.

**Conclusion**

State legislatures have a large role to play in creating Clean Power Plan compliance plans that address the regional nature of the nation’s electric grid. State policymakers have been the catalyst for the creation of a number of existing systems, including renewable energy credit trading and cap and trade, which could be tailored to help with multi-state compliance efforts. Many of the challenges posed by the creation of these systems, including the operation of credit trading markets and coordination of state partnerships, have been addressed as these existing systems have been refined. While further legislative action may be needed in order for existing programs to help with 111(d) compliance, they provide an excellent foundation for states wishing to take advantage of the economic benefits that can result from a multistate compliance approach.

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Notes


3. Ibid.


17. Ibid.


19. The Cadmus Group, Exploring and Evaluating Modular Approaches to Multi-State Compliance with EPA’s Clean Power Plan in the West.


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