

EPA's Clean Power Plan

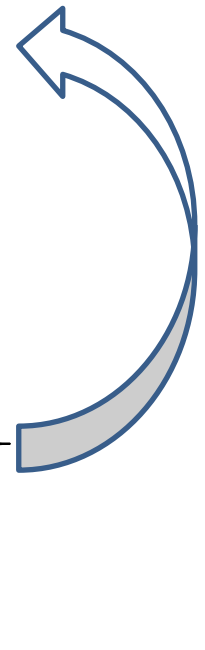
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- Structure of proposed rule
- Compliance options for states
- Legal issues/vulnerabilities

Clean Power Plan: Proposal

- Goal:
 - reduce GHG emissions from existing coal-fired plants, or
 - reduce GHG emissions from power sector?
- State emissions “budgets” + state compliance plans
- Four pillars / building blocks
 1. CFPP efficiency / heat rate improvements
 2. Re-dispatch → dispatch lower-emitting sources (CCNG) in place of coal
 3. Build / retain zero carbon sources (renewables & nuclear)
 4. Demand-side efficiency



Clean Power Plan: Compliance options

- Emissions reductions from CFPPs
- Closure of CFPPs
- Budgets are based on state-specific assumptions about the four pillars
 - Redispatch gas more often
 - RPS or other incentives for renewables
 - Efficiency standards / demand response
 - Retain/build nuclear
 - Cooperative solutions → multistate “cap and trade” or RTO-organized solutions

Selected Legal Issues

Constitutional Issue: “commandeering” state institutions for federal purposes.

Do these parts of the formula commandeer state institutions?

1. CFPP efficiency / heat rate improvements
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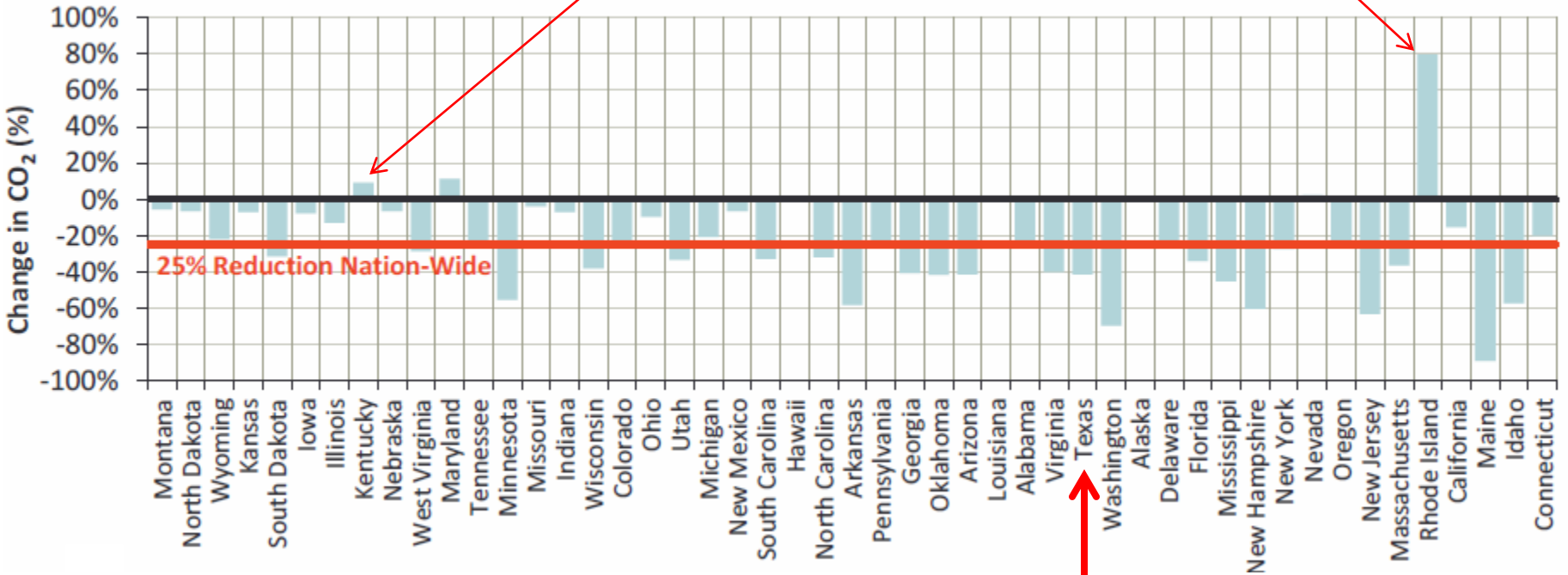
Administrative Law Issue: Is the rule arbitrary and capricious?
Does it treat states fairly?

State Budgets at a Glance

92% of Kentucky's electricity generation comes from coal.

Rhode Island: 0% coal; almost all natural gas and renewables

EPA Estimated Changes in CO₂ Emissions (without Cooperation) Compared to Base Case in 2030



States (like Texas) with lots of gas-fired and coal-fired generation (i.e., redispatch opportunities) bear a larger reduction burden

Figure source: Brattle Group

Selected Legal Issues

Clean Air Act Section 111(d) interpretive issues. EPA rules must be consistent with the statute.

- State plans establish “standards of performance” for **sources**. Does EPA’s proposed rule really require or encourage limits on **sources** (existing CFPPs), or is it about the **power sector**?
- Standards must reflect degree of emission limitation achievable through the application of the **best system of emission reduction** that has been **adequately demonstrated** (BSER). Are the 4 pillars, and the various compliance options, BSER?
- Congress never reconciled differing versions of section 111(d) when it passed them in 1990. Can EPA use 111(d) to regulate existing CFPPs regulated by the mercury rule?

CAA 111(d), relevant language:

(d) Standards of performance for existing sources; remaining useful life of source

... each State shall submit to the Administrator a plan which

(A) establishes standards of performance for any existing source for any air pollutant

- (i) ... which is not included on a list published under section 7408 (a) of this title or emitted from a source category which is regulated under section 7412 of this title but
- (ii) to which a standard of performance under this section would apply if such existing source were a new source, ...

Must the mercury rule be struck down for 111(d) to be applicable?

Must the EPA's proposed rule governing GHG emissions from new sources be upheld for 111(d) to be applicable?