

[H.R. 2042, Ratepayer Protection Act of 2015](#)

FLOOR SITUATION

On Wednesday, June 24, 2015, the House will consider [H.R. 2042](#), *the Ratepayer Protection Act of 2015*, under a [structured rule](#). H.R. 2042 was introduced on April 28, 2015, by Rep. Ed Whitfield (R-KY) and was referred to the Committee on Energy and Commerce, which ordered the bill reported, by a vote of 28 to 22 on April 29, 2015.

SUMMARY

H.R. 2042 would postpone the dates by which states and operators of existing fossil-fuel fired power plants must comply with any final rule addressing emissions of carbon dioxide proposed by the Environmental Protection Agency (EPA)¹ until after completion of judicial review. This would include the following rules submitted by the EPA:

- Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, published in the [Federal Register on June 18, 2014](#); and,
- Carbon Pollution Emission Guidelines for Existing Stationary Sources: EGUs in Indian Country and U.S. Territories; Multi-Jurisdictional Partnerships, published in the [Federal Register on November 4, 2014](#).

The bill also provides that no state shall be required to implement a state or federal plan under a final rule if the state's governor, in consultation with other relevant state officials, determines the rule would have a significant adverse effect on (1) retail, commercial, or industrial electricity rates; or (2) the reliability of the state's electricity system.

BACKGROUND

On June 18, 2014, the EPA proposed a rule for existing power plants, referred to by the agency as its "Clean Power Plan." In the rule, EPA interprets a provision of the Clean Air Act, section 111(d), to allow the agency to set mandatory carbon dioxide (CO₂) "goals" for each state's electricity system. In

¹ See Energy and Commerce ["Memo: Committee Markup—H.R. 2042 and H.R. 204."](#) April 24, 2015.

the rule, EPA seeks to fundamentally change how electricity is generated, distributed, and consumed in the United States.

Under this proposal, states would be required to submit complex state plans to EPA in 2016, with a possible 1 year extension for state plans and 2 years for regional plans, and to begin to meet interim goals in 2020 and a final goal in 2030. Under the rule, a state's "goals" would be fixed and could not be changed and plans would be federally enforceable. For states that do not submit a satisfactory plan, EPA would impose a Federal plan, a model of which has not yet been proposed by the agency.

According to CRS, "The proposal relies on authority asserted by EPA in Section 111(d) of the Clean Air Act (CAA). This section has been little used—the last use was in 1996—and never interpreted by the courts, so a number of questions have arisen regarding the extent of EPA's authority and the mechanisms of implementation. EPA tends to refer to the regulations as "guideline documents"—although that term is not used in the statute—perhaps to indicate that the section is intended to give primary authority to the states. The proposed guideline document would set interim (2020 to 2029 averages) and final (2030) emission rate goals for each state based on its unique circumstances. The goal for each state was derived from a formula based on four "building blocks"—broad categories that describe different reduction measures; in general, however, the policies to be adopted to reach these goals would be determined by the states, not EPA. Each state has the flexibility to reach its goal however it chooses, without needing to "comply" with the assumptions in its building blocks."²

EPA estimates annual compliance costs of implementing the rule of \$5.5 billion to \$7.5 billion in 2020 and \$7.3 billion to \$8.8 billion in 2030.³ But according to an outside economic forecast, the energy system costs would increase as much as \$366 billion to \$479 billion over the period 2017 to 2031.⁴

State governors, regulators, electric reliability organizations, and other stakeholders have filed extensive comments raising a wide range of concerns, from issues regarding the legality of the rule to how it would be implemented, the significantly higher electricity costs, and the risks to electric reliability. There are threshold questions about whether EPA has authority to proceed with the rule, and legal challenges have already been brought by at least 12 states.

According to the bill sponsor, "this bill does not repeal the Clean Power Plan, nor does it preclude a state from moving forward and implementing EPA's rule. It simply allows states to prevent the proposed rule from imposing unnecessary economic hardship."⁵

COST

The Congressional Budget Office (CBO) [estimates](#) that implementing this legislation would not have a significant effect on the federal budget.

AMENDMENTS

- 1) [Rep. Frank Pallone \(D-NJ\)](#) – The amendment requires a governor wishing to opt out of the Clean Power Plan to include a certification that electric generating units are sources of

² See CRS Report, "[EPA's Proposed Greenhouse Gas Regulations for Existing Power Plants: Frequently Asked Questions](#)," December 10, 2014.

³ See [79 Federal Register 34830](#) (June 18, 2014) at Tables 18 and 19, pp. 34943-34944

⁴ See NERA Report, "[Potential Energy Impacts of the EPA Proposed Clean Power Plan](#)," October, 2014, at 13.

⁵ See Rep. Ed Whitfield Press Release, "[Whitfield's Ratepayer Protection Act Advances through Committee](#)," April 29, 2015.

carbon pollution that contribute to human-induced climate change; and the state or federal plan to reduce carbon emissions from electric generating units would promote national security, economic growth and public health by addressing human induced climate change through the increased use of clean energy, energy efficiency and reductions in carbon pollution.

- 2) [Rep. Bobby Rush \(D-IL\)](#) – The amendment requires a governor’s determination and shall also include certification that the inapplicability of a state or federal plan will not have a significant adverse effect on costs associated with a State’s plan to respond to extreme weather events associated with human-caused climate change, including flooding, intense storms, frequent wildfires, and increased drought.
- 3) [Rep. Bill Huizenga \(R-MI\)](#) – The amendment offers a sense of Congress that the EPA should specifically address how the megawatt hours discharged from pumped hydroelectric storage will be incorporated in State and Federal implementation plans created by final rules made under section (2)(b) of this bill.
- 4) [Rep. Jerry McNerney \(D-CA\)](#) – The amendment requires a state public utility commission/public service commission and the Electric Reliability Organization to conduct an analysis of any state or federal plan.
- 5) [Rep. Dan Newhouse \(R-WA\)](#) – The amendment directs EPA to recognize hydropower as a renewable energy source when issuing, implementing, and enforcing any final rule to address carbon dioxide emissions from existing sources under section 111(d) of the Clean Air Act.

STAFF CONTACT

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