

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 949 Regulation of Carbon Dioxide Emissions from Fossil Fuel-Fired Electric Generating Units

**SPONSOR(S):** Rodrigues and others

**TIED BILLS:** None. **IDEN./SIM. BILLS:** SM 1228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	9 Y, 3 N	Keating	Keating
2) Local & Federal Affairs Committee	12 Y, 5 N	Kiner	Kiner
3) Regulatory Affairs Committee	9 Y, 6 N	Keating	Hamon

### SUMMARY ANALYSIS

On June 18, 2014, the U.S. Environmental Protection Agency (EPA), pursuant to section 111(d) of the federal Clean Air Act (CAA), published a proposed rule to address greenhouse gas emissions from existing power plants (the "Clean Power Plan"). In its proposed rule, the EPA proposes state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The EPA is currently processing public comments on the proposed rule and plans to issue a final rule this summer (2015).

Under the proposed Clean Power Plan, each state, by June 30, 2016, must submit to the EPA a plan to implement the guidelines set forth in the rule. With respect to Florida, the EPA's proposed rule requires a 38 percent reduction in carbon emissions from 2012 rates by 2030, with much of the reduction required by 2020 to meet the EPA's interim compliance schedule. Under the proposed rule, a state may request a one-year extension if it demonstrates a need for additional time to submit a complete plan or a two-year extension to develop a multi-state plan. The provisions of the proposed rule are subject to change in the final rule.

This memorial urges the United States Congress to direct the EPA to revise its proposed Clean Power Plan as follows:

- Extend by 1 year the date by which states are required to submit a state plan to the EPA, thereby providing more time to finalize technical work and state legislative and rulemaking activities.
- Decrease the proposed interim and final state goals expressed as adjusted output for the weighted average emission rates for all affected electric generating units in Florida.
- Extend by 5 years the interim plan compliance schedule for meeting the proposed state goals for reductions in carbon dioxide emission rates.
- Extend by 5 years the date by which final goals for carbon dioxide emission rates must be reached.
- Prohibit retirement of an electric generating unit before the end of its engineering lifetime unless the affected utility has fully recovered the costs of construction and financing of the unit, the state has sufficient replacement capacity, and grid reliability is maintained.

Copies of the memorial must be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Administrator of the EPA, and each member of the Florida delegation to the United States Congress.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

The U.S. Environmental Protection Agency (EPA) regulates air emissions from stationary and mobile sources under the authority of the Clean Air Act (CAA).<sup>1</sup> Under section 109 of the CAA, the EPA must set National Ambient Air Quality Standards (NAAQS) for air pollutants deemed hazardous to the public health or welfare.<sup>2</sup> The EPA has set NAAQS for six common pollutants referred to as “criteria pollutants”: ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead.<sup>3</sup> Section 110 of the CAA requires each state to adopt a plan (state implementation plan or SIP) that provides for enforcement of the NAAQS.<sup>4</sup> In addition, Section 112 of the CAA authorizes the EPA to set emission standards for sources of specified pollutants referred to as “hazardous air pollutants.”<sup>5</sup>

Section 111(b) of the CAA authorizes the EPA to establish standards of performance for a *new or modified* stationary source of air pollution that “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.”<sup>6</sup> Standards of performance are set by category of stationary sources, and each category is set by the EPA.<sup>7</sup> The standard for each category must be based on “the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the [EPA] determines has been adequately demonstrated.”<sup>8</sup>

When the EPA establishes standards of performance for a new or modified source under section 111(b) of the CAA, each state must develop a plan for enforcing the standards for such new sources located in the state.<sup>9</sup> Further, section 111(d) of the CAA mandates that the EPA prescribe regulations that require each state to establish standards of performance for any *existing* source to which the EPA standards would apply if it were a new source, provided that the pollutant at issue is not already regulated as a criteria pollutant or a hazardous air pollutant.<sup>10</sup> Standards for existing sources are set through a process that includes the establishment of federal guidelines followed by the development of state plans to meet the federal guidelines.<sup>11</sup> To reflect technology differences between new and existing sources, the standards established by states for existing sources may be less stringent than those established by the EPA for new sources.<sup>12</sup> Further, the state may take into account, among other factors, the remaining useful life of the existing source to which the standard applies.<sup>13</sup> State standards and implementation plans are subject to EPA review and approval.<sup>14</sup>

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<sup>1</sup> U.S. Environmental Protection Agency, Summary of the Clean Air Act, available at <http://www2.epa.gov/laws-regulations/summary-clean-air-act> (last accessed March 10, 2015).

<sup>2</sup> 42 U.S.C. § 7409.

<sup>3</sup> U.S. Environmental Protection Agency, Clean Air Act Requirements and History, available at <http://www.epa.gov/air/caa/requirements.html> (last accessed March 10, 2015).

<sup>4</sup> 42 U.S.C. § 7410. SIPs are subject to review and approval by the EPA. The Florida Department of Environmental Protection is responsible for implementing air pollution programs in Florida that are in compliance with federal requirements.

<sup>5</sup> 42 U.S.C. § 7412.

<sup>6</sup> 42 U.S.C. § 7411(b)(1).

<sup>7</sup> *Id.*

<sup>8</sup> 42 U.S.C. § 7411(a)(1).

<sup>9</sup> 42 U.S.C. § 7411(c).

<sup>10</sup> 42 U.S.C. § 7411(d).

<sup>11</sup> U.S. Environmental Protection Agency, What EPA is Doing: Reducing carbon pollution from the power sector, available at <http://www2.epa.gov/carbon-pollution-standards/what-epa-doing> (last accessed March 10, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> 42 U.S.C. § 7411(d).

<sup>14</sup> *Id.*

Under the authority granted in section 111(b) of the CAA,<sup>15</sup> the EPA, on April 13, 2012, proposed rules setting forth performance standards for carbon emissions<sup>16</sup> from new electric power plants.<sup>17</sup> The adoption of performance standards for this new source triggered the development of federal guidelines and state standards under section 111(d) of the CAA for carbon emissions from existing power plants.

On June 25, 2013, President Barack Obama issued a Presidential Memorandum which recognized that the EPA had begun rulemaking for new power plants and directed the EPA to issue standards, regulations, or guidelines, as appropriate, that address carbon emissions from existing power plants pursuant to its authority under the CAA.<sup>18</sup> The Presidential Memorandum requested that the EPA issue such guidelines for existing plants by June 1, 2014, issue final guidelines for existing plants by June 1, 2015, and require submission of state implementation plans and standards by June 30, 2016.

On June 18, 2014, the EPA published a proposed rule to address greenhouse gas emissions from existing power plants (the “Clean Power Plan”).<sup>19</sup> In its proposed rule, the EPA proposes state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The proposed rule requires Florida to reduce carbon emissions from its 2012 rate of 1,238 pounds per megawatt-hour to a rate of 740 pounds per megawatt-hour by 2030, a 38 percent reduction. The proposed rule establishes an interim goal of 794 pounds per megawatt-hour, with much of the reduction required by 2020 to meet the EPA’s interim compliance schedule.<sup>20</sup>

The EPA invited public comment on the proposed rule. The Public Service Commission, Department of Environmental Protection, Office of Public Counsel, Department of Agriculture and Consumer Services, and the Attorney General (jointly with other state attorneys general) each submitted comments in response to the proposed rule.<sup>21</sup> The EPA is currently processing these comments and all other public comments submitted on the proposed Clean Power Plan and plans to issue final rules this summer (2015) related to both new power plants and existing power plants.

Under the proposed rule, each state, by June 30, 2016, must submit to the EPA a plan to implement the guidelines set forth in the rule. The EPA intends to develop federal plans to apply to states that do not submit a state plan. Under the proposed rule, a state may request a one year extension if it needs additional time to submit a complete plan. To obtain an extension, the state must submit an initial plan by June 30, 2016, that contains certain required components. The initial state plan must also document the reasons the state needs more time and include commitments to concrete steps that will ensure that the state will submit a complete plan by June 30, 2017. The proposed rule identifies the following “approvable” justifications for seeking an extension beyond 2016: a state’s required schedule

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<sup>15</sup> In *Am. Elec. Power Co., Inc. v. Connecticut*, 131 S. Ct. 2527 (2011), the U.S. Supreme Court affirmed the EPA’s authority to regulate stationary sources of greenhouse gases (like electric power plants), so long as the EPA made an “endangerment finding” to justify the regulation.

<sup>16</sup> According to the EPA’s website, carbon dioxide is a greenhouse gas that is naturally present in the atmosphere as part of the Earth’s carbon cycle (the natural circulation of carbon among the atmosphere, oceans, soil, plants, and animals). The main human activity that emits carbon dioxide is the combustion of fossil fuels (coal, natural gas, and oil) for energy and transportation. The combustion of fossil fuels to generate electricity is the largest single source of carbon dioxide emissions in the nation, accounting for about 38 percent of total U.S. carbon dioxide emissions and 32 percent of total U.S. greenhouse gas emissions in 2011. The type of fossil fuel used to generate electricity will emit different amounts of carbon dioxide, but to produce a given amount of electricity, burning coal will produce more carbon dioxide than oil or natural gas. See <http://www.epa.gov/climatechange/ghgemissions/gases/co2.html> (last accessed March 10, 2015).

<sup>17</sup> Notice of Proposed Rulemaking entitled “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units”; Docket ID No. EPA-HQ-OAR-2013-0495.

<sup>18</sup> Memorandum to the Environmental Protection Agency from President Barak Obama, (June 25, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards> (last accessed March 10, 2015).

<sup>19</sup> “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”; Docket ID No. EPA-HQ-OAR-2013-0602. See <https://federalregister.gov/a/2014-13726> (last accessed March 10, 2015).

<sup>20</sup> Presentation by the Department of Environmental Protection to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

<sup>21</sup> Presentation by the Public Service Commission to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

for legislative approval and administrative rulemaking; the need for multi-state coordination in the development of an individual state plan; or the process and coordination necessary to develop a multi-state plan. A state may request an extension through June 30, 2018, if it is working with other states to develop a multi-state plan.

As with other components of the proposed rule, the proposed timelines for development of state plans are subject to change in the final rule. The EPA notes in the proposed rule that its framework regulations (40 CFR 60.23) require that state plans be submitted to the EPA within nine months of promulgation of the emission guidelines, unless the EPA specifies otherwise.

As compared to other sections of the CAA, the EPA rarely has used section 111(d). Thus, there are limited precedents for how the EPA will or should implement performance standards for carbon emissions under section 111(d) of the CAA.<sup>22</sup>

### **Effect of Proposed Changes**

This memorial urges the United States Congress to direct the EPA to revise its proposed Clean Power Plan as follows:

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#### **B. SECTION DIRECTORY:**

Not applicable.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

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<sup>22</sup> Pew Center on Global Climate Change, GHG New Source Performance Standards for the Power Sector: Options for EPA and the States, at p.5, available at <http://www.c2es.org/docUploads/EPA-HQ-OAR-2011-0090-2950.1.pdf> (last accessed March 10, 2015).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.