

# Federal Efforts to Address Climate Change

## Summary

Over the last decade, Congress and the Environmental Protection Agency (EPA) have sought to address climate change through legislation and regulations. Congressional efforts to move climate legislation failed in 2010 with the Senate's decision to not take up a bill due to a lack of support in the chamber. Following a U.S. Supreme Court decision holding that greenhouse gases (GHGs) are pollutants under the Clean Air Act (CAA) and that EPA has the authority to regulate them from tailpipe emissions, the agency has undertaken several rulemakings to regulate carbon dioxide (CO<sub>2</sub>) emissions from power plants. In 2015, the agency issued the Clean Power Plan (CPP), which sought to reduce emissions from coal and natural gas power plants under section 111(d) of the CAA. In 2019, under the direction of President Trump, the agency finalized new emissions guidelines to regulate CO<sub>2</sub> emissions from existing coal-fired power plants and repealed the CPP.

The American Public Power Association (APPA or Association) did not support the CPP because it exceeded EPA's statutory authority under section 111(d). APPA supports EPA's replacement of the CPP with the new rule, which better comports with the statutory requirements of CAA section 111(d). The Affordable Clean Energy (ACE) rule will allow the continued operation of coal-fired power plants that make efficiency improvements at the electric generating unit. It also provides states with the flexibility to develop unit-specific performance standards that can account for local market and economic conditions. The final ACE Rule was published in the *Federal Register* on July 8, 2019, and becomes effective September 6, 2019.

Public power utilities recognize the threat climate change poses. They are reducing their GHG emissions through a variety of means, including increased use of renewable energy resources, development of new nuclear power, addition of distributed energy resources and storage, and adoption of energy efficiency programs. Between 2005 and 2017, public power utilities reduced their CO<sub>2</sub> emissions by 33 percent. Should Congress decide to do more to address climate change, Congress could focus on energy policies that reduce GHG emissions while keeping electricity affordable and reliable.

## Background

In 2007, the U.S. Supreme Court issued its decision in *Massachusetts v. Environmental Protection Agency*. In that case, the court held that EPA has the authority to regulate tailpipe emissions of GHGs under the CAA because GHGs are pollutants that potentially "endanger" public health and welfare. The court remanded the case back to the agency to either issue an endangerment finding for GHGs or provide a basis for not issuing an endangerment finding.<sup>1</sup> On remand, EPA issued an endangerment finding in December 2009, which states that GHGs from motor vehicles do endanger public health and welfare. The following year, the agency entered into a judicial settlement where it agreed to promulgate New Source Performance Standards (NSPS) for two existing source categories—power plants and refineries.

During this same time period, there were efforts in Congress to address climate change. In 2007, the Consolidated Appropriations Act, 2008 directed EPA to publish a rule requiring public reporting of GHG emissions from large sources. Less than two years later, the House of Representatives passed the American Clean Energy and Security Act of 2009 by a vote of 219-212. The legislation, commonly referred to as "Waxman-Markey," 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 a proposed NSPS for new fossil fuel-fired power plants in March 2012. Just over a year later, President Obama sent a memo to the Acting Administrator of EPA, directing him to issue proposed "standards, regulations, or guidelines, as appropriate, that address carbon pollution from modified, reconstructed, and existing power plants..." no later than June 1, 2014. On August 3, 2015, EPA

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<sup>1</sup> An endangerment finding is a necessary precondition under the CAA to take regulatory action.

released its final “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units” (called the “Clean Power Plan” or “Existing Plant Rule”) as well as its final “Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Generating Units” (called the “New Plant Rule”).<sup>2</sup>

The CPP set final emission guidelines in the form of nationally uniform CO<sub>2</sub> emission performance rates for two kinds of fossil fuel-fired electric generating units (EGUs)—steam generating units (1,305 pounds CO<sub>2</sub> per megawatt hour (lb CO<sub>2</sub>/MWh)) and combustion turbines (771 lb CO<sub>2</sub>/MWh). It finalized goals for each state between 771 and 1,305 lb CO<sub>2</sub>/MWh based on the weighted average of existing fossil-fuel fired generation in the state and provided equivalent mass-based state goals in short tons of CO<sub>2</sub>. It also allowed for emissions reductions through energy efficiency upgrades at power plants and fuel switching from coal to natural gas or renewables.

Following publication of the CPP in the *Federal Register* on October 23, 2015, more than 150 state and industry petitioners challenged the legality of the rule in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). On February 9, 2016, the U.S. Supreme Court granted a rare emergency stay of the CPP that put implementation of the rule on hold while the D.C. Circuit heard legal challenges to it. The stay is still in place while the D.C. Circuit reviews the rule, as well as any future appeal to the U.S. Supreme Court. While the stay is in effect, neither EPA nor the states can enforce any of the deadlines or requirements in the final CPP rule, nor will states be penalized for missing a deadline or requirement.

### Administrative Action

On March 28, 2017, President Trump signed an Executive Order (EO) entitled, “Promoting Energy Independence and Economic Growth.” The EO directs the Administrator of EPA to review the CPP and determine whether the agency should “suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding...” the rules for new, modified, and reconstructed power plants, as well as existing power plants and the proposed Federal Plan and Model Trading Rule. The EO also orders the Administrator to review and determine whether to “suspend, revise, or rescind, as appropriate with the law, the ‘Legal Memorandum Accompanying the Clean Power Plan for Certain Issues.’”

Pursuant to the EO, EPA, through the Department of Justice, notified the D.C. Circuit of its intention to review the new and existing plant rules. The agency requested the court hold the litigation in abeyance as it conducts its review. The court granted that request and is currently holding the case in abeyance. Now that the agency has repealed the CPP and replaced it with the final ACE rule, the case will likely be dismissed.

On August 21, 2018, EPA proposed “a new rule to reduce greenhouse gas (GHG) emissions from existing coal-fired electric utility generating units and power plants across the country.” Entitled the Affordable Clean Energy (ACE) rule, it “establishes emissions guidelines for states to use when developing plans to limit GHGs at their power plants.” ACE is the proposed replacement for the CPP. APPA filed comments with EPA on October 31, 2018, expressing support for the decision to replace the CPP with “emissions guidelines for GHG emissions from existing EGUs that adhere to the statutory requirements of CAA section 111(d).”

On June 19, 2019, EPA Administrator issued the final ACE rule. The final rule included three separate final actions:

1. The repeal of EPA’s 2015 Clean Power Plan;
2. The promulgation of new emission guidelines for regulating CO<sub>2</sub> emissions from existing coal-fired EGUs; and
3. The promulgation of amendments to CAA section 111(d) implementing regulations governing the submission and review of state plans and future guidelines.

EPA elected not to finalize reforms to the New Source Review emissions applicability test for major modifications, opting instead to finalize these reforms in a separate action, at a later date.

In keeping with the President’s EO, on December 20, 2018, EPA also proposed to revise its 2015 Standards of Performance for Greenhouse Gas Emissions from new, modified, and reconstructed coal-fired power plants. The proposed revision would establish new performance standards and revise the “best system of emission reduction” (BSER) for new plants.<sup>3</sup> EPA proposes to base the BSER on the most efficient demonstrated steam cycle in combination with the best operating practices, instead of partial carbon capture and sequestration, as was required in the 2015 rule. The Association filed comments with EPA on March 18, 2019, on the proposed new plant rule. APPA’s comments were generally supportive and recommended that any new performance standard should be achievable under all load conditions in which power plants operate. The revised new plant rule is expected to be finalized in September 2019.

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<sup>2</sup> The agency also issued final Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Generating Units. In addition, EPA proposed its Federal Plan Requirements for Greenhouse Gas Emissions from Electric Generating Units; Model Trading Rules; Amendments to Framework Regulations (Federal Plan and Model Trading Rules) on August 3 (this was done to assist states in developing implementation plans that relied on tradable compliance instruments).

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<sup>3</sup> Under section 111(b), EPA identifies the “best system of emission reduction” that has been adequately demonstrated to control emissions of a particular pollutant from a particular type of source and sets a standard for new sources based on the application of that BSER.

## Congressional Activity

The House of Representatives has been active on climate issues in the 116th Congress. In early January, Speaker Nancy Pelosi (D-CA) reinstated the Select Committee on Climate Change, now called the Select Committee on the Climate Crisis. The select committee will hold hearings and report to the House in March 2020 on its recommendations for addressing climate change. The House Energy & Commerce Committee thus far has held five hearings focused on the impact of climate change and policies that could be implemented to reduce GHG emissions. Climate-related provisions are also likely to be included in infrastructure legislation that the House plans to draft. On April 3, the committee approved H.R. 9, the Climate Action Now Act, introduced by Representative Kathy Castor (D-FL) “to ensure the United States honors its Paris Agreement commitments by prohibiting any funds from being used to withdraw, and requiring the President to develop and communicate a plan to meet..[the U.S.’s] pollution reduction targets.” The full House approved the legislation on May 2 by a vote of 231 to 190. Senate consideration of H.R. 9 is unlikely.

The House is not expected to draft and move comprehensive climate change legislation, but may move other legislation that would promote clean energy and reduce GHG emissions. Such legislation could include policies to promote distributed energy resources, electric vehicles, renewables, and energy storage.

In the Senate, the Energy & Natural Resources Committee has held three hearings this year focused on climate change. The first one was entitled the “Electricity Sector in a Changing Climate.” It examined emissions reductions that have occurred in the electricity sector and what the industry can do to continue reducing emissions while keeping electricity affordable and reliable. The second hearing was entitled “Opportunities for Energy Innovation and Other Potential Solutions to Help Address Global Climate Change.” It examined how the U.S. can use its leadership in energy innovation to develop technologies to reduce GHG emissions across the globe. The third hearing examined the Department of Energy’s carbon capture, utilization, and storage (CCUS) programs and the role CCUS technologies could play in reducing CO<sub>2</sub> emissions. The hearing also focused on S. 1201, the Enhancing Fossil Fuel Energy Carbon Technology Act. This legislation would establish “four research and development projects focused on coal and natural gas technology, carbon storage, carbon utilization, and carbon removal.” The committee approved the legislation on July 16.

In addition, the Senate Environment & Public Works Committee held a legislative hearing in February 2019 to “examine the state of current technologies that reduce, capture, and use carbon dioxide” and on S. 383, the Utilizing Significant Emis-

sions with Innovative Technologies Act. The bipartisan legislation, introduced by Chairman John Barrasso, Ranking Member Tom Carper (D-DE), and 11 other senators, would amend the Clean Air Act to encourage capturing CO<sub>2</sub> emissions and converting the gas into a valuable commercial good, thus reducing emissions. During the hearing, Chairman Barrasso expressed his strong desire to move the legislation through the committee and full Senate in the 116th Congress. The bill was approved by the committee without amendment on April 10. It was later attached to the fiscal year 2020 National Defense Authorization Act that was approved by the Senate on June 27.

## American Public Power Association Position

Public power utilities have reduced their CO<sub>2</sub> emissions by 33 percent between 2005 and 2017. They are reducing their GHG emissions through a variety of means. Many are increasing their use of renewable energy resources, such as hydropower, wind, solar power, and geothermal. They are also working with their customers to enable distributed energy resources, which can reduce the need for power from traditional fossil fuel-fired power plants. Some members are involved in the construction of two new nuclear units at Plant Vogtle in Georgia, and others are actively pursuing development of small modular reactors (SMRs). SMRs are small nuclear reactors that could generate up to 300 megawatts of power and be linked together to provide incremental power as load grows. Many public power utilities have implemented energy efficiency programs to help their customers reduce their power usage. Many of these efforts have been undertaken voluntarily rather than being required by state or federal law.

Public power understands the threat posed by climate change, but believes that the CAA is not well suited to regulating CO<sub>2</sub> or other GHG emissions. The CAA was drafted during a different era with more traditional criteria pollutants in mind. If the CAA is going to be the vehicle for GHG regulation, APPA supports EPA’s current efforts to replace the CPP with the ACE rule, which comports with the statutory requirements of CAA section 111(d). Should Congress decide to draft legislation to address climate change, it could do so through the adoption of policies that would reduce CO<sub>2</sub> emissions while keeping electricity affordable and reliable. Such policies include promoting hydropower development, nuclear power, distributed energy resources, electric vehicles, energy storage, and energy efficiency. If Congress decides to draft comprehensive climate change legislation, public power is ready to provide input on how to do so in a way that keeps electricity affordable, reliable, and sustainable.

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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 to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.