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Feature Story

EPA's Proposed CO_2 Emissions Rule for New Power Plants Has No Benefits, No Costs According to Agency Analysis

The Environmental Protection Agency released a much-anticipated proposed rule that would limit the emissions of CO_2 by new coal- and natural gas-fired power plants, or electric utility generating units (EGUs). This proposal is one of many regulatory actions being undertaken by the Obama administration to curb carbon emissions, and is the first uniform federal limit on CO_2 production for new power plants. However, EPA's analysis suggests that the proposed rule doesn't exert any meaningful requirement on emissions from new power plants: "the proposed EGU New Source GHG [greenhouse gas] Standards are not expected to change GHG emissions for newly constructed EGUs, and are anticipated to yield no monetized benefits and impose negligible costs, economic impacts, or energy impacts on the electricity sector or society." According to the agency's analysis, EPA additionally presumes that any costs incurred by power plants will be at least partially recovered through sale of captured carbon.

Unlike in its April 2012 proposal, EPA is now proposing different emission standards for coal-fired and natural gas-fired power plants (all standards are in pounds of CO_2 per megawatt-hour, lb/MWh). For new coal-fired plants, EPA is proposing a limit of 1,100 lbs CO_2/MWh over a 12-operating month period, while also giving plants the option to elect for a limit of 1,000-1,050 lbs CO_2/MWh over an 84-operating month (7-year) period. Natural gas-fired plants larger than 850 mmBtu/hr (million British thermal units per hour) must meet a standard of 1,000 lbs CO_2/MWh, while natural gas-fired plants smaller than 850 mmBtu/hr are held to a standard of 1,100 lbs CO_2/MWh. (Read our analysis here.)

Opinion

- Banks are essential to the commodities market, say banks
- Everything you need to know about the EPA's carbon limits for new power plants
- Summers lost because liberals don't trust Obama on financial reform
- Yes, Actually, It Is a War on Coal: Chart
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Marketplace of Ideas

American Action Forum

- The Unknown Costs of Dodd-Frank, *Sam BatkinS & Ike Brannon*
- Small Business Implications of Greenhouse Gas Regulation, *Sam Batkins*
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- Bleak Anniversary: 5 Years Later, The Keystone XL Application Is Still Pending, *Catrina Rorke*

In the News

Congress & Regulatory Reform

US Sen. Mitch McConnell blames EPA regulations for creating economic depression in coalfields, *Washington Post*
House panel advances GOP-backed regulatory reform bill, *The Hill*
Lawmakers want SEC to name names in 'London Whale' case, *The Hill*
GOP blames 'red tape' for five-year wait on Keystone pipeline, *The Hill*
Reid blocks McConnell's bill to thwart EPA carbon rules, *The Hill*
Options limited, Republicans and industry groups seek to block Obama's rules for power plants, *Washington Post*
EPA chief says agency will 'effectively shut down,' can't pay workers without budget deal, *Washington Post*
Shutdown would shutter EPA, chief says, *The Hill*
Regulator's pledge to weigh rulemaking costs wins GOP praise, *The Hill*

Energy & Environment

EPA proposes first-ever carbon controls on new power plants, but effect 'negligible', *Washington Post*
Pollution rule to accelerate shift to natural gas, renewable power; electric rates could rise, *Washington Post*
EPA moves to limit emissions of future coal- and gas-fired power plants, *Washington Post*
Will coal survive the EPA's new carbon rules?, *Washington Post*
Republicans push through mining deregulation bill that could avoid US

American Enterprise Institute

- Statement before the House Committee on the Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law: More Consolidation & More "Political" Competition, Less Patient-Centered Market Competition, *Thomas P. Miller*
- Conservative health care reform: A reality check, *Thomas P. Miller*

Bipartisan Policy Center

- The Consumer Financial Protection Bureau: Measuring the Progress of a New Agency, *Rick Fischer & Eric Rodriguez*

Center for Effective Government

- EPA Announces Limits on New Power Plant Greenhouse Gas Emissions, *Katie Weatherford*
- Labor Department Announces Long-Awaited Home Care Workers Rule, *Katie Greenhaw*
- Growing Use of Third Parties to Certify Health and Safety Compliance Raises Troubling Questions, *Katie Greenhaw*

Center for Progressive Reform

- New Source Standards for Power Plants: The Status Quo and Sensible Government, *David Driesen*
- EPA's Authority to Impose Emissions Regulations is Clear under the Clean Air Act, *Alexandra Klass*
- Transparency Withdrawn: A New Tactic for Shielding OIRA's Regulatory Review Activities?, *James Goodwin*
- EPA's New Source Proposal: The "Category" Question, *Alice Kaswan*

Competitive Enterprise Institute

- CEI Experts: New EPA Rule Could Mean End of Coal-Fired Plants in US, *Brian McNicoll*
- The Regulatory Improvement Commission, *Ryan Young*
- CEI's Battered Business Bureau: The Week in Regulation, *Ryan Young*

Federal Regulations Advisor

- Monday Morning Regulatory Review – 9/23/13, *Leland E. Beck*

Federalist Society

- EPA Proposes New Carbon Standards for Power Plants
- No Cost-Free Climate Control

The George Washington University Regulatory Studies Center

- Small Farms, Big Costs, *Sofie E. Miller & Cassidy B. West*

environmental reviews, *Washington Post*
EPA used disputed carbon metric to develop power plant rules, *The Hill*
EPA releases draft rules to cut emissions from power plants, *The Hill*
Emissions regulations are central battle in Obama climate agenda, *The Hill*
Feds promise to work with businesses on meeting emissions goals, *The Hill*
Obama's Carbon Rules Seen as New Battleground for EPA, *Bloomberg*
New Coal Plants Must Capture Carbon Dioxide Output: EPA, *Bloomberg*
Mississippi Coal Plant Overruns Show Risks of Carbon Rule, *Bloomberg*
Regulators propose to cite utility for flaw in generators at shuttered Calif. nuclear plant, *Washington Post*
US judge gives EPA 6 months to decide whether regulations needed for farmland runoff pollution, *Washington Post*
Carbon capture, sequestration may not be part of EPA rules for existing plants, *Washington Post*
Business group cries foul over EPA water rule, *The Hill*
Green groups strike back in 'social cost of carbon' fight, *The Hill*
EPA won't require carbon trapping for existing power plants, *The Hill*
EPA Won't Require Carbon Capture at Existing Coal Plants, *Bloomberg*

Financial Markets & Housing

New capital rules spur banks seek breathing room with controversial credit relief trades, *Washington Post*
JPMorgan's Admission: A symbolic victory for the SEC, of limited use in private lawsuits, *Washington Post*
JPMorgan fined $389 million for deceptive credit card practices, *Washington Post*
US regulators move toward requiring public companies to detail CEO-employee pay gap, *Washington Post*
SEC narrowly votes to require firms to disclose CEO pay ratios, *Washington Post*
NCUA wants big credit unions to undergo stress tests, *Washington Post*
US regulators order JPMorgan to pay $80M in fines, $309M in refunds over ID theft service, *Washington Post*
JPMorgan makes rare admission of wrongdoing in $6 billion trading loss, will pay $920M, *Washington Post*
SEC's draft regs for money market funds assailed as too much, not enough, *The Hill*
CFTC Approves Swap-Execution Facility Plans for ICE, TrueEX, *Bloomberg*
Refinancing Effort for Lost-Value Homes Gets Push by U.S. Agency, *Bloomberg*
Fed Faces New Era of Thinking Global as Yellen Nomination Nears, *Bloomberg*
Wall Street Defends Commodity Trades Against Regulatory Scrutiny, *Bloomberg*
Fannie Mae Regulator Pushes Refinancing for Underwater Loans, *Bloomberg*
U.S. Startups Freed to Solicit Funds Fight SEC Over Disclosures, *Bloomberg*
U.S. Bank Agency Invites Foreign Regulators to Review Its Work, *Bloomberg*
Report finds flaws at consumer financial bureau, *The Hill*
SEC Chief White on Rules, High-Frequency Trading, *Bloomberg TV*
U.S. Crowd-Funding Rules a Very High Priority, SEC's White Says, *Bloomberg*
Regulators Look Into Timing of Trades After Fed Statement, *Bloomberg*
Fed Lets Smaller Banks Delay New Standards in Stress Test, *Bloomberg*

- Much-anticipated CO_2 Emissions Rule Renders Zero Benefits or Costs in Agency Analysis, *Sofie E. Miller*

Heritage Foundation

- EPA's New CO_2 Regulations: Time for Congress to Step Up, *Nicholas Loris*
- Congress Should Stop Regulations of Greenhouse Gases, *Nicholas Loris*

The Mercatus Center

- Why the DOT's Role in Funding and Regulating Transportation Should Be Reduced, *Tracy C. Miller & Brian Deignan*

Penn Program on Regulation

- The History of Precaution, *Noga Morag-Levine*
- Hold the Phone: FDA to Regulate Smartphone Health Apps?, *Silki Patel*
- Former FDIC Head Offers Prescriptions for Fixing Wall Street, *Christina Reichert*

Health & Safety

FDA requires unique codes to track medical devices, improve recalls and patient safety, *Washington Post*
With deadlines looming, lobbyists push for changes to Obamacare, *Washington Post*
Groups ask USDA chief to cancel deals with countries using controversial inspection system, *Washington Post*
FDA, NIH awarding millions to create 14 centers to do tobacco research related to regulation, *Washington Post*
Produce industry weighs in on draft food import regs, *The Hill*
FDA to exert new controls over medical device industry, *The Hill*
Administration takes $53M step toward new tobacco regulations, *The Hill*
FDA lays out regulations for mobile device apps that work like medical devices, *Washington Post*
Regulators probe cancer risks near nuke plants, *The Hill*
FDA outlines rules for medical apps on phones, tablets, *The Hill*
40 attorneys general urge FDA to more tightly regulate e-cigarettes, cite marketing tactics, *Washington Post*
Administration sued over car safety rule delay, *The Hill*
Industry appeals ruling on USDA meat labeling regulations, *The Hill*

Business

Obama administration faces business backlash over home aide pay rule, *The Hill*

Rulemaking

Securities Exchange Commission

SEC, FDIC, OCC, Fed Board Propose Credit Risk Retention Standards for Securitizers

The Securities Exchange Commission, in conjunction with the Comptroller of the Currency, the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Housing and Urban Development Department, published a joint proposed rule to revise a previously-published rule and to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934, as amended by the Dodd-Frank Act. "Section 15G generally requires the securitizer of asset-backed securities to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as "qualified residential mortgages," as such term is defined by the agencies by rule… As the agencies observed in the preamble to the original proposal, the securitization markets are an important link in the chain of entities providing credit to U.S. households and businesses, and state and local governments. When properly structured, securitization provides economic benefits that can lower the cost of credit to households and businesses. However, when incentives are not properly aligned and there is a lack of discipline in the credit origination process, securitization can result in harmful consequences to investors, consumers, financial institutions, and the financial system." Comments are due on October 30th.

Food and Drug Administration

FDA Finalizes Unique Device Identifier Requirement for Medical Device Labeling

The Food and Drug Administration published a final rule establishing a system through which medical devices can be uniquely identified during distribution and use. "This rule requires the label of medical devices to include a unique device identifier (UDI), except where the rule provides for an exception or alternative placement. The labeler must submit product information concerning devices to FDA's Global Unique Device Identification Database (GUDID), unless subject to an exception or alternative. The system established by this rule requires the label and device package of each medical device to include a UDI and requires that each UDI be provided in a plain-text version and in a form that uses automatic identification and data capture (AIDC) technology. The UDI will be required to be directly marked on the device itself if the device is intended to be used more than once and intended to be reprocessed before each use." FDA's analysis suggests that this rule will entail between $48.8

million and $122.5 million in annualized costs, with no monetized benefits. The qualitative benefit of the UDI standard is "More accurate and prompt identification of device related adverse events should lead to more rapid action to reduce the incidence of the adverse events and to more effectively target and manage medical device recalls."

Consumer Product Safety Commission

CPSC Seeks Oral Comments on Proposal to Ban High-Powered Magnet Desk Toys

The Consumer Product Safety Commission is seeking oral comments on its September, 2012 proposed rule, *Safety Standard for Magnet Sets*. The proposed rule would ban sets of small, high-powered magnets marketed to adults as desk toys due to the Commission's preliminary determination that there may be an unreasonable risk of injury from children ingesting the high-powered magnets. CPSC will host a meeting on October 22nd, during which members of the public can verbally present their comments on the rulemaking to the Commission for inclusion in the rulemaking docket.

From the Commission's original proposal: "To address the unreasonable risks of serious injury associated with these magnet sets, the Commission is issuing this notice of proposed rulemaking (NPR), which would prohibit such magnet sets. Under the proposal, if a magnet set contains a magnet that fits within the CPSC's small parts cylinder, magnets from that set would be required to have a flux index of 50 or less, or they would be prohibited." An estimate of net injury reduction comprises the entirety of the Commission's $25 million in anticipated benefits, while the costs of foregone profit are estimated at $7.5 million. However, the Commission does not calculate the value to consumers of the products this rule proposes to ban: "We have no information regarding aggregate consumer surplus, and hence, the amount of utility that would be lost from a ban of magnetic sets. While the magnetic desk sets clearly provide "utility" to purchasers, they are not necessities. Consequently, the demand for magnetic desk sets is probably not price inelastic, a factor that would tend to reduce estimates of utility losses."

Environmental Protection Agency

EPA Finalizes Amendments to Oil and Natural Gas Sector New Source Performance Standards

The Environmental Protection Agency published a final rule finalizing the amendments to EPA's previously-published new source performance standards (NSPS) for the oil and natural gas sectors. These amendments are in response to petitions received by EPA to reconsider its rule. "These changes are the result of the EPA's consideration of the many substantive and thoughtful comments submitted on the proposal and other information received since proposal. We believe that the changes we have made sufficiently address concerns expressed by commenters and improve the clarity of the rule while improving or preserving public health and environmental protection required under the CAA [Clean Air Act]."

Department of Health and Human Services

HHS Proposes Rule Establishing Basic Health Program to Provide Coverage for Low-Income Individuals

The Department of Health and Human Services published a proposed rule establishing the Basic Health Program, as mandated by the Patient Protection and Affordable Care Act. "The Basic Health Program provides states the flexibility to establish a health benefits coverage program for low-income individuals who would otherwise be eligible to purchase coverage through the state's Affordable Insurance Exchange (Exchange, also called a Health Insurance Marketplace). The Basic Health Program would complement and coordinate with enrollment in a QHP through the Exchange, as well as with enrollment in Medicaid and the Children's Health Insurance Program (CHIP). This proposed rule sets forth a framework for Basic Health Program eligibility and enrollment, benefits, delivery of health care services, transfer of funds to participating states, and federal oversight. Additionally, this rule would amend other rules issued by the Secretary of the Department of Health and Human Services (Secretary) in order to clarify the applicability of those rules to the Basic Health Program." Comments are due on November 25th.

Agencies

Food and Drug Administration

FDA Releases Guidance for Industry on FDA's Regulatory Authority Over Mobile Medical Apps

The Food and Drug Administration published a guidance for industry on how FDA will exercise its regulatory authority over mobile medical apps. "Given the rapid expansion and broad applicability of mobile apps, the FDA is issuing this guidance document to clarify the subset of mobile apps to which the FDA intends to apply its authority.

Many mobile apps are not medical devices (meaning such mobile apps do not meet the definition of a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act)), and FDA does not regulate them. Some mobile apps may meet the definition of a medical device but because they pose a lower risk to the public, FDA intends to exercise enforcement discretion over these devices (meaning it will not enforce requirements under the FD&C Act). The majority of mobile apps on the market at this time fit into these two categories. Consistent with the FDA's existing oversight approach that considers functionality rather than platform, the FDA intends to apply its regulatory oversight to only those mobile apps that are medical devices and whose functionality could pose a risk to a patient's safety if the mobile app were to not function as intended. This subset of mobile apps the FDA refers to as mobile medical apps. FDA is issuing this guidance to provide clarity and predictability for manufacturers of mobile medical apps." FDA is accepting comments on this guidance.

Environmental Protection Agency

EPA Announces Public Meeting, Webinars on Proposed Water Quality Standards Regulatory Clarifications

The Environmental Protection Agency announced a public meeting on October 23rd and two public webinars on September 24th and November 14th on the Agency's September 4th proposed rule, *Water Quality Standards Regulatory Clarifications*. "The proposed rule addresses the following key program areas: Administrator's determinations that new or revised WQS are necessary, designated uses, triennial reviews, antidegradation, variances to WQS, and compliance schedule authorizing provisions. Once final, the proposed rule will lead to improved water quality standard development, implementation and compliance as well as improving the ability of water systems to adapt and respond to the impacts of climate change. EPA will discuss the contents of the proposed rule during the webinars and meeting and will provide the opportunity for interested parties to ask clarifying questions prior to the close of the comment period. These clarifying questions or any public views expressed during the webinars and meeting will not be considered formal comments and will not be recorded for inclusion in the official administrative record."