

**Arkansas Department of Environmental Quality Calls
EPA's Proposed Clean Power Plan Federal Plan and Model Rules
November 18, 2015, 10:00 – 11:30 a.m.**

Topic: Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts

This call will be organized around the following subtopics:

- 111(d) Regulatory Framework
- Compliance Obligations
- Finalization of Model Rules and FP
- Impacts of this Action
- Partial State Plans and Partial Delegation
- Set-Asides for Overburdened Communities
- Sources that Modify or Reconstruct
- Treatment of States Entering or Exiting the Trading Program

Items for comment from EPA's proposal that pertain to these subtopics are listed in the table below. On this call, stakeholders will have the opportunity to discuss the items for comment and present information pertaining to these items for consideration.

Item for comment	Prepublication page	80 FR xxxxx	Session #	Subtopic
Partial Approvals/Disapprovals: mechanisms similar to CAA section 110(k)(3). When much of a state plan is approvable and the EPA and the state cannot reach resolution on only a small, severable portion of the state plan. In this case, the EPA prefers not to be in a position where it must disapprove the full plan, but rather to allow the state to move forward with those portions of the plan that are approvable. This approach would also address those situations where the state wishes to take over a discrete part of a federal plan.	348-350	65035	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework
Conditional Approvals: similar to CAA section 110(k)(4). The Governor or his/her designee must submit to the EPA a commitment that specifies the amendments to be adopted and submitted to the EPA by no later than 1 year from the effective date of the conditional approval. If the state fails to meet its commitment, the conditional approval is treated as a disapproval.	350	65035	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework
Error Corrections: similar to CAA section 110(k)(6). This section authorizes the agency to revise its action, in the same manner as the original action, without requiring any further submission from the state.	355	65036	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework

<p>Completeness Criteria: and a process to determine completeness similar to CAA section 110(k)(1) and (2). It provides the agency with a means to determine whether a submission by a state includes the minimum elements that must be met before the EPA is required to act on such submission. When submittals do not contain the necessary minimum elements, then the EPA may, without further action, find that a state has failed to submit a plan.</p>	356	65036	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework
<p>EPA intends to finalize the procedure changes to the framework regulations and interpretation sooner than it finalizes the rest of this proposed action. It will do so after the close of the comment period, and after consideration and response to any comments to these changes.</p>	369	65039	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework
<p>Update to Deadlines for EPA Actions: EPA proposes to update the deadlines for acting on state submittals and promulgating a federal plan under 40 CFR 60.27(b), (c), and (d) (to more closely track the current versions of CAA sections 110(c) and 110(k)) to allow EPA 12 months to approve and disapprove submittals of all plans or plans revisions, not just the CPP, after receipt. EPA also proposes slight modifications to the provisions related to issuing a proposed federal plan in 40 CFR 60.27 (c), changing the 6-month deadline for issuing a final federal plan to 1 year, and setting the deadline for promulgation of a federal plan to run from the date of the EPA's action on a state submittal, rather than from the original deadline for a state submittal.</p>	363	65308	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework
<p>Calls for Plan Revisions: similar to CAA section 110(k)(5) "SIP Call." A procedural mechanism available under CAA section 111(d) similar to the so-called "SIP call" mechanism in CAA section 110(k)(5) will allow the agency to initiate a process with the state to make necessary revisions to ensure the plan functions properly.</p>	352	65035 - 65036	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework
<p>EPA is proposing to amend the framework regulations and update the process for acting on CAA section 111(d) procedures for approval or disapproval of CAA section 111(d) state plans, to make the approval process similar to the process under CAA section 110. EPA invites comments on all these proposed changes to the framework regulations.</p>	345-366	65035-65036	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	111(d) Regulatory Framework

<p>This federal plan will require affected EGUs to meet specific emission standards for CO2 and related requirements. Enforceable compliance obligations will apply to the owners and operators of those affected EGUs. See 40 CFR 62.13. No obligation falls on states or state officials (except to the extent they may be owners and operators of affected EGUs). State officials responsible for developing state plans, however, should be aware of the procedural enhancements being proposed to the framework regulations of 40 CFR part 60, subpart B, in this rulemaking document. Although these changes do not alter the deadlines or submission obligations provided in the Clean Power Plan Emission Guidelines, state officials and other interested parties are encouraged to review and comment on these changes.</p>	56	64976	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Compliance Obligations
<p>The finalization of a model trading rule will not constitute a final action with respect to a federal plan for the affected EGUs in any state. Rather, the proposed federal plan will remain just that, a proposal. The EPA will promulgate a final federal plan for any state only after it has made a finding on a state's failure to submit a plan, or fully or partially disapproved a submitted state plan. The EPA will go through a public notice and comment process before disapproving a submitted and complete state plan, in whole or part. The EPA invites comments on this staged approach to finalizing one or more model trading rules on the one hand (which we currently intend to do in summer 2016), and finalizing federal plans on the other (which we currently intend to do state by-state upon our taking predicate action on states' plans).</p>	48-49	64975	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Finalization of model rules and FP
<p>The EPA requests comment on its proposed conclusion that Endangered Species Act (ESA) section 7 consultation is not required for this action. The EPA will continue to evaluate the scope and potential effects of federal planning activities for this source category to the extent federal plans are needed and implemented in specific areas and over specific sources.</p>	378	65041	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Impacts of this Action

<p>Nevertheless, the EPA is aware that there is substantial interest in this rule among small entities (e.g., municipal and rural electric cooperatives). In light of this interest, prior to this action, the EPA sought early input from representatives of small entities while formulating the provisions of the proposed regulation. Such outreach is also consistent with the President's January 18, 2011 Memorandum on Regulatory Flexibility, Small Business, and Job Creation, which emphasizes the important role small businesses play in the American economy. This outreach process has enabled the EPA to hear directly from these representatives, as the EPA developed the rule about how the EPA should approach the complex question of how to apply section 111 of the CAA to the regulation of GHGs from these source categories. We invite comments on all aspects of this proposal and its impacts, including potential adverse impacts, on small entities.</p>	442-443	65056	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Impacts of this Action
<p>The EPA encourages states and eligible tribes that do not submit approvable plans to request delegation of the federal plan if they wish to have primary responsibility for implementing the EG. Approved and effective state or tribal plans or delegation of the federal plan is the EPA's preferred outcome in many circumstances where the EPA believes that state and local, or tribal, agencies have practical knowledge and enforcement resources critical to achieving highest rate of compliance.</p>	334	65032	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Partial State Plans and Partial Delegation
<p>This proposed federal plan also specifies that EGU owners or operators who wish to petition the agency for any alternative requirement should submit a request to the Regional Administrator with a copy sent to the appropriate state.</p>	336	65033	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Partial State Plans and Partial Delegation
<p>There are two mechanisms for transferring implementation authority to state and local agencies and tribes: (1) EPA approval of a state or tribal plan after the federal plan is in effect; and (2) if a state or tribe does not submit or obtain approval of its own plan, EPA delegation to a state or tribe of the authority to implement certain portions of this federal plan to the extent appropriate and if allowed by state or tribal law.</p>	336	65033	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Partial State Plans and Partial Delegation
<p>The administration of a federal trading program in any final federal plan for a state or tribe, group of states or combined group of states and tribes, the Office of Air and Radiation within the Headquarters of the EPA is proposed to be the primary office within the agency with delegated CAA section 111(d)(2) authority.</p>	336	65033	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Partial State Plans and Partial Delegation

<p>If a state or tribe intends to take delegation of the federal plan, the state or tribe should submit to the appropriate EPA Regional Office a written request for delegation of authority and explain how it meets the criteria for delegation.</p>	336	65032-65033	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Partial State Plans and Partial Delegation
<p>If authority is not delegated to a state or tribe, the EPA will implement the federal plan. Also, if a state or tribe fails to properly implement a delegated portion of the federal plan, the EPA will assume direct implementation and enforcement of that portion.</p>	336	65032-65033	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Partial State Plans and Partial Delegation
<p>In section V.D of this preamble, we outline that we are seeking comment on whether a portion of this set-aside should be targeted to RE projects that benefit low-income communities. Furthermore, the EPA is seeking comment on how a low-income community should be defined as eligible under this set-aside. We also seek comment on how much of the set-aside should be designated as targeted at over-burdened communities. We also request comment on whether the methods of approval and distribution of allowances to projects that benefit low-income communities should differ, and if so, in what manner, from the methods that are proposed to apply to other RE projects.</p>	413-414	65050	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Set-Asides for Overburdened communities
<p>We invite comment on the agency's proposed interpretation that when an existing source modifies or reconstructs in such a way that it meets the definition of a new source, for purposes of a particular NSPS and emission guideline, it becomes a new source under the statute and is no longer subject to the CAA section 111(d) program</p>	369	65039	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Sources that Modify or Reconstruct
<p>Rate-based Approach: The EPA is proposing that a state must transition to a state plan at the conclusion of a federal plan compliance period. The EPA requests comment on whether there are reasons that a state should be allowed to transition from a federal plan to a state plan in the middle of a compliance period and if so what requirements should be put in place to do so while ensuring the integrity of both the federal plan and the state plan and while enabling the affected EGUs covered by the plans to understand and meet their compliance requirements.</p>	230	65011	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Treatment of States Entering or Exiting the Trading Program
<p>Mass-based Approach: The EPA requests comment on other approaches to provide a smooth transition from federal plan implementation to implementation by state plans, and on its proposed approach of not replacing a federal plan for any compliance period for which allowances were already recorded.</p>	319	65029	Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts	Treatment of States Entering or Exiting the Trading Program

<p>Mass-based Approach: The agency requests comment on an alternative of providing for a state to give notice to the EPA of its intent to submit a state plan to replace the federal plan (or a state allowance-distribution methodology to replace federal plan allocations), and for the agency to delay recording federal plan allocations for sources in that state until a later date than proposed. The EPA requests comment on whether this alternative would help smooth the transition from federal plan implementation to state plan implementation, and on the tradeoff between recording allowances in a timely way and providing this increased timing flexibility.</p>	<p>319</p>	<p>65029</p>	<p>Clean Air Act Section 111 Regulatory Framework and Proposed Rule Impacts</p>	<p>Treatment of States Entering or Exiting the Trading Program</p>
--	------------	--------------	---	--