

EPA State Consultations

Clean Air Act Section 111(d) Discussion

12/11/13

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Below is a preliminary summary of themes that have emerged in meetings held by EPA and states, as follows:

- Individual calls and meetings with representatives from Arkansas, Louisiana, Oklahoma, Texas, Mississippi, Montana, California, Nevada, and Hawaii
- Regional meetings with state representatives in EPA Region 4 and Region 5
- National meetings with state environment and energy associations, as well as a meeting of tribal representatives

Themes are organized according to Questions 2-4 raised by EPA's paper "Considerations in the Design of a Program to Reduce Carbon Pollution from Existing Power Plants." (Note takers have also been tracking responses to Question 1 about specific characteristics and policies in each state or Region, but they are not summarized here). Under each question, themes are organized by the frequency with which they were raised by states. In general, the themes under the first sub-heading "Common Themes" were heard by more than a third of the states and themes under the second heading "Other Points" were heard by less than a third of states.

This list of themes (and the relative frequency) is likely to change substantially as more state input is incorporated in this analysis. In this document, most themes are not identified with particular states, regions, or state characteristics (i.e., highly coal-dependent, etc.), but such identification may be useful for EPA as part of a more comprehensive analysis.

Question 2. How should EPA set the performance standard for state plans?

Common Themes

Mixed opinions on mass-based vs. a rate-based standard. For states that talked about the specific nature of the standard, there was not a clear preference for mass-based or rate-based. States favoring a rate-based approach noted that it would accommodate future growth in demand (i.e., not penalize the state for population growth, etc.). Some states that had already implemented significant greenhouse gas reduction policies were concerned that a mass-based standard would require additional reductions

that would be difficult and expensive (this also relates to the theme of credit for actions taken described below).

Set a standard that doesn't penalize states for demand growth. Sources of demand growth mentioned by states included population growth, industrial growth, or sectoral shifts that would increase demand (e.g., shifts to electrified transportation). Examples mentioned included CO₂ emissions per kWh, or metric tons per person.

Consider cost to utilities and ratepayers when setting the standard. Several states noted that increased costs (from stranded assets and 111(d) compliance actions) would ultimately be passed on to residential, commercial, and industrial ratepayers. They noted that for states with high poverty areas and low income residents, even small monthly increases in utility bills can have substantial impacts. They noted that some states with the highest carbon intensity per MWh also have some of the poorest residents (in terms of income). Some states have large manufacturing sectors that have developed with support of low industrial electricity rates, which have relied on cheap coal power. For example, Kentucky emphasized that its low income rural populations already pay high utility bills and that any additional rate increases from 111(d) could have significant economic justice implications. In addition, Kentucky has a large manufacturing sector; increased electric rates can result in lost jobs and constrained economic growth. Mississippi has very low income populations in the delta region that state representatives said could be severely affected by increased electric rates.

Consider costs of enhancing electric system resiliency and adaptation that will be required in the coming years. Some state representatives indicated that they will likely need to invest significant resources in the coming decade to harden the electric sector infrastructure and improve its resiliency to extreme weather events. They want to make sure that electric sector costs to address the adaptation and resiliency aspects of the President's Climate Action Plan are factored into cost analyses, as these costs will also be borne by ratepayers.

Let states choose among multiple standards or set their own. Several states suggested that EPA should set multiple standards and then let states select and justify which one(s) to use. For example, EPA could set a mass-based standard and a rate-based standard. A few states suggested that EPA should not set standards at all but instead provide guidance to states on how they should set and justify their own standards.

Recognize that mitigation potential differs significantly by state and region. When states described their power systems and policy options, it was clear that mitigation potential differs significantly among them. States heavily reliant on coal power (for internal use or export) and relatively few other opportunities for reducing emissions (e.g., populations too small to achieve significant emissions reductions from energy efficiency) were particularly concerned that the only way to meet 111d standards would be to reduce production and potentially strand generation assets. In light of the different mitigation potential among states, some states suggested varying the stringency of standards to account for state circumstances and variation.

Some utilities favor setting achievable limits "within the fenceline." Several Southeastern states reported that their utilities would prefer a standard that only applies within the facility fenceline. They say that this is a clearer, more enforceable, and more legally defensible approach. Some states, particularly states in the Southeast like Mississippi, argue that power plant emissions are the jurisdiction of state environmental agencies, but moving to a systems approach requires the need to engage other

parties (e.g., state PUCs, regional ISOs/RTOs, etc.) around strategies that have indirect connections to emissions, and that this will increase the likelihood of legal challenge and legal vulnerability.

111(d) as a “one-shot deal.” A few states have noted that EPA has one chance to address existing power plant emissions with 111(d), and that it is not appropriate to revisit the standard after several years (such as in the NAAQS program). A few states have added that this is a rationale for EPA to take more time for rule development and consultation than envisioned under the current schedule.

Other Points

Other points suggested by one or two states include:

- Set different standards for different types of fuels
- Set a standard based on averaging
- Set a stringent standard
- Consider interactions between 111b and 111d when setting the standard
- Don't require CCS or fuel switching (but allow them in state plans if appropriate)
- Consider a multi-pollutant standard
- Consider a standard that doesn't reference a baseline or “business-as-usual” scenario
- Establish a base level of effort or suite of policies that all states need to achieve/implement

3. What requirements should state plans meet, and what flexibility should be provided to states in developing their plans?

Common Themes

EPA should allow states to take a system-wide approach to compliance. Most states supported a system-wide approach to compliance. Suggested policies and measures that should “count” for compliance, included:

- Energy efficiency
- Renewable energy and/or Renewable Portfolio Standard (although one state suggested caution in using RPS as a compliance option)
- Demand response
- Biomass
- Nuclear energy

Provide credit for actions taken. Most states emphasized that the rules should provide credit for actions taken. A few states noted that this should be distinct from setting a baseline year because emissions levels since the baseline could be affected by many other factors, including population growth. Some states have indicated that 2005 would be an appropriate baseline year in a mass-based approach, although a few other states and utilities have argued that 2000 would be good baseline.

Allow maximum flexibility for state plans. Most states called on EPA to provide maximum flexibility for state plans. States with that already have ambitious greenhouse gas reduction strategies said that flexibility would allow them the greatest latitude to align new rules with existing policies. States that did not yet have significant greenhouse gas reduction strategies emphasized that flexibility would allow them to meet new requirements in the most cost-effective way.

Be flexible in the timing of power sector compliance in state plans. Several states suggested that adjusting the timing of power sector compliance (as defined in state plans) could provide flexibility that accommodated the diverse mitigation potential of states (e.g., reflecting fuel mix, economic conditions, geography, etc.). Although all states would be required to meet the same standard or to achieve a declining trend in emissions, they could be on different schedules for doing so. One state emphasized that this type of compliance flexibility would be more preferable than allowing states to exempt certain facilities or utilities.

Don't adversely impact existing state, regional, or local climate policies or efforts. States that already have ambitious greenhouse gas or other air quality policies emphasized that 111d rules should not adversely impact these efforts. Specific concerns included adding redundant reporting or other requirements to utilities (which may reduce their support and compliance with state policies) and not creating a “chilling effect” on local climate and clean energy efforts by making them enforceable.

Mixed interest in regional strategies. In general, states already involved in regional strategies (e.g., Western Climate Initiative) wanted 111d to recognize them while states not already involved in regional strategies were skeptical of them. Several states noted that crafting regional compliance strategies would take more time.

Recognize regional system integration and the critical role of system operators. Many states have power systems that are integrated across states or regions through transmission systems, utilities that serve multiple states, and significant import or export of electricity. Given this integration, system operators such as Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) play important roles in regional dispatch, reliability, etc. which affect the mix of power generated and used in states. This creates complexity for the rules (e.g., how should responsibility for imports or exports be allocated), but it may also create opportunities for regional compliance strategies. A few states noted that EPA should work with the U.S. Department of Energy and the Federal Energy Regulatory Commission on regional power system issues.

Require rigorous and consistent measurement. Some states suggested that EPA should require rigorous measurement and verification under 111d and that states should use similar methodologies and tools. A few states noted that EPA should partner with the U.S. Department of Energy in this area.

Other Points

Other points suggested by one or two states include:

- Consider how rules will apply to unregulated distributed generation
- Align new rules with existing regulations (e.g., regional haze) to avoid duplicating efforts or conflicting requirements
- Allow for short-term electricity reliability exemptions
- Allow states to prevent adverse air quality impacts in extreme non-attainment areas
- Provide credit for investments outside of the states. Some states (such as Michigan) may be required by their ISO/RTO to invest in transmission infrastructure outside of their state to connect new renewables to the grid in other states; these states are interested in getting credit for these system investments even though they do not affect the power generation mix in their state.

- Other states have made direct investments in renewable energy in neighboring states to meet their RPS commitments; they are interested in credit for these investments

4. What can EPA do to facilitate state plan development and implementation?

Common Themes

Provide enough time for state plan development. Most states said that the one year time frame for state compliance is too short. Several states recommended three years for developing the plans; others advocated for a phased plan development approach that could provide some aspects of a plan analyses within one year, but recognizes that more time will be needed to develop a complete plan. Specific concerns included:

- At a minimum state plans will probably require new rules, which can often take 6-12 months
- In many states, state plans may require new legislation; some state legislatures only meet every two years
- Significant inter-agency collaboration and/or regional collaboration in plan development take time

EPA should help facilitate ongoing collaboration among states. Some states suggested that EPA should provide opportunities for ongoing state-to-state and EPA-to-state collaboration on compliance strategies. Existing collaborative institutions (e.g., state associations, etc.) could be one forum for these ongoing interactions.

EPA should provide various resources to help states develop their plans. Specific resources suggested by one or more states included:

- Examples of effective state policies, including data on effectiveness and cost
- Clear methodologies for including and measuring various types of policies (e.g., energy efficiency) as compliance strategies in state plans
- Funding for plan development
- Communications materials about 111d that states can use with stakeholders and others
- Clear expectations and criteria for plan approvals

Other Points

Other points suggested by one or two states include:

- Assess and address the potential implications for the Title V program
- Provide consultant analyses and expert testimony to support clean coal tech deployment