

**Arkansas Department of Environmental Quality Calls
EPA's Proposed Clean Power Plan Federal Plan and Model Rules
December 2, 2015, 10:00 – 11:30 a.m.**

Topic: Federal Plan Structure

This call will be organized around the following subtopics:

- Administrative Appeals
- Affected Units
- Clean Energy Incentive Program
- Compliance Instrument Markets
- Compliance Periods
- Federal Plan Approach
- Interaction with other EPA rules
- Permitting Requirements
- Reliability
- Remaining Useful Life
- Section 111(d) Authority
- Trading Linkages
- Workforce certification

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
EPA is proposing, and requesting comment on the use of the regulations for appeals procedures set forth in 40 CFR part 78, to provide for the adjudication of certain disputes that may arise during the course of implementation of a federal plan under CAA section 111(d).	104	64986	Federal Plan Structure	Administrative Appeals
EPA requests comment on this list of actions for both types of approaches to the federal plan, and whether there are other decisions that may be made in the course of implementation of the federal plan that are party-specific that would be appropriate to list as appealable under part 78.	106	64986	Federal Plan Structure	Administrative Appeals
EPA also requests comment on whether it would be appropriate to finalize an administrative appeals process that differs in any way from that offered under part 78, or in addition to that offered under part 78. If so, EPA requests comment broadly on all aspects of the alternative or additional administrative appeals process, including with respect to any structural, procedural, substantive, and timing requirements it should include, who should have access to it and in what manner, and how it would differ from part 78.	106	64986	Federal Plan Structure	Administrative Appeals
Finally, EPA requests comment on whether, similar to other programs identified in 40 CFR part 78.1(a)(1), the agency should make the procedures of part 78 available to any actions of the Administrator under the comparable state regulations approved as a part of a state plan under the EGs.	107	64986	Federal Plan Structure	Administrative Appeals

<p>The EPA also requests comment on an alternative compliance pathway that could be available to units under a mass-based approach. The ways that the approach could be implemented are further outlined in the Alternative Compliance Pathway for Units that Agree to Retire Before a Certain Date Technical Support Document (TSD). Under this approach, two basic requirements would need to be met. The first is that the unit would have to take a commitment that it would retire on a date on or before December 31, 2029. The second is that the unit would have to demonstrate that it will take an enforceable emission limitation that would assure that the overall state emission goal is met. [...]The EPA requests comment on whether this approach should be available for all units or limited to small units (e.g. less than 100 MW nameplate capacity). The EPA also requests comment on whether and how such an approach could be included under a rate-based approach.</p>	74	64980	Federal Plan Structure	Affected Units
<p>In the federal plan Affected EGU TSD, the EPA lists all applicable affected EGUs according to their records from the National Electric Energy Data System (NEEDS), Energy Information Administration (EIA), and comments from the Clean Power Plan. In this TSD, each affected EGU is assigned its proposed applicable standards if a federal plan were to be promulgated for that affected EGU at any time. The EPA requests comments and updates to this list of affected units.</p>	75	64980	Federal Plan Structure	Affected Units
<p>The EPA proposes to apply the CEIP in all states subject to either a rate-based or mass-based federal plan.</p>	23	64970	Federal Plan Structure	Clean Energy Incentive Program
<p>Whether the EPA ultimately finalizes rate-based or mass-based federal plans, the agency believes that the ERC market and the allowance market would be competitive. The opportunities for interstate trading detailed above would reduce any potential for firms to exercise market power in the ERC market or allowance market. The EPA requests comment on this expectation of a competitive ERC market and a competitive allowance market, and comment on potential program design choices that could address any identified market power concern.</p>	62	64977	Federal Plan Structure	Compliance Instrument Markets
<p>The EPA agency requests comment on appropriate market monitoring activities, which may include tracking ownership of allowances or ERCs, oversight of the creation and verification of credits, and tracking market activity (e.g., transaction volumes and prices).</p>	63	64977	Federal Plan Structure	Compliance Instrument Markets
<p>The EPA solicits comment on other approaches to ensure market liquidity while continuing to meet the stringency of the final EGs.</p>	78	64981	Federal Plan Structure	Compliance Instrument Markets
<p>The EPA requests comment on whether it would be possible to grant, on a case-by-case basis, certain affected EGUs, particularly small entities, additional time to come into compliance, and to request additional input from the public as to the design of such flexibility that would be compatible with the EGs and a federal plan that implements a trading system.</p>	77	64981	Federal Plan Structure	Compliance Periods

In accordance with the schedule set out in the EGs, the federal plan is proposed to be implemented in a phased approach. The first period, corresponding to the Interim Period in the EG, is proposed to run from beginning of calendar year 2022 until end of calendar year 2029 (January 1, 2022 to December 31, 2029). The Final Period would run from beginning of calendar year 2030 (January 1, 2030) indefinitely into the future. The first period is proposed to be comprised of three “compliance periods,” set by calendar year. The first compliance period will be from January 1, 2022 to midnight, December 31, 2024 (3 calendar years). The second compliance period will be from January 1, 2025 to midnight, December 31, 2027 (3 calendar years). The third compliance period will be from January 1, 2028 to midnight, December 31, 2029 (2 calendar years). [...]The EPA proposes that the compliance periods in the Final Period will each be 2 calendar years.	75-76	64980	Federal Plan Structure	Compliance Periods
The EPA currently intends to finalize a single approach (<i>i.e.</i> , either the mass-based or rate-based approach) for every state in which it promulgates a federal plan [...] EPA invites comment on which approach, <i>i.e.</i> , either mass-based or rate-based trading, should be selected if EPA opts to finalize a single approach.	18	64969	Federal Plan Structure	Federal Plan Approach
Existing fossil fuel-fired EGUs, such as those covered in this proposal, are or will be potentially impacted by several other rules recently finalized or proposed by the EPA. These rules include the Mercury and Air Toxics Standards (MATS) (77 FR 9304; February 16, 2012); 42 the CSAPR [Cross State Air Pollution Rule]; Requirements for Cooling Water Intake Structures at Power Plants (79 FR 48300; August 15, 2014); Disposal of Coal Combustion Residuals from Electric Utilities, promulgated on April 17, 2015 (80 FR 21302); and the proposed Steam Electric Effluent Limitation Guidelines and Standards (78 FR 34432; June 7, 2013). These rules are discussed in more detail in the final EGs along with steps the EPA is taking to enable compliance with obligations under other power sector rules as efficiently as possible. EPA solicits comment on whether there are specific things the EPA can do in the design and implementation of the federal plan that further this objective.	103 – 104	64895-64896	Federal Plan Structure	Interaction with other EPA rules
The EPA invites comment on its proposed approach to permitting requirements for the federal plan, including whether it would be of use to develop guidance similar to the guidance developed for permitting under CSAPR.	100	64985	Federal Plan Structure	Permitting Requirements
The EPA invites comment on its proposed approach to incorporating applicable requirements of the federal plan into title V permits and revising those requirements, including specifically seeking comment on whether all requirements should be eligible for incorporation into title V permits via minor modification procedures or if only a specified subset of such requirements should be eligible for such procedures.	100	64985	Federal Plan Structure	Permitting Requirements
Additionally, the EPA requests comment on how a reliability “set-aside” approach could be implemented in the rate-based federal plan.	84	64982	Federal Plan Structure	Reliability
The EPA requests comment on the potential for these banks of ERCs and allowances to support reliable electricity generation and transmission to be utilized in the event of this kind of reliability emergency.	85	64982	Federal Plan Structure	Reliability
Rather as explained earlier, the very nature of the federal plan, in which affected EGUs can obtain allowances or credits if needed, supports reliability. Therefore, a reliability safety valve for the federal plan is not needed. The EPA invites comments on this aspect of the proposed federal plan.	82-83	64982	Federal Plan Structure	Reliability

The EPA requests comment specifically on creation of an allowance set-aside for the purpose of making allowances available in emergency circumstances in which an affected EGU was compelled to provide reliability critical generation and demonstrated that a supply of allowances needed to offset its emissions was not available. [...] The EPA requests comment on all elements of such an approach, including what events would trigger the need for allowances from the reliability set-aside; eligibility criteria to receive the set-aside allowances; the size of the set-aside; and the timing of distribution of allowances from the reliability set-aside.	83-84	64982	Federal Plan Structure	Reliability
In considering the remaining useful lives of facilities under a federal plan, the EPA believes this approach to setting the emission standards, coupled with the ability to trade, adequately accounts for remaining useful lives of facilities. In essence, it allows the facilities to comply with the federal plan through the purchase or acquisition of ERCs or allowances, and to avoid the need to make costly investments in control technology for plants that have short remaining useful lives. For these reasons, the federal plan adequately considers “remaining useful lives.” EPA invites comment on our consideration of facilities “remaining useful lives” in the federal plan.	93	64984	Federal Plan Structure	Remaining Useful Life
The EPA is co-proposing two distinct forms of emissions trading as the mechanism for federal implementation of standards of performance that achieve the emission performance levels by determined by application of the BSER in the Clean Power Plan EGs. Both proposals are “emission standard” approaches as defined in the EGs, and the EPA is not proposing an approach like the “state measures” approach that is also available to states in the final EGs. The EPA has legal authority to establish either of the proposed trading systems as a federal plan under CAA section 111(d)(2). EPA discusses this topic briefly here and invite public comment	107	64986	Federal Plan Structure	Section 111(d) Authority
The EPA invites comment on this discussion and the agency’s interpretation that CAA section 111(d)(2) authorizes the two approaches to a federal plan proposed here.	123	64989	Federal Plan Structure	Section 111(d) Authority
The EPA also requests comment on expanding the scope of interstate trading to include linking states covered by the rate-based trading federal plan with any state that has an approved rate-based trading state plan meeting the proposed conditions for linkages and that uses an EPA designated ERC tracking system that is interoperable with an EPA-administered ERC tracking system.	59	64977	Federal Plan Structure	Trading Linkages
The EPA also requests comment on allowing a state that has an approved rate-based trading state plan meeting the proposed conditions for linkages and that uses an EPA-designated ERC tracking system to register with the EPA, and after registration, to link with states covered by the rate-based trading federal plan.	59	64977	Federal Plan Structure	Trading Linkages
In the mass based federal plan the EPA proposes to issue allowances in short tons; as a result, the EPA is proposing in this rule that linkage for the mass-based federal plan is limited to state plans that issue allowances in short tons. The agency also requests comment on whether to extend linkage to state plans that issue allowances in metric tons and on what provisions would be necessary to implement such linkages.	60	64977	Federal Plan Structure	Trading Linkages
The EPA also requests comment on expanding the scope of interstate trading to include linking states covered by the mass-based trading federal plan with any state that has an approved mass-based trading state plan meeting the proposed conditions for linkages and that uses an EPA-designated allowance tracking system that is interoperable with an EPA-administered allowance tracking system.	61	64977	Federal Plan Structure	Trading Linkages

<p>The EPA also requests comment on allowing a state that has an approved mass-based trading state plan meeting the proposed conditions for linkages and that uses an EPA-designated allowance tracking system to register with the EPA, and after registration, to link with states covered by the mass-based trading federal plan.</p>	61	64977	Federal Plan Structure	Trading Linkages
<p>The EPA proposes to allow interstate trading between affected EGUs in states covered by the proposed federal plans and affected EGUs in states covered by state plans (referred to below as “linking” states, or “linkages”) under the following conditions, which are discussed further below the list:</p> <ul style="list-style-type: none"> • The state plan must be approved. • The state plan must implement the same type of trading program as the federal plan trading program in order to be linked for interstate trading, i.e., mass-based trading programs can link to mass-based trading programs only, and rate-based trading programs can link to rate-based trading programs only. • The state plan must use the identical compliance instrument as the federal plan (this requirement is detailed below). • The state plan must be approved as a ready-for-interstate-trading plan. • The state plan must use an EPA administered tracking system (EPA is also requesting comment on expanding this to include a state plan that uses an EPA-designated tracking system that is interoperable with an EPA-administered system, as detailed below). 	58-59	64976 - 64977	Federal Plan Structure	Trading Linkages
<p>In this proposed rule, the proposed approach to link from the mass-based trading federal plan to state plans could result in linking of the federal plan to state plans that include non-affected emission sources. The EPA requests comment on this proposed approach.</p>	61-62	64977	Federal Plan Structure	Trading Linkages
<p>The EPA asks for comments as to whether the federal plan should encourage EGUs to ask for a demonstration that the work undertaken under a federal plan is performed by a proficient workforce.</p>	85	64982	Federal Plan Structure	Workforce certification