

EPA's Reproposed Carbon Limits Include Separate Standards for Coal, Gas Units

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By Jessica Coomes

Jan. 7 — The Environmental Protection Agency is scheduled to publish repropose carbon dioxide limits for new power plants Jan. 8, setting separate standards for coal-fired and natural gas-fired generating units.

The EPA released the proposal Sept. 20, following a schedule President Barack Obama laid out, but the agency waited nearly four months to publish the rule in the Federal Register.

The new plant performance standards aren't expected to result in significant carbon dioxide emissions reductions directly because the power sector has been investing in cheaper, cleaner natural gas-fired units, rather than coal-fired units. However, finalizing new-plant performance standards would trigger a requirement under Section 111(d) of the Clean Air Act for the EPA to issue similar emissions guidelines for existing power plants, which are the largest source of greenhouse gas emissions in the country.

The EPA is accepting comments on the revised proposed rule through March 10 and will hold a public hearing Jan. 28 in Washington.

Pursuing Legally Sound Rule

The EPA could be taking its time with the rulemaking process to ensure the new-plant rule is legally sound in order to protect its ability to establish existing-plant regulations in the future, observers told Bloomberg BNA Jan. 7.

Bill Becker, executive director of the National Association of Clean Air Agencies, said the existing-plant rule can't go forward if the new-plant rule is overturned in court.

"The agency wants to make certain that this rule is legally and technically credible, so that it does not get in the way of triggering 111(d), which is where the most significant impacts will occur," Becker said.

The EPA told Bloomberg BNA in an e-mail Jan. 7 that the government shutdown in October 2013 contributed to the lag time in publishing the rule.

Jeff Holmstead, an attorney with Bracewell & Giuliani LLP who previously was the EPA assistant administrator for air and radiation, told Bloomberg BNA Jan. 7 that the proposed rule assumes carbon capture and sequestration technology has been adequately demonstrated, but industry could challenge that assessment if the rule were finalized as proposed.

“That's going way out on a limb,” Holmstead said about the feasibility of carbon capture and sequestration. “If that gets challenged and gets overturned in court, that eliminates their ability to do anything for existing sources.”

Hal Quinn, president of the National Mining Association, said Jan. 7 that the proposed rule “effectively bans coal from America's power portfolio by conditioning new power generation on the use of unproven technologies,” which sets “a dangerous and far-reaching precedent for the broader economy.”

“Although today's story is about coal and affordable electricity, tomorrow the story will concern other industries forced to comply with arbitrary standards based on unproven technologies,” Quinn said in a statement.

Original Rule Proposed in 2012.

The EPA has been working for years to establish carbon limits for new power plants.

The EPA issued its original proposal in April 2012. But the agency's decision at the time to propose a single standard for both coal- and gas-fired plants in the original rule was a potential legal vulnerability. New natural gas plants probably could have met the standard, but it would have been more difficult for new coal plants to meet it.

The revised proposal to be published Jan. 8 withdraws the 2012 rule and proposes new standards.

In a June 2013 announcement, Obama called on the EPA to repropose the standards by Sept. 20 and finalize them “in a timely fashion.” In the same announcement, Obama said the EPA should issue proposed guidelines to regulate existing power plants by June 1, 2014, and final guidelines by June 1, 2015.

“I think it is aggressive, but on the other hand, it's clearly [EPA Administrator Gina McCarthy's] highest priority and almost certainly the highest priority of the White House when it comes to environmental issues, so my guess is they will probably meet their deadlines,” Holmstead said.

Separate Carbon Limits

The reproposed rule would set carbon limits of 1,000 pounds per megawatt-hour for new gas units and 1,100 pounds per megawatt-hour for smaller gas plants and new coal plants. New coal plants would have the option of averaging their emissions over a seven-year period if they agreed to meet a more stringent standard in a range between 1,000 pounds per megawatt-hour and 1,050 pounds per megawatt-hour.

The April 2012 proposed rule would have set a single standard of 1,000 pounds per megawatt-hour for both coal- and gas-fired plants.

After the proposed rule was released Sept. 20, McCarthy said the EPA responded to concerns raised by the power industry by offering separate performance standards for coal- and natural gas-fired units and by setting a less-stringent standard for small natural gas-fired units that are primarily used during times of peak electricity demand.

Comments Due by March 10

The EPA will accept comments through March 10 at <http://www.regulations.gov> in Docket No. EPA-HQ-OAR-2013-0495. Comments submitted in response to the original April 2012 proposal won't be associated with this new proposed rule.

The public hearing on the rule will be 9 a.m. Jan. 28 at 1201 Constitution Ave., N.W. in Washington.

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The proposed rule is available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2013-28668.pdf>.

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