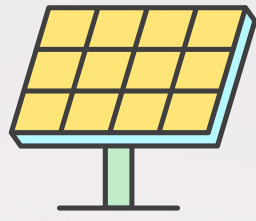


Power Plant Emissions:



Clean Power Plan and “Affordable Clean Energy” Rule



ORIGIN: STATUTORY AUTHORIZATION

1970
2007
2009

Section 111 of the Clean Air Act (1970) directs EPA to establish emissions standards for stationary sources of air pollution that “may reasonably be anticipated to endanger public health or welfare.” Section 111(b) and 111(d) establish EPA's authority to regulate new and modified sources and existing sources, respectively. In 2009, following the Supreme Court's 2007 decision in *Massachusetts v. EPA*, EPA determined that greenhouse gases (GHGs), including carbon dioxide, contribute to climate change, endangering both the public health and welfare of current and future generations and are thus within EPA's authority to regulate under the Clean Air Act.

OBAMA ADMINISTRATION: PROPOSED RULE

2014

EPA issued a **proposed rule** directing states to develop their own plans for emissions reductions from existing fossil fuel-fired power plants, relying on its authority under Section 111(d) and simultaneously issued standards for new power plants. The rule would assign each state a specific goal for reducing carbon emissions from the sector, to be achieved through four "building blocks" (heat rate improvements, replacing coal units with natural gas units, replacing fossil units with renewable sources, and demand-side energy efficiency). The proposal estimated a nationwide 30% reduction of power plant emissions below 2005 levels by 2030.

OBAMA ADMINISTRATION: FINAL RULE

2015

EPA issued a **final rule**, the Clean Power Plan (CPP), targeting two categories of fossil fuel-fired power plants: steam-generating units & stationary combustion turbines. The final rule established a best system of emissions reduction (BSER) based on the performance improvement and generation-shifting building blocks, and was expected to curb power sector emissions by 32%. The CPP also implemented a New Source Review (NSR) process requiring new or modified major sources of air pollution to acquire pre-construction permits if the construction would increase emissions by at least 75,000 tons of carbon dioxide per year.

TRUMP ADMINISTRATION: PROPOSED RULE

2017

Following the Trump Administration's **Executive Order 13783**, EPA issued a **proposed rule** to replace the CPP. The proposed rule would significantly loosen guidelines for state-specific emissions reductions, employing heat rate improvement (HRI) as the lone BSER for coal-fired electricity-generating units and listing NSR as a potential barrier to efficiency projects for certain electricity-generating units.

TRUMP ADMINISTRATION: FINAL RULES

2019

EPA issued a **final rule** formally repealing the CPP and creating new guidelines for GHG emissions from existing power plants. The Affordable Clean Energy (ACE) Rule emphasized improving the efficiency of coal-fired power plants, arguing that HRI improvement was the only cost-effective and legally permitted regulatory tool for carbon emission reduction. EPA projected that the ACE Rule would reduce carbon emissions by 0.7% by 2030, but many experts predicted it would not reduce emissions at all.

LITIGATION

2020

Environmental and public health entities as well as states and municipalities challenged the ACE Rule in litigation consolidated under *American Lung Association v. EPA*. The petitioners argued that the EPA had ignored its statutory duty to regulate carbon emissions, misstated the limitations of Section 111, and mischaracterized the state of the power sector.

BIDEN ADMINISTRATION REVERSAL

2021

In January 2021, President Biden issued **Executive Order 13990** directing EPA to review and consider revising the final ACE rule.

The day before President Biden took office, the D.C. Circuit issued a **ruling** vacating the ACE Rule, and its repeal of the CPP, remanding it to EPA. EPA issued **guidance** stating that since the D.C. Circuit did not expressly reinstate the CPP, the agency will not expect states to submit implementation plans or take action under the Plan.