

FACT SHEET
Advance Notice of Proposed Rulemaking on State Guidelines
for Greenhouse Gas Emissions from Existing Power Plants

Action

- On December 18, 2017, the U.S. Environmental Protection Agency issued an Advance Notice of Proposed Rulemaking (ANPRM) to solicit information from the public about a potential future rulemaking to limit greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs), commonly called power plants.
- In the ANPRM, the EPA is considering proposing emission guidelines to limit GHG from existing power plants and is soliciting information on the proper respective roles of the state and federal governments in that process, as well as information on systems of emission reduction that are applicable at or to a power plant, information on compliance measures, and information on state planning requirements under the Clean Air Act (CAA).
- The ANPRM does not propose any new regulations or requirements for power plants; rather, it offers the public the opportunity to comment on specific topics for the Agency to consider in developing a potential future proposed rule.
- The ANPRM is a separate but related action to the October 16, 2017 proposal to repeal the Clean Power Plan (CPP).
- In light of the proposed repeal of the CPP, this ANPRM focuses on what EPA should consider in a future regulatory action establishing emission guidelines for GHG emissions from existing power plants.
- The EPA is setting out and requesting comment on the roles, responsibilities, and limitations of the federal government, state governments, and regulated entities in developing and implementing such a rule, and the EPA solicits information regarding the appropriate scope of such a rule and associated technologies and approaches.
- Through this ANPRM, the EPA solicits information on multiple aspects of a potential rule that would establish emission guidelines for States to establish performance standards for GHG emissions from existing power plants.
- More specifically, the ANPRM seeks information on several key topics:
 - The roles and responsibilities of the States and the EPA in regulating existing power plants for GHG.
 - Application, in this specific context, of reading CAA Section 111(a)(1) as limited to emission measures that can be applied to or at a stationary source, at the source-specific level.
 - Note that the solicitation in this ANPRM is application- and context-specific; comments on interpreting CAA section 111(a)(1) as generally applied to CAA section 111(d) should be submitted to the docket on the CPP repeal proposal.

- How to best define the “Best System of Emission Reduction (BSER)” and develop emission guidelines for existing power plants for GHG, specifically with respect to:
 - identifying the BSER that can be implemented at the level of an affected source, including aspects related to efficiency (heat-rate) improvement technologies and practices as well as other systems of emission reduction;
 - considering whether emission guidelines should include presumptively approvable limits; and
 - aspects relating to use of carbon capture and storage as a compliance option to reduce GHG emissions.
- Potential interaction with other regulatory programs, such as New Source Review.
- Any other comment that may assist the Agency in considering setting emission guidelines for States to follow to limit GHG emissions from existing power plants.
- EPA will accept comment on the ANPRM for 60 days after publication in the Federal Register.

Background

- In 2007, the United States Supreme Court concluded Congress had drafted the Clean Air Act broadly enough that EPA could regulate greenhouse gases (GHGs) from new motor vehicles under section 202(a).
- In 2009, EPA issued an Endangerment Finding concluding that emissions of GHGs from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. This determination allowed EPA to regulate GHGs from new motor vehicles.
- Relying on the 2009 endangerment finding, EPA then proposed to regulate GHGs from power plants.
- In October 2015, the previous Administration issued a final rule to regulate GHGs from new power plants under Section 111(b) of the Clean Air Act and issued a final rule to regulate GHGs from existing power plants under Section 111(d), which was more commonly referred to as the Clean Power Plan.
- Soon after, 150 entities including 27 states, 24 trade associations, 37 rural electric co-ops, and three labor unions challenged the CPP highlighting a range of legal and technical concerns.
- By December 1, 2015, a bipartisan majority of the United States Congress formally disapproved of the CPP pursuant to the Congressional Review Act.

- On February 9, 2016, the United States Supreme Court stayed the CPP immediately halting implementation. The Supreme Court had never before issued a stay to block the enforcement of a rule while it is being challenged in court.
- On March 28, 2017, President Trump signed the Energy Independence Executive Order which called, among other things, for a review of the Clean Power Plan and, if appropriate, reconsideration proceedings to suspend, revise, or rescind the rule.
- After completing review, on October 16, 2017, the EPA proposed to repeal the Clean Power Plan and is taking comment on that action through January 16, 2018.
 - On November 28 and 29, 2017, EPA also held a public hearing on the proposed repeal rule in Charleston, W. Va.,
 - EPA also plans to hold three public listening session on the proposed repeal of the Clean Power Plan in San Francisco, Calif., Gillette, Wyo., and Kansas City, Mo. Dates and specific locations for those listening sessions will be announced in the coming weeks.
- In light of the Supreme Court precedent and the underlying statutory scheme, the EPA is now issuing an Advance Notice of Proposed Rulemaking for a potential new rule under section 111(d) of the Clean Air Act.

How to Comment

- Comments on the ANPRM should be identified by Docket ID No. EPA-HQ-OAR-2017-0545, and may be submitted by one of the following methods:
 - **Online:** Go to <https://www.regulations.gov> and follow the online instructions for submitting comments to Docket ID No. EPA-HQ-OAR-2017-0545.
 - **Email:** Comments may be sent to a-and-r-Docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2017-0545 in the subject line of the message.
 - **Fax:** Fax your comments to: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2017-0545
 - **Mail:** Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA-HQ-OAR-2017-0545, 1200 Pennsylvania Avenue, NW, Washington, DC 20460
 - **Hand/Courier Delivery:** EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2017-0545. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information
- For additional information, including the full EPA public comment policy, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

- This ANPRM is a separate but related action to the proposed repeal of the Clean Power Plan, and each has its own docket number. Comments on the proposed repeal of the Clean Power Plan will need to be submitted under Docket ID No. EPA-HQ-OAR-2017-0355 by January 16, 2018. Information on how to comment on the proposed repeal is available at <https://www.epa.gov/stationary-sources-air-pollution/clean-power-plan-proposed-repeal-how-comment>

For more information

- A copy of the ANPRM is available on EPA's website at <https://www.epa.gov/stationary-sources-air-pollution/electric-utility-generating-units-advance-notice-proposed>