

EPA Unveils Proposed Replacement for Clean Power Plan

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On August 21, 2018, the U.S. Environmental Protection Agency (EPA) announced its proposed Affordable Clean Energy Rule, which is intended to replace the Obama Administration's Clean Power Plan. Although the Clean Power Plan was promulgated in October 2015, the Supreme Court stayed its implementation February 2016. In October 2017, EPA issued a Notice of Proposed Rulemaking to repeal the Clean Power Plan, and in December 2017, the Agency issued an Advanced Notice of Proposed Rulemaking to request public comments on what should be included in a replacement rule. After considering more than 270,000 comments, EPA published the proposed Affordable Clean Energy Rule in the Federal Register on August 31, 2018, opening a 60-day public comment period that will end on October 30, 2018.

The proposed rule would define the "best system of emission reduction" (BSER) for greenhouse gas emissions from existing coal-fired power plants as on-site, heat-rate efficiency improvements. States would be required to develop plans to implement the BSER at existing coal-fired plants within their boundaries three years after finalization of the rule. To assist in this effort, EPA proposed a list of candidate technologies for states to consider in establishing standards of performance for individual existing coal-fired plants in their state plans. EPA concluded that it did not have sufficient information to develop a BSER for natural gas-fired simple cycle turbines or combined cycle turbines. Those units would not be covered under the Affordable Clean Energy Rule, although EPA is seeking public comment on how to treat these units.

EPA has also proposed revisions to the New Source Review (NSR) permitting program to prevent NSR from being a barrier to the implementation of energy efficiency projects at power plants, such as economizer replacements. Specifically, the proposed rule would establish a new preliminary applicability test to determine whether a physical or operational change at an existing power plant would be a major modification that would trigger NSR. The proposal would allow states to adopt an hourly emissions increase test (rather than the existing annual emissions increase test) such that only projects that increase a power plant's hourly emission rate would trigger NSR. Critics of such an approach have noted that this could result in increased overall emissions because more efficient units that do not trigger NSR might then be run for longer periods of time. On the other hand, proponents have argued that allowing improvements that make an existing source run more efficiently and at a lower emission rate should be encouraged rather than effectively barred.

It is expected that EPA will finalize its repeal of the Clean Power Plan at the same time it finalizes the Affordable Clean Energy Rule, which will likely occur in early 2019.

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