



Docket ID: EPA-HQ-OAR-2017-0355

The Ohio Chamber of Commerce writes in support of the United States Environmental Protection Agency's (U.S. EPA) proposed repeal of carbon emissions guidelines for existing electric utility generating units. The Ohio Chamber is the state's leading business advocate and we represent nearly 8,000 companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

This regulation, known as the Clean Power Plan (CPP), is unlawful, unnecessarily costly and a bad deal for Ohioans. It would drive up electricity costs for businesses by imposing tens of billions in annual compliance costs and reduce our state's competitive advantage—without any significant reduction in global greenhouse gas emissions.

EPA estimates that the proposed repeal could provide up to \$33 billion in avoided compliance costs in 2030. If the CPP is not repealed, Ohio businesses would be left footing this bill in the form of lost hiring and expansion as well as higher prices for energy. In May 2016, the Energy Information Administration (EIA) within the Department of Energy released detailed modeling that projected the CPP would drive up electricity rates and bills, reduce national GDP by an average of \$58 billion per year and result in 376,000 fewer jobs in 2030.¹ Manufacturing-intensive states such as Ohio disproportionately rely on affordable electricity to compete globally. The Public Utilities Commission of Ohio found that under the draft rule, wholesale electricity prices would be almost 40 percent higher in 2025².

The CPP is incompatible with numerous practical and technical aspects of America's electricity system and is based on a flawed interpretation of the Clean Air Act (CAA). If implemented, the CPP would vastly expand the agency's regulatory reach into the authority properly held by the states to set appropriate electric generation portfolios. EPA's reliance upon a rarely used provision of the CAA to impose a vast overhaul of the nation's electric grid is clearly outside any grant of authority Congress has enacted.

At the center of this legal overreach is the CPP's mandate that power plant owners take actions "outside-the-fence" of a regulated facility.³ Prior to the instant rule, every regulation

¹ A detailed summary of EIA's CPP modeling is available at <https://www.globalenergyinstitute.org/sites/default/files/EIA%20CPP%20Final%20Rule%20Analysis%20Final%20Formatted%20Single%20Column.pdf>

² <https://www.puco.ohio.gov/puco/assets/File/PUCO%20CPP%20Comments%2012012014.pdf>

³ Section 111(d) authorizes EPA to establish "standards of performance for any existing source," and "existing source" is specifically defined as "any building, structure, facility or installation which emits or may emit any air pollutant." CAA § 111(a). The CPP set emissions guidelines that require measures that cannot be employed at or

promulgated under section 111 of the Clean Air Act limited action to those achievable “inside-the-fence” of a regulated facility. As EPA notes in its proposed repeal, the CPP ignores this clear statutory constraint:

“CAA section 111(d) requires the EPA to promulgate emission guidelines for existing sources that reflect the “best system of emission reduction” (BSER) under certain circumstances. Notwithstanding the CPP, all of the EPA's other CAA section 111 regulations are based on a BSER consisting of technological or operational measures that can be applied to or at a single source. [Emphasis added.] The CPP departed from this practice by instead setting carbon dioxide (CO₂) emission guidelines for existing power plants that can only realistically be effected by measures that cannot be employed to, for, or at a particular source.

Instead, the CPP encompassed measures that would generally require power generators to change their energy portfolios through generation-shifting (rather than better equipping or operating their existing plants). This includes through the creation or subsidization of significant amounts of generation from power sources entirely outside the regulated source categories, such as solar and wind energy.

In addition, while the EPA is authorized to regulate emissions from sources in the power sector and to consider the impact of its standards on the generation mix in setting standards to avoid negative energy impacts, regulation of the nation's generation mix itself is not within the Agency's authority.”

The Ohio Chamber agrees with U.S. EPA's revised interpretation recognizing these limits to its authority. By redefining the CAA definition of “source,” the CPP would have required a fundamental restructuring of the power sector and compelled States, utilities and other power suppliers to redesign their electricity infrastructure to adopt EPA's preferred sources of power. Prioritizing environmental dispatch of resources over economic dispatch upends federally-regulated wholesale markets. The CPP's overreach is inconsistent with Congress's directive that states—not U.S. EPA—should establish and implement “standards of performance” after considering the unique circumstances of local resources and communities. The CPP would disregard this clear statutory requirement and in doing so would have dismantled the longstanding model of cooperative federalism that has made the CAA an overall success.

For these reasons, we strongly support the proposed repeal of the rule and encourage U.S. EPA to respect the Clean Air Act and the role of the states and to ensure that any future greenhouse gas emission rule is not overly burdensome on industry and is based on sound science.

to a particular source, unlawfully forcing regulated facilities to undertake “outside-the-fence” compliance measures.