

## Calendar No. 283

114TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ 114-159

---

---

### AFFORDABLE RELIABLE ELECTRICITY NOW ACT OF 2015

—————  
OCTOBER 29, 2015.—Ordered to be printed  
—————

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

### R E P O R T

together with

### MINORITY VIEWS

[To accompany S. 1324]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 1324) to require the Administrator of the Environmental Protection Agency to fulfill certain requirements before regulating standards of performance for new, modified, reconstructed fossil fuel-fired electric utility generating units, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### GENERAL STATEMENT AND BACKGROUND

On June 25, 2013, President Obama announced his “Climate Action Plan” which provided three main categories of action: cut carbon emissions in America, prepare the U.S. for the impacts of climate change, and lead international efforts to address global climate change. As a part to this plan, the President issued an Executive Order directing the EPA to set standards of emissions reductions for new and existing fossil fuel-fired power plants.

*New Source Performance Standard:* On September 20, 2013, the EPA re-proposed CO<sub>2</sub> emissions limits for new power plants. The proposal, entitled “Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generation

Units” would limit emissions from coal-fired power plants to 1,100 pounds (lbs) of CO<sub>2</sub> per mega-watt hour (MWh) and either 1,000 or 1,100 lbs per MWh at natural gas-fired power plants. The average coal plant emits 2,249 lbs of CO<sub>2</sub> per MWh.

The proposed New Source Performance Standard (NSPS) was published in the Federal Register January 8, 2014, and had a 120-day comment period. EPA received around 2 million comments and missed the finalization deadline, which was January 8, 2015. EPA issued a press release stating the agency planned to finalize the NSPS rule by “mid-summer.”

*Existing Source Performance Standard:* On June 2, 2014, the EPA proposed a rule to limit CO<sub>2</sub> emissions from existing power plants, entitled “Emission Guidelines for Existing Stationary Sources: Electric Generating Units,” referred to by the agency as the “Clean Power Plan.” The proposal set emission rate targets each state would be required to meet in an interim period from 2020 to 2029 and a final target to be met by 2030. Using 2012 CO<sub>2</sub> emissions as a baseline, the proposal’s stated goal was to reduce U.S. greenhouse gas (GHG) emissions by 30% when compared to 2005 levels.

The EPA calculated a state’s emissions reduction target based on 4 main assumptions, referred to by the agency as “building blocks,” that ranged from heat-rate efficiency improvements to expansion of certain low and zero-emitting power sources, primarily renewables, to demand-side efficiency programs. EPA proposed to give states a one-year deadline to submit implementation plans with a possible one or two year extension.

The agency held a 165-day comment period for the proposed Existing Source Performance Standard (ESPS), which received over 4 million public comments. On January 7, 2015, EPA announced it would publish the existing plant final rule by “midsummer” along with the new plant final rule and a model Federal Implementation Plan (FIP).

*Modified and Reconstructed Sources:* On June 2, 2014, the EPA also announced a proposal to limit CO<sub>2</sub> from modified and reconstructed power plants. The proposal sets the qualifying standards by which any qualifying modification or reconstruction made at an existing plant would require compliance with an emission standard based on a combination of best operating practices and equipment upgrades. After a 120-day comment period, the proposal received 235 public comments.

*Final Carbon Rules:* On August 3, 2015, the EPA announced a prepublication version of the final carbon standards for new, modified, reconstructed, and existing power plants. While the final rules, and primarily the existing source standard, represent a significant revision of the proposed rules, many of the technical, legal and procedural concerns remain. Further, the agency has announced it will not formally publish the final rules until “mid to late October” delaying both legal and certain legislative challenges.

*Stakeholder Concerns and Legal Status of Carbon Rules:* The agency has embarked on an unprecedented misuse of the Clean Air Act (CAA) to perpetuate a presidential agenda that could not be achieved legislatively. The agency attempts to use creative legal arguments that would vastly expand EPA’s authority under section 111 of the CAA. A diverse and expansive list of impacted stake-

holders has expressed serious concerns over the proposed and final carbon rules. These concerns have led to multiple legal challenges at both the state and federal level that raise basic technical concerns and questions regarding procedural integrity of our regulatory system.

*The New Source Proposal.* To comply with the proposed and final carbon standard, a newly constructed coal-fired power plant would have to install carbon capture and storage (CCS) technology. CCS is in the early stages of development and has yet to be proven on a commercial scale. Given the infancy of CCS technology, the agency failed to meet basic legal standards required under section 111—that the system of emission reduction be “adequately demonstrated.”

Counter to restrictions in the Energy Policy Act of 2005, the agency cites three U.S. CCS projects heavily reliant on government support through the Department of Energy’s Clean Coal Power Initiative as proof that CCS is a demonstrated technology. Because of the government support, these projects cannot be used to make that demonstration. Further, since the new source standard was initially proposed, only one of the three U.S.-based projects continues today after DOE decided to pull support from the California and Illinois projects.

Beyond legal obstacles, numerous technical experts agree CCS is neither technically feasible nor viable. Many experts have testified before House and Senate committees, including an October 2013 hearing before the House Committee on Science, Space, and Technology where DOE’s former Assistant Secretary for Fossil Energy, Charles D. McConnell, testified that “it is disingenuous to state that the technology is ready.” In January 2015, the National Coal Council released a study assessing the state of CCS in response to a request from DOE Secretary Moniz. The study concluded that “the DOE CCS/CCUS program has not yet achieved critical mass” and “without adequate demonstration there can be no commercialization.” Requiring use of a technology that is not available amounts to a de facto ban on new coal plant construction in the U.S.

*The Existing Source Standard:* Given significant legal concerns raised by the proposed and now final rule, the existing source standard has been subject to numerous challenges. A basic threshold issue is whether EPA has authority to proceed with the rules under Section 111(d) at all. Per the express language of the U.S. Code, EPA is precluded from regulating existing power plants under Section 111 because they are already subject to the EPA’s Mercury and Air Toxics Standard under section 112.

EPA’s existing source standard is also counter to the limited historic application of authority under 111(d). Since the establishment of the CAA, section 111 has only been successfully used five times. Previous uses assigned emission reduction responsibility to a specified source. In contrast, under the power plant existing source standard, the agency attempts a drastic expansion of authority “beyond the source” or “beyond the fence-line” resulting in federal regulatory control over energy generation, dispatch and use.

The rule intrudes on state authority and undermines the concept of cooperative federalism whereby states and the federal government are meant to work as partners to achieve environmental ob-

jectives. Per the Federal Power Act, states have exclusive jurisdiction over intrastate electricity matters. Under the existing source rule, the EPA is attempting to regulate a state's entire electricity industry, from generation to consumption, thereby undermining the states longstanding autonomy over such matters. If a state chooses to submit a State Implementation Plan (SIP) it would cede to EPA approval authority over matters traditionally set by state legislatures, including renewable portfolio standards, building codes, and energy efficiency standards. Such actions raise additional questions about how EPA plans to enforce plans that address areas where EPA lacks institutional expertise and legal authority. In addition to state intrusion, the existing source standard potentially complicates the prerogatives of the Federal Energy Regulatory Commission (FERC), which is charged with primary regulatory jurisdiction over the interstate transmission of electricity.

Beyond the legal arguments, technical experts at the local and state level have expressed concerns over the practical application of the existing source standard. Compliance would force a rapid and unnatural restructuring of local energy systems undermining grid reliability at exorbitant costs. A significant amount of existing coal-fired generation would be shut down. Separate analyses by the EPA and the Energy Information Administration estimate fifty gigawatts would retire, with the majority of retirements occurring well before the 2030 final deadline. Of further concern in both the proposed and final versions of the rule is that this massive reduction in reliable electricity generation is expected to largely be replaced by intermittent renewable generation, like wind. During the proposed version's comment period, numerous stakeholders raised concerns about reliability including the Southwest Power Pool, which warned the rule would cause "cascading outages" and "voltage collapse."

Alongside reduced reliability, the existing source standard comes at a high compliance cost and will increase the price of electricity. In the proposed version, EPA estimated costs to range from \$5.5 billion to \$8.8 with a four to seven percent increase in retail electricity prices on average. Other estimates place costs at a much higher range of \$366 to \$479 billion with double digit electricity price increases occurring in over 43 states.<sup>1</sup>

Committee experts testified that such increases would be especially harmful to low and fixed-income households that already spend a larger portion of their household budgets on energy costs.<sup>2</sup> Various analyses and surveys have found that in the face of increased energy costs, these household make decisions adverse to their own health and welfare including foregoing food, prescription use and medical care.<sup>3</sup> At a hearing before the Clean Air and Nuclear Safety Subcommittee on June 23, 2015, the President of the Black Chamber of Commerce also testified that increased energy costs are particularly harmful to minority communities. The existing source rule alone would increase Black poverty by 23% and increase Hispanic poverty by 26%. Unemployment rates of Blacks

<sup>1</sup>NERA Economic Consulting, "Potential Energy Impacts of the EPA Proposed Clean Power Plan," October 2014, available at [http://www.nera.com/content/dam/nera/publications/2014/NERA\\_ACCCE\\_CPP\\_Final\\_10.17.2014.pdf](http://www.nera.com/content/dam/nera/publications/2014/NERA_ACCCE_CPP_Final_10.17.2014.pdf)

<sup>2</sup>See Testimony of Eugene Trisko, available at <http://www.epw.senate.gov/public/%2Fcache/files/4204e97b-87b8-4629-ab45-ac55d475fd36/spw-062315.pdf>

<sup>3</sup>*Id.*

and Hispanics would increase with an estimated loss of nearly 200,000 jobs held by Black workers and more than 300,000 jobs held by Hispanic workers.

Such technical, procedural and legal shortcomings are why 32 states opposed the proposed rule and sixteen states alongside leading industry stakeholders brought multiple challenges. The final rule was published in the Federal Register on October 23, 2015, a total of 81 days after it was initially announced. The publication date initiated an influx of legal petitions against the rules, including challenges by over half the states.

There are also numerous concerns from stakeholders regarding limited opportunities to meaningfully participate in the regulatory process. The final rules evolved from a settlement agreement that limited substantive involvement to a select group of environmental activists and some state and local governments. In the rush to comply with the arbitrary deadlines, the agency deviated from established policies and circumvented transparency laws and basic public participation requirements. The ensuing technical, legal and policy challenges are the result of the one-sided and insular approach used to develop these regulations.

Initial findings of an ongoing Committee investigation into the role environmental activist organizations played in EPA's rule-making process further solidified these concerns. Preliminary findings were documented in a 72-page Majority Staff Report on August, 4, 2015, entitled "Obama's Carbon Mandate: An Account of Collusion, Cutting Corners, and Costing Americans Billions."

Finally, while the existing source standard is being labeled as the core component of the President's domestic climate agenda, the EPA failed to measure whether it would produce any meaningful environmental benefits. Industry analysis using EPA's numbers and methods, found that CO<sub>2</sub> concentrations would be reduced by less than 0.5 percent, global temperature rise would be reduced by 0.016 degrees Fahrenheit, and sea level rise would be reduced by the thickness of three sheets of paper.<sup>4</sup> For the final rule, the same analysis found CO<sub>2</sub> concentrations would be reduced by 0.2 percent, global temperature would be reduced by 0.01 degrees Fahrenheit and sea level reduced would be reduced by the thickness of two human hairs.<sup>5</sup> Even more concerning is that the CO<sub>2</sub> reductions achieved over the 11-year life of the existing source rule would be rendered pointless by a few months of CO<sub>2</sub> emissions in China.<sup>6</sup>

#### OBJECTIVES OF THE LEGISLATION

Given the range of technical, procedural and legal concerns regarding the President's carbon mandates, S. 1324 repeals the final rules and sets forth new requirements the agency must follow in setting replacement standards under section 111. The bill rein-

<sup>4</sup>American Coalition for Clean Coal Electricity, "Climate Effects of EPA's Proposed Carbon Regulations," June 2014, available at: <http://www.americaspower.org/sites/default/files/Climate%20Effects%20Issue%20Paper%20June%202014.pdf>

<sup>5</sup>American Coalition for Clean Coal Electricity, "Climate Effects of EPA's Final Clean Power Plan," August 2015, available at: <http://americaspower.org/sites/default/files/Climate-Effects-Paper-August-6-2015.pdf>

<sup>6</sup>See Testimony of Stephen Eule on behalf of the U.S. Chamber, June 2015 available at [https://www.uschamber.com/sites/default/files/150624\\_steveeule\\_testimony\\_eia\\_analysis\\_of\\_epa\\_clean\\_power\\_plan\\_house\\_science\\_sbcmt.pdf](https://www.uschamber.com/sites/default/files/150624_steveeule_testimony_eia_analysis_of_epa_clean_power_plan_house_science_sbcmt.pdf)

states balance and a range of protections for impacted stakeholders through the following provisions.

First, S. 1324 requires EPA set standards for new, modified and reconstructed plants based on existing technology. In particular, the bill requires that any new technology be used for at least 12-months at 6 separate power facilities throughout the country. The bill also prevents the EPA from using any demonstration projects—projects that are reliant on federal support as specified in the Energy Policy Act of 2005—from being used to set the standard.

Second, S. 1324 requires EPA to measure the environmental impacts of any proposed standards. Specifically, the bill requires EPA to submit a report to Congress that includes projected domestic and global GHG reductions alongside measured impacts on any associated “climate indicators.”

Third, the S. 1324 prevents EPA from mandating a one-size-fits-all approach to compliance. The bill requires EPA issue state-specific model plans that account for a state’s energy needs, existing infrastructure and local laws.

Fourth, S. 1324 extends compliance dates. The bill would extend deadlines for compliance, including deadlines for state plan submissions, until after any legal challenges raised during the first 60 days of Federal Register publication have been resolved.

Fifth, S. 1324 provides a safe harbor for states to protect their ratepayers. The bill prevents a state from being forced to implement a SIP or FIP that the state’s governor determines would negatively impact economic growth, negatively impact the reliability of their electricity system, or negatively impact electricity costs for ratepayers.

Sixth, S. 1324 prevents highway fund sanctions for noncompliance. The bill would prevent the EPA from withholding highway funds from any state that chooses to forego or opt-out of standards set under section 111.

Finally, S. 1324 restates existing law. Existing power plants are already subject to regulation under the Mercury and Air Toxics rule. The Clean Air Act explicitly prevents this type of double regulation. This is a restatement of existing law to prevent EPA from attempting to rewrite the law to support their illegal and unprecedented actions.

Despite the multitude of concerns raised by stakeholders regarding basic legal authority, costs, reliability and stakeholder input, the agency is pushing forward with its now final rules and associated deadlines. States have already and will continue to be forced to assess and develop a plan of action for rules that were developed with limited state involvement, lack basic legal backing, and will cause harm to their local communities. However these plans of action are characterized, they will be extremely complex and require significant time and resource investment.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section designates the title of the bill as the “Affordable Reliable Electricity Now Act of 2015”

## *Section 2. Definitions*

This section defines “Administrator” as the Administrator of the Environmental Protection Agency; “Demonstration project” as a project to test or demonstrate the feasibility of carbon capture and storage technologies that have received government funding or financial assistance; “Existing Source” as the meaning given the term in section 111(a) of the Clean Air Act; “Greenhouse gas” as any of the following: carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons or perfluorocarbons; “Modification” as the meaning given the term in section 111(a) of the Clean Air Act; “Modified Source” as a stationary source that undergoes a modification after enactment of this Act; “New source” as the meaning given such term in CAA section 111(a); and “Reconstructed Source” as any stationary source that undergoes reconstruction as defined in section 60.15 of title 40, Code of Federal Regulations after the date of enactment of this Act.

## *Section 3. Standards of performance for new, modified, and reconstructed fossil fuel—fired electric utility generating units*

This section provides direction relating to the establishment of standards for new, modified, and reconstructed fossil fuel-fired electricity generating units (EGUs). This section provides that the EPA Administrator must establish separate source categories for new EGUs fueled with coal and natural gas. This section also provides that for any fossil fuel-fired electric generating units, the EPA Administrator may not set a standard unless it has been achieved for a continuous 12-month period by at least 6 EGUs located at different power plants in the United States, which EGUs collectively are representative of the operating characteristics of EGUs at different locations in the U.S. and which have operated for the entire 12-month period on a full commercial basis. This section sets a subcategory for EGUs fueled by lignite coal and restricts standards based on results from a demonstration project.

## *Section 4. Standards of performance for existing fossil fuel-fired electric utility generating units, compliance extension, and rate-payer protection*

This section provides direction relating to the establishment of standards for existing fossil fuel-fired electricity generating units (EGUs). This section provides that the Administrator must submit a report to Congress describing the quantity of projected GHG emissions reductions and assessing the impacts of a rule to EPA’s climate indicators. The section further requires EPA to issue state-specific model plans, extends compliance dates until legal questions are resolved, and allows States to opt-out of compliance if the rule would have negative impacts on economic growth, reliability or result in electricity rate increases.

## *Section 5. Limitation on effect of noncompliance*

This section provides that noncompliance by a State with any proposed, modified, or final rule described within shall not be subject to highway sanctions under Section 179(b)(1) of the Clean Air Act.

*Section 6. Repeal of earlier rules and guidelines*

This section provides that the EPA's proposed standards for new, modified and reconstructed, and existing fossil fuel-fired EGUs, and any substantially similar rules that do not meet the requirements of the Act, are of no force and effect.

*Section 7. Restatement of existing law*

This section provides a restatement of existing law that existing sources regulated under section 112 of the Clean Air Act are precluded from being regulated under Section 111 of the Clean Air Act.

## LEGISLATIVE HISTORY

On May 13, 2015, Senator Capito, introduced S. 1324, the ARENA Act. Senators Inhofe, Manchin, Alexander, Barrasso, Blunt, Boozman, Cassidy, Coats, Cornyn, Cotton, Crapo, Cruz, Daines, Enzi, Fischer, Hoeven, Isakson, McConnell, Paul, Perdue, Risch, Roberts, Rounds, Thune, Tillis and Wicker were original cosponsors of the legislation. The bill was referred to the Senate Committee on Environment and Public Works.

On August 5, 2015, the Senate Committee on Environment and Public Works conducted a business meeting to consider S. 1324. The bill, as amended, was favorably reported out of Committee by voice vote.

## HEARINGS

During the 114th Congress, the Committee held three full committee hearings and two subcommittee hearings to conduct oversight and hear from stakeholders regarding concerns related to the proposed and now final carbon emission standards.

2/11/2015 Full Committee Hearing: "Examining EPA's proposed carbon dioxide emissions rules from new, modified, and existing power plants"

3/11/2015 Full Committee Hearing: "Examining State Perspectives of the EPA's proposed carbon dioxide emissions rule for existing power Plants"

3/23/2015 Full Committee Field Hearing: "Regional Impacts of EPA Carbon Regulations: The Case of West Virginia"

5/5/2015 Subcommittee on Clean Air and Nuclear Safety Hearing: "Legal Implications of the Clean Power Plan"

6/23/2015 Subcommittee on Clean Air and Nuclear Safety Hearing: "The Impacts of EPA's proposed Carbon Regulations on Energy Costs for American Businesses, Rural Communities and Families, and a legislative hearing on S. 1324"

## ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1324 on August 5, 2015.

The committee did not agree to an amendment by Senator Merkley by a rollcall vote of 9 ayes, 11 nays, and 0 not voting. Voting in favor were Senators Booker, Boxer, Cardin, Carper, Gillibrand, Markey, Merkley, Sanders and Whitehouse. Voting against



the amendment were Senators Barrasso, Boozman, Capito, Crapo, Fischer, Inhofe, Rounds, Sessions, Sullivan, Vitter and Wicker.

The committee did not agree to an amendment by Senator Whitehouse by a rollcall vote of 9 ayes, 11 nays, and 0 not voting. Voting in favor were Senators Booker, Boxer, Cardin, Carper, Gillibrand, Markey, Merkley, Sanders and Whitehouse. Voting against the amendment were Senators Barrasso, Boozman, Capito, Crapo, Fischer, Inhofe, Rounds, Sessions, Sullivan, Vitter and Wicker.

The committee did not agree to an amendment by Senator Markey by a rollcall vote of 9 ayes, 11 nays, and 0 not voting. Voting in favor were Senators Booker, Boxer, Cardin, Carper, Gillibrand, Markey, Merkley, Sanders and Whitehouse. Voting against the amendment were Senators Barrasso, Boozman, Capito, Crapo, Fischer, Inhofe, Rounds, Sessions, Sullivan, Vitter and Wicker.

The committee did not agree to another amendment by Senator Markey by a rollcall vote of 9 ayes, 11 nays, and 0 not voting. Voting in favor were Senators Booker, Boxer, Cardin, Carper, Gillibrand, Markey, Merkley, Sanders and Whitehouse. Voting against the amendment were Senators Barrasso, Boozman, Capito, Crapo, Fischer, Inhofe, Rounds, Sessions, Sullivan, Vitter and Wicker.

The committee did not agree to an amendment by Senator Gillibrand by a rollcall vote of 9 ayes, 11 nays, and 0 not voting. Voting in favor were Senators Booker, Boxer, Cardin, Carper, Gillibrand, Markey, Merkley, Sanders and Whitehouse. Voting against the amendment were Senators Barrasso, Boozman, Capito, Crapo, Fischer, Inhofe, Rounds, Sessions, Sullivan, Vitter and Wicker.

The committee did not agree to another amendment by Senator Whitehouse by a rollcall vote of 9 ayes, 11 nays, and 0 not voting. Voting in favor were Senators Booker, Boxer, Cardin, Carper, Gillibrand, Markey, Merkley, Sanders and Whitehouse. Voting against the amendment were Senators Barrasso, Boozman, Capito, Crapo, Fischer, Inhofe, Rounds, Sessions, Sullivan, Vitter and Wicker.

The Committee on Environment and Public Works ordered S. 1324 reported favorably to the Senate by voice vote with a quorum present.

#### REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill. The committee finds that S. 1324 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee note that the Congressional Budget Office found, ‘S. 1324 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.’

#### COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill,

prepared by the Congressional Budget Office, be included in the report. That statement follows:

OCTOBER 8, 2015.

Hon. JIM INHOFE,  
*Chairman, Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1324, the Affordable Reliable Electricity Now Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman and Jon Sperl.

Sincerely,

KEITH HALL.

Enclosure.

*S. 1324—Affordable Reliable Electricity Now Act of 2015*

S. 1324 would repeal or require changes to rules and guidelines issued by the Environmental Protection Agency (EPA) that address greenhouse gas emissions from power plants that use fossil fuels. Under the bill, before proposing any new rules or guidance related to those emissions, EPA would need to meet certain standards and follow certain procedures. Final rules that would be affected by this legislation include:

- Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, signed by the Environmental Protection Agency on August 3, 2015;
- Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units, published in the *Federal Register* on January 8, 2014;
- 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.

Before developing any rules or guidance for existing power plants, the legislation would require EPA to provide a report to the Congress that describes the level of emissions reductions a rule is projected to achieve both globally and domestically, conduct modeling of the effect of the rule on climate indicators, and issue state-specific plans for reductions in greenhouse gas emissions.

In addition, when developing any rules or guidance for power plants that are new, modified or reconstructed, this legislation would require EPA to create separate categories for power plants that use natural gas as a fuel source and for power plants that use coal as a fuel source, and to base any new emissions standards on actual emissions levels achieved by at least six different electric generating units across the United States when operating for a continuous 12-month period. CBO expects that under S. 1324, EPA would likely propose a new rule for carbon emissions from new,

modified, and reconstructed power plants, consistent with the requirements of this legislation.

The bill would not prohibit EPA from continuing to work on activities related to power plants, such as developing guidance and providing technical assistance to states. Based on information from EPA, CBO estimates that implementing this legislation would not have a significant effect on EPA's workload or spending related to power plant emissions.

Enacting S. 1324 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 1324 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contacts for this estimate are Susanne S. Mehlman and Jon Sperl. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF BOXER, CARPER, CARDIN, SANDERS,  
WHITEHOUSE, MERKLEY, GILLIBRAND, BOOKER, AND  
MARKEY ON S. 1324, AS REPORTED BY THE EPW COM-  
MITTEE

Power plants are the largest source of the nation's harmful carbon pollution, accounting for nearly 31% of U.S. greenhouse gas emissions. The final Clean Power Plan standard that President Obama announced on August 3, 2015 is the first rule to limit the amount of carbon pollution that can be released into the air from existing power plants. On August 3, 2015, President Obama also announced final standards for carbon pollution from new, modified, and reconstructed power plants (NSPS).

When it is fully implemented in 2030, the final Clean Power Plan will cut emissions from power plants 32% below 2005 levels. In addition, the Clean Power Plan will increase the percentage of our electricity generating capacity from renewables to 28% in 2030.

S. 1324 blocks implementation of the President's Clean Power Plan and the standards for new, modified, and reconstructed power plants. Furthermore, the bill allows states to opt out of complying with any future plan. The bill creates giant loopholes that make it nearly impossible to take any meaningful action to address climate change and reduce harmful carbon pollution from power plants. Turning away from the President's Clean Power Plan, as S. 1324 would do, would not only move us toward the most devastating impacts of climate change, but hurt the health of the American people.

S. 1324 would block the climate pollution reductions and public health benefits of the Clean Power Plan and it would alter the Clean Air Act in several significant and harmful ways:

- Place new restrictions on the ability of the Environmental Protection Agency (EPA) to issue any carbon pollution standards for both new and existing power plants;
- Repeal all previous EPA proposals and rules controlling carbon pollution from new, modified, and existing power plants;
- Change the way EPA is able to regulate *new* power plants by limiting the technologies EPA can consider in setting the standards;
- Alter the Clean Air Act by allowing states to opt out of any new climate rule under Section 111 for existing power plants;
- Delay any new carbon regulation from being implemented until all the lawsuits are resolved—which could take a number of years; and
- Alter the Clean Air Act to require EPA to take a “pick your poison” approach by prohibiting EPA from regulating power plants for both air toxics, such as mercury, and carbon pollution.

Letters opposing this bill from dozens of public health, business, environmental, and religious groups were entered into the record at the legislative hearing. These letters criticized the damaging changes to the Clean Air Act that would result from S. 1324 and highlighted the benefits of the Clean Power Plan, which are addressed below.

#### THE CLEAN POWER PLAN

##### *Public health benefits*

The Clean Power Plan will deliver important health benefits for our families in 2030 and every year after. By cutting the air pollutants that are emitted along with climate pollution the Clean Power Plan will avoid:

- 3,600 premature deaths;
- 1,700 heart attacks;
- 90,000 asthma attacks; and
- 300,000 missed workdays and schooldays by 2030.

In addition, for every dollar invested through the Clean Power Plan, American families will see up to \$4 in health benefits from the soot and smog pollution reductions achieved.

##### *Employment*

The EPA estimates that the Clean Power Plan will create thousands of jobs, including jobs in the energy efficiency field. The final plan includes the Clean Energy Incentive Program (CEIP), which incentivizes early expansion of renewables and investment in energy efficiency. This program will help accelerate job growth in those important sectors. EPA estimates that improving demand-side energy efficiency will create approximately 53,000 to 84,000 jobs in 2025 and about 52,000 to 83,000 jobs in 2030.

##### *Consumer savings and benefits to low-income communities*

The Clean Power Plan will lower household electricity bills by encouraging energy efficiency. By 2030, the EPA estimates families will save, on average, \$85 a year. There will also be benefits for low-income communities through the CEIP, which prioritizes early investment in energy efficiency projects in low-income communities. In addition, implementation of the plan will accelerate the development of clean, renewable energy and reduce pollution from power plants, which has a disproportionate negative effect on low-income, minority communities.

According to a statement issued by the NAACP on August 4, 2015:

“Power plants are the country’s single biggest source of carbon pollution—responsible for up to 40% of the country’s emissions of greenhouse gases. According to the plan, these measures will reduce the pollutants that contribute to life-threatening soot and smog by 70% which would have significant implications for communities of color. Three out of every four African Americans live within 30 miles of a coal-fired power plant. These communities are disproportionately represented among those with respiratory illnesses, such as lung cancer and pulmonary dis-

ease. In fact, African American children are 3 times more likely to be admitted to the hospital for an asthma attack and twice as likely to die of asthma.”

The NAACP Director of Environment and Climate Justice specifically addressed the harms of carbon pollution to minorities and low-income communities:

“We stridently refute the contentions of those who have used an equity and civil rights frame to oppose regulations on carbon pollution by claiming undue cost burden on vulnerable communities. The cost these communities are paying from their close proximity to polluting plants and from choking down toxins daily is the toll that compromised health, negative educational outcomes and challenged work performance takes on community well-being and growth potential. Still others see the devastating climate change impacts from pollution including disasters, rising sea levels, and decreasing availability of affordable nutritious foods, all of which disproportionately affect our most vulnerable communities.”<sup>1</sup>

#### *Economic benefits outweigh costs*

The EPA estimates that the combined health and climate benefits of the Clean Power Plan in 2030 are worth an estimated \$34 billion to \$54 billion. These benefits far outweigh the estimated costs of \$8.4 billion. As it has with other Clean Air Act regulations, industry has made extreme claims about the costs of the proposed rule. The U.S. Chamber of Commerce analysis of the proposed rule, which provides the basis for industry’s criticism of the rule, has been roundly criticized as it applied to the proposed rule; it is not relevant to the final rule.<sup>2</sup>

#### *Broad public support for the Clean Power Plan*

The final Clean Power Plan drew strong support from a broad range of religious organizations and public health groups<sup>3</sup> and is strongly supported by voters. An August 2015 poll shows 60% of voters support the plan, while just 31% oppose it. “[T]hose who strongly support this plan outnumber those who strongly oppose it by eight percentage points (27% to 19%).”<sup>4</sup> Another poll from August 2015 shows that 59% of voters say states should move forward and develop a plan to cut carbon pollution from power plants.<sup>5</sup>

<sup>1</sup>(August 4, 2015). *NAACP Statement on President Obama’s Clean Power Plan*. National Association for the Advancement of Colored People. Retrieved from <http://www.naacp.org/press/entry/naacp-statement-on-president-obamas-clean-power-plan>.

<sup>2</sup>(August 26, 2015). *Why Media Should Stop Citing NERA’s Flawed Study on the EPA Climate Plan*. Media Matters for America. Retrieved from <http://mediamatters.org/research/2015/08/26/why-media-should-stop-citing-neras-flawed-study/205177>.

<sup>3</sup>*See, e.g.*, (August 3, 2015). *APHA applauds the Clean Power Plan*. American Public Health Association. Retrieved from <http://www.apha.org/news-and-media/news-releases/apha-news-releases/apha-applauds-the-clean-power-plan>; (August 3, 2015). *National Religious Organizations Praise Clean Power Plan*. The National Religious Partnership for the Environment. Retrieved from [http://www.nrpe.org/uploads/2/4/4/7/24473122/nrpe\\_cpp\\_release\\_august\\_2015.pdf](http://www.nrpe.org/uploads/2/4/4/7/24473122/nrpe_cpp_release_august_2015.pdf).

<sup>4</sup>(August 13, 2015). *Support for the Clean Power Plan*. Hart Research Associates and Chesapeake Beach Consulting. Retrieved from <http://www.lcv.org/issues/polling/clean-power-plan-poll.pdf>.

<sup>5</sup>(August 4, 2015). *Americans Strongly In Favor of Plan to Limit Carbon Emissions*. Public Policy Polling. Retrieved from [http://aupc.3cdn.net/ae95ea4da2c00733cc\\_9am6ib5ns.pdf](http://aupc.3cdn.net/ae95ea4da2c00733cc_9am6ib5ns.pdf).

The opposition to the proposed rule has been overstated and claims that 32 states opposed the proposed rule have been refuted.<sup>6</sup> States, including some that express concern with the rule, (MI, GA, ND, MT) are moving forward with developing their plans.<sup>7</sup>

*The Clean Power Plan reflects an inclusive process and incorporates public comments*

EPA received more than 4.3 million comments on the proposed Clean Power Plan. The final rule differs from the proposal in several significant ways that address issues raised in the comments. The final rule affords states additional time to submit State Implementation Plans to EPA, providing up to 3 years rather than 1–2 years. States also have additional time to begin making reductions in emissions—the initial compliance date is now 2022 instead of 2020. The final rule also provides for a more gradual phase-in of reductions to avoid concerns about the steep reductions in the proposed rule.

*Flexibility for states to implement the Clean Power Plan*

In the Clean Power Plan, EPA establishes specific goals for each state to reduce the carbon pollution from its power producing system based on separate standards for both gas and coal-fired plants. Each state is given broad flexibility on how it will meet its state-specific goal. Various approaches range from improving the efficiency of existing coal and natural gas power plants, expanding the use of renewable energy, implementing emissions trading plans, increasing energy efficiency, upgrading transmission, or including nuclear and hydropower uprates in their plans.

The final rule also gives states two options for developing their plans—rate-based goals which apply to each power plant in the state or mass-based goals which set an emissions target for the state. These options allow states to customize a path forward for achieving reductions in carbon pollution. Finally, the CEIP encourages investment in energy efficiency in low income communities and the development of renewable energy that will begin generating power between 2020 and 2022, which will enable states to generate credits toward compliance.

EPA also issued a draft Federal Implementation plan that states can use to guide the development of their own plans.

*Reliability is addressed in the Clean Power Plan*

Climate change is a threat to the reliability of our electricity system. According to the Department of Energy (DOE), severe weather is the number one cause of power outages in the U.S. and costs the economy billions of dollars a year in lost output and wages, spoiled inventory, delayed production, inconvenience and damage to grid infrastructure. Between 2003 and 2012, roughly 679 power outages,

<sup>6</sup>Doniger, D. (March 11, 2015). 32 States, What? Senator Inhofe's Fuzzy Math on States and EPA. Retrieved from [http://switchboard.nrdc.org/blogs/ddoniger/32\\_states\\_what\\_senator\\_inhofes.html](http://switchboard.nrdc.org/blogs/ddoniger/32_states_what_senator_inhofes.html).

<sup>7</sup>See, e.g., [http://www.eenews.net/interactive/clean\\_power\\_plan/states/montana](http://www.eenews.net/interactive/clean_power_plan/states/montana).

each affecting at least 50,000 customers, occurred due to weather events.<sup>8</sup>

The Clean Power Plan includes several provisions that are intended to ensure reliability of the nation's electricity supply as states implement the rule. Some of the changes in the final rule, such as starting reductions in 2022 and the flexibility states and utilities have to plan for and achieve reductions, including trading and multi-state approaches to achieve emissions reductions, will ensure that compliance with the rule provides reliable electricity. In addition, state plans must consider reliability and the final rule allows states to revise a plan if there is an unanticipated or significant reliability challenge that arises. Further, the rule includes a "safety valve" provision in the final rule for emergency situations.

Along with the final rule EPA issued a memo of coordination with DOE and the Federal Energy Regulatory Commission (FERC). This memo describes steps that will be taken to ensure reliable electricity generation and transmission as the Clean Power Plan is implemented and provides for ongoing communication and cooperation between EPA, DOE and FERC.

#### FINAL STANDARDS FOR NEW, MODIFIED, AND RECONSTRUCTED POWER PLANTS

On August 3, 2015, the EPA also issued final standards for new, modified or reconstructed power plants under section 111(b) of the Clean Air Act. This rule complements the Clean Power Plan by setting carbon pollution standards for new coal or gas fired plants as well as modified or reconstructed plants that require the application of the best system of emission reduction (BSER).

Given that the Clean Air Act calls for standards for new plants to be technology forcing, the final standard for new coal plants is based on partial carbon capture and storage (CCS) technology as BSER. CCS technology is being utilized at facilities in Canada and the U.S.<sup>9</sup> According to EPA, the final rule is consistent with the current investment trends in the industry and the standards "are not expected to have notable costs and are not projected to impact electricity prices or reliability."<sup>10</sup>

#### LEGAL AUTHORITY FOR CARBON POLLUTION STANDARDS

Both the Clean Power Plan and the final standards for new, modified, and reconstructed power plants are promulgated pursuant to EPA's established authority under the Clean Air Act to regulate carbon pollution. The U.S. Supreme Court has ruled three times in support of EPA's legal authority to control carbon pollution under existing law. In 2007, the Supreme Court confirmed in *Massachusetts v. EPA* that the Clean Air Act covered carbon pollu-

<sup>8</sup>(August 2013). *Economic Benefits of Increasing Grid Resilience to Weather Outages*. Executive Office of the President. Retrieved from <http://energy.gov/sites/prod/files/2013/08/f2/Grid%20Resiliency%20Report—FINAL.pdf>.

<sup>9</sup>Duffy, J., & Weeks, A. (June 15, 2015). *Let's Go EPA—Remain Strong on Power Plant Rules*. Clean Air Task Force. Retrieved from <http://www.catf.us/blogs/ahead/2015/06/15/lets-go-epa-remain-strong-on-power->; see also (July 10, 2015). *Technical Support Document*. Environmental Protection Agency. Retrieved from <http://www3.epa.gov/airquality/cpp/tsd-cps-literature-survey-carbon-capture-technology.pdf>.

<sup>10</sup>EPA Fact Sheet: Carbon Pollution Standards, <http://www3.epa.gov/airquality/cpp/fs-cps-overview.pdf>.



tion. Four years later, the Supreme Court in *American Electric Power v. Connecticut*, specifically found that the Clean Air Act has provisions (Section 111) in place to limit carbon pollution from power plants—the very provisions EPA is using in its proposed existing power plant carbon standards. Lastly, on June 23, 2014, the Supreme Court in *Utility Air Resources Group v. EPA* again confirmed that the Clean Air Act covers carbon pollution. The case upheld EPA’s rules requiring that if an individual industrial source needs a pre-construction air permit (known as a PSD permit) because of the amount of conventional air pollutants it will emit, EPA can require that the same source consider how it will also best control carbon pollution.

#### AMENDMENTS TO S.1324

During markup, as noted in the Rollcall Votes section above, the Committee considered six amendments that addressed the impacts of climate change, the need to ensure the benefits of implementing the Clean Power Plan, the need for federal action, as well as the need to express the sense of the Senate regarding the science of climate change.

Each amendment was rejected on a party line vote of 9 yeas and 11 nays.

Senator Markey offered an amendment that recognized the significant public health benefits that will come with implementation of the Clean Power Plan, including the prevention of 3,600 premature deaths, 90,000 asthma attacks, and the avoidance of 300,000 missed days of work or school. The amendment stated that S. 1324 does not take effect before a plan is in place to achieve the health benefits created by the Clean Power Plan. All of the Republicans voted against the amendment; the amendment was defeated.

Senator Markey offered another amendment to ensure S. 1324 would not apply if the bill has a negative impact on clean energy jobs. The EPA estimates that the Clean Power Plan will create thousands of jobs, and in particular EPA estimates that improving demand-side energy efficiency will create the need for about 53,000 to 84,000 jobs in 2025 and about 52,000 to 83,000 jobs in 2030. All of the Republicans voted against the amendment; the amendment was defeated.

Senators Gillibrand and Markey offered an amendment recognizing that climate change is a threat to our coasts as sea levels rise. The American Meteorological Society issued its *State of the Climate in 2014 Report* noting that numerous key climate change indicators were at or near record levels in 2014, including a record high for sea levels—2.5 inches above 1993 levels. The amendment prohibited the Act from taking effect if its implementation contributes to an increase in sea level rise and coastal erosion. All of the Republicans voted against the amendment; the amendment was defeated.

Senator Merkley offered an amendment to express the sense of the Senate that climate change is real and due to human activity. The amendment recognized that leading scientists worldwide, as well as our own government experts at NASA and NOAA, tell us that climate change is real and that human activity is causing it. In addition, the amendment recognized that the climate change im-

pacts that scientists predicted years ago are happening now, including record heat, droughts, wildfires, storms, and sea ice melt. All of the Republicans voted against the amendment; the amendment was defeated.

Senator Whitehouse offered an amendment to create a new findings section in S. 1324 stating the sense of the Senate that climate change is real and not a hoax, and human activity significantly contributes to it; and the federal government has a responsibility to act. According to a Washington Post-ABC poll, a bipartisan majority of the American people want federal limits on carbon pollution. Approximately 70 percent say the federal government should require limits on carbon pollution from existing power plants, and 70 percent support requiring states to limit the amount of carbon pollution within their borders. Further, 97% of scientists agree human activity is leading to dangerous climate change that threatens our families. All of the Republicans voted against the amendment; the amendment was defeated.

The second amendment offered by Senator Whitehouse would have required the federal government to have another program or legislative proposal in place that would reduce carbon pollution by at least as much as the EPA's power plant rules before the Act can take effect. When the Clean Power Plan is fully implemented it will cut carbon pollution from the power sector by 32%. These reductions are an essential element of President Obama's Climate Action Plan and this amendment would require an alternative plan to be in place to secure equivalent reductions. All of the Republicans voted against the amendment; the amendment was defeated.

BARBARA BOXER.  
THOMAS CARPER.  
BENJAMIN CARDIN.  
BERNARD SANDERS.  
SHELDON WHITEHOUSE.  
JEFF MERKLEY.  
KIRSTEN GILLIBRAND.  
CORY BOOKER.  
EDWARD MARKEY.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

\* \* \* \* \*

**CLEAN AIR ACT**

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

SEC. 111. (a) For purposes of this section:

(1)\* \* \*

\* \* \* \* \*

**[(d)(1) The Administrator]**

*(d) STANDARDS OF PERFORMANCE FOR EXISTING SOURCES; REMAINING USEFUL LIFE OF SOURCE.—*

*(1) IN GENERAL.—The Administrator ;shall prescribe regulations which shall establish a procedure similar to that provided by section 110 under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under [section 108(a) [or emitted from a source category which is regulated under section 112][or 112(b)]<sup>24</sup> but]section 108(a) or emitted from a source category that is regulated under section 112, but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.*

**[(2) The Administrator]**

*(2) AUTHORITY OF THE ADMINISTRATOR.—The Administrator shall have the same authority—*

*(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 110(c) in the case of failure to submit an implementation plan, and*

<sup>24</sup>US Code executes the amendment as follows: “(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or 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, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.” 42 USC 7411(d)(1).

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 113 and 114 with respect to an implementation plan. **[In promulgating a standard]**

(3) *CONSIDERATIONS.*—*In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.*

(4) *PROHIBITION.*—*The Administrator shall not regulate as an existing source under this subsection any source category regulated under section 112.*

