

Federal Efforts to Address Climate Change

- Public power utilities are reducing their greenhouse gas (GHG) emissions through a variety of means, including increased use of renewable energy resources, the development of new nuclear power, the addition of distributed energy resources and storage, the adoption of energy efficiency programs, and the promotion of transportation electrification.
- The American Public Power Association (APPA) supports congressional efforts to address climate change through a statutory framework that provides electric utilities with regulatory certainty for the clean energy transition while keeping electricity affordable and reliable for all customers.
- Congress should continue to fund federal research, development, and deployment of clean energy technologies and infrastructure that increase the resilience of the grid, reduce emissions, and help keep electricity affordable.

Background

Following the U.S. Supreme Court's landmark decision in *Massachusetts v. Environmental Protection Agency* in 2007, which held that EPA has the authority to regulate tailpipe emissions of GHGs under the Clean Air Act (CAA) because GHGs are pollutants that potentially "endanger" public health and welfare, Congress and EPA have sought to address climate change through legislation and regulations. In 2009, the House of Representatives passed the American Clean Energy and Security Act of 2009 by a vote of 219-212. The legislation would have established an economy-wide GHG cap-and-trade system. The Senate did not consider the House bill; nor did it consider its own comprehensive climate bill due to the lack of sufficient support among senators.

With Congress failing to enact climate change legislation in 2010, the Obama administration's EPA issued proposed New Source Performance Standards (NSPS) for new fossil fuel-fired power plants in 2012. Just over three years later, in August 2015, EPA issued final rules to regulate carbon dioxide (CO₂) emissions from new power plants and existing power plants ("Clean Power Plan" or CPP).

The CPP set final emission guidelines in the form of nationally uniform CO₂ emission performance rates for coal-fired and natural gas-fired power plants. It also set CO₂ emissions-reduction goals for each state and allowed for emissions reductions through energy efficiency upgrades at power plants and fuel switching from coal to natural gas or renewables.

In 2015, the CPP was challenged in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The case was subsequently dismissed in 2019, with the court noting that challenges to the rule were moot due to the repeal of the CPP and replacement of the rule with the Trump administration's Affordable Clean Energy (ACE) rule. The ACE rule sought to establish the "best system of emissions reduction" (BSER) for limiting CO₂ emissions from affected electric generating units (EGUs) in the form of heat rate improvement measures that could be applied to or at an affected unit (i.e., "inside the fence"). In 2019, the ACE rule was challenged in the D.C. Circuit, where the court vacated and remanded it to EPA. Subsequently, the D.C. Circuit's decision was appealed to the U.S. Supreme Court. The court ruled in *West Virginia v. EPA et al.* (No. 20-1530) that EPA's conclusion in the CPP that an "outside the fence" approach, including a cap-and-trade system, that resulted in a shift of electricity production from coal plants to other sources of lower GHG emissions, exceeded EPA authority under section 111(d) of the CAA. Thus, the court reversed and remanded the case to the D.C. Circuit.

Administrative Action

In May 2024, EPA finalized rules to regulate GHG emissions from new, modified, reconstructed, and certain existing power plants under section 111 of the CAA.¹ The final 2024 Carbon Pollution Standard (CPS) rules will impose stringent NSPS on power plants fueled by natural gas and impose strict limits on GHG emissions from existing coal-fired generators. The final rules establish BSER based on the use of lower-emitting fuels, highly efficient generation practices, co-firing with natural gas, and carbon capture and storage (CCS) technology. The final rules aim to significantly reduce GHGs from the electric sector by requiring certain new and existing fossil fuel generation to implement CCS by 2032 or co-fire with 40 percent natural gas by 2030. The final rules allow for various technology options and compliance timelines commensurate with a facility's anticipated retirement date. The requirements vary based on whether an EGU is new or existing, coal-fired or gas-fired, and how often it is used. EPA's reliance on CCS as BSER assumes the technology is "adequately demonstrated" and "economically achievable." Many of the final rules' assumptions are based upon changes in the electric sector, technology developments, the passage of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58) and Inflation Reduction Act (IRA) (P.L. 117-169), and state support for investment in CCS.

Following the publication of the 2024 CPS in the *Federal Register*, 25 states and several industry petitioners challenged them in the D.C. Circuit. Oral arguments in *West Virginia v. EPA*, No. 24-1120 (D.C. Cir.) were held in December 2024. In early 2025, the Trump administration filed a motion with the court to hold the litigation in abeyance pending EPA's review and reconsideration of the final rules. On June 11, 2025, EPA issued its proposed rule to repeal all GHG standards for fossil-fired power plants.²

The proposed rule would repeal the 2015 NSPS and elements of the 2024 CPS. EPA proposes to find that GHG emissions from fossil-fired power plants "do not contribute significantly to dangerous air pollution." The agency now interprets CAA section 111 to require EPA to make this finding specifically for a source category before it can regulate GHGs for that category. The proposal also offers an alternative to repeal, a narrower set of requirements based on a revision to the BSER determination in the 2024 CPS. First, for existing long-term coal units, EPA is proposing to determine 90 percent CCS is not BSER because the technology has not been adequately demonstrated. Second, for medium-term coal units, the agency proposes that 40 percent natural gas co-firing is not BSER because it constitutes impermissible generation shifting, which *West Virginia* prohibits. Third, EPA proposes to repeal the emission guidelines for natural gas and oil-fired steam EGUs because it would be an inefficient use of state resources and would result in few or no emission reductions, as these sources comprise a small part of the source category. Fourth, EPA is proposing to repeal the CCS requirements for coal units undergoing large modifications because CCS has not been adequately demonstrated, and the costs are not reasonable. Lastly, the agency is proposing to repeal the phase 2 base-load gas standards for stationary gas turbines. However, EPA would retain the phase 1 gas standards for intermediate- and low-load turbines.

APPA submitted comments on the proposed repeal, urging EPA to finalize the alternative proposal first because doing so would provide public power utilities with the relief they need from the 2024 CPS. The comments noted that because the alternative proposal is based on existing interpretations of the CAA and decades of caselaw, it provides a more certain and durable route to the relief needed by the power industry. APPA also urged EPA to revise the gas turbine NSPS in a supplemental rulemaking to address new baseload combustion turbines in phase 1 and intermediate combustion turbines. The association asserted that the 2024 CPS was legally defective, relying on technologies, such as CCS, that do not meet the legal definition of BSER. APPA also asserted that the requirement to co-fire coal-fired power plants with natural gas also does not meet the legal definition of BSER as EPA is precluded from requiring generation shifting to meet emissions reductions targets per the major questions doctrine. EPA is expected to issue a final rule repealing the 2024 CPS in early 2026.

Congressional Action

Similar to regulations issued by EPA, there have been significant changes in climate-related federal policies in recent years. In 2021, President Biden signed the IIJA into law, which provided federal funding for a host of programs to promote clean energy, energy efficiency, grid resilience, and electrification of the transportation sector. Further, the IRA, signed into law in 2022, expanded existing energy tax credits and created new ones, including for nuclear power and carbon capture, among other technologies, to promote clean

1 New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39798 (May 9, 2024).

2 Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 25752 (June 17, 2025).

energy technologies to reduce emissions to address climate change. The IRA also, for the first time, made these credits available to public power utilities through elective pay.

The 118th Congress focused on oversight of federal agencies, such as the Departments of Energy, Transportation, and Treasury, tasked with implementing the energy tax credits and grant programs created by the IRA and IIJA, and on executive actions to address climate change, including EPA's power plant regulations. Congress held several hearings on the proposed and final rules, with Republicans largely focused on the rules' impact on electric reliability and Democrats predominantly focused on the purported public health benefits of the rules. Beginning in January 2025, the 119th Congress has focused extensively on electric reliability and resource adequacy issues. In May, Representative Troy Balderson (R-OH) introduced H.R. 3616, the Reliable Power Act, which would require the Federal Energy Regulatory Commission (FERC) to review federal agency actions that are likely to have a significant, negative impact on the reliability of the bulk power system. Senator Tom Cotton (R-AK) introduced a Senate version of the Reliable Power Act, S. 3034. APPA supports both bills. In addition to the Reliable Power Act, the House Energy & Commerce Committee passed several reliability-related bills in June, including legislation requiring FERC to reform the interconnection queue to prioritize dispatchable generation (H.R. 1047), and to require large generators to provide five years advance notice before retirement and to give FERC additional authority to keep needed generation from retiring (H.R. 3632). While similar bills have not yet been introduced in the Senate, APPA expects Congress to continue to focus on reliability and resource adequacy issues, as opposed to climate or emissions issues, throughout 2026.

In July 2025, President Trump signed into law H.R. 1, the One Big Beautiful Bill Act. The new law significantly scales back the availability of energy tax credits created by the IRA, though it would maintain elective payment for public power utilities. It also rescinds unobligated funding from the IRA for energy-related research, development, and deployment projects.

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The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government and protect the interests of the more than 55 million people that public power utilities serve and the 100,000,000 people they employ.