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Implementing President Obama's Climate Action Plan: Process, Framework, and Impacts

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Overview of Climate Action Plan (CAP)

- Three Key Goals
 - 17% reduction in carbon emissions from 2005 to 2020
 - Prepare United States to adapt to climate change
 - Take leadership role in international climate change efforts

- Wide Range of Issues Addressed
 - Commitment to reduce carbon from new and existing utilities
 - Government purchase and installation of renewable energy
 - Incentives and guarantees for renewable energy
 - Investments in infrastructure for adaptation

A New Proposal on Carbon Limits for New Power Plants

- Presidential Memorandum directs EPA to complete carbon emissions standards for new and existing power plants
- First clear statement that EPA will issue a new proposal
 - Original proposal issued in April 2012
 - EPA received more than 2.7 million comments
 - EPA needs to improve the legal defensibility of the original proposal
 - EPA is likely to propose distinct standards for coal, natural gas, and petcoke (proposal combined together)
- EPA directed to issue new proposal by September 20, 2013
- Final rule to be issued “in a timely fashion” following public comment; we anticipate final rule no later than June 1, 2014
- **Takeaway:** Administration is committed to finalizing NSPS for new sources within the next 12 months

A Timeline for Controlling Carbon from Existing Sources

- Commitment to regulate existing sources is most significant announcement in CAP
- Clear timeline for regulation of existing sources
 - June 1, 2014 – proposed “standards, regulations, guidelines”
 - June 1, 2015 – finalized standards
 - June 30, 2016 – deadline for submitting state implementation plans (SIPs); this is key date by which regulation of existing sources can begin
- EPA directed to consult with states, industry, and other leaders
- Standards may include “market-based instruments, performance standards, or other regulatory flexibilities”; preserves all options for 111(d) standards, including cap and trade
- EPA likely will need to engage in option selection in Fall 2013 to meet June 1 deadline
- **Takeaway:** CAP provides a clear schedule to regulation, but no substantive details on scope of standards; no margin of error for deadlines to slip before end of administration

NSPS: A CAA Section 111 Primer

- Requires EPA to issue NSPS for categories of sources that are determined to cause, or contribute significantly to, air pollution which can reasonably be anticipated to endanger public health or welfare.
- EPA may distinguish among classes, types, and sizes within categories of sources.
- Performance-based standards
- Apply to any affected source constructed, reconstructed, or modified after the date of proposal (beginning upon promulgation).

Existing sources trigger new source standards if they:

Modify: Make a physical or operational change and increase hourly maximum emission rate achievable in the last 5 years.

Reconstruct: Defined as spending more than 50% of cost to replace affected facility.

NSPS: Five Key Distinctions with PSD

- (1) NSPS are organized by source categories
- (2) NSPS are based on “Best Demonstrated Technology” (BDT)
- (3) NSPS apply at the time of proposal
- (4) NSPS requires endangerment from “source category”
- (5) NSPS can reach existing sources through 111(d)

NSPS Primer: Addressing Existing Sources

Section 111(d) applies to source categories that EPA first regulated if new.

- Directs EPA to establish a SIP approval procedure similar to NAAQS SIPs; states must submit a plan to EPA to establish standards of performance for any existing source for any air pollutant
 - (1) for which there is no NAAQS; and
 - (2) is not emitted from a source category regulated under Section 112.
- If a state does not develop a plan, EPA has the same authority as it does for SIPs to impose a plan on the state.
- Standards of performance must take into consideration “among other factors, the remaining useful life of the existing source to which such standard applies.”
- EPA has used 111(d) for municipal solid waste landfills, municipal waste combustors, sulfuric acid plants, primary aluminum reduction plants, and the phosphate fertilizer manufacturing.

Key Themes from Industry Comments

- EPA must make source-specific endangerment finding for GHGs before issuing NSPS
- EPA may not use NSPS program to regulate fuel type or design type out of existence
- EPA may not create an aggregate “mega” source category to impose a standard that only one sub-category can achieve
- EPA cannot use NSPS to mandate specific control equipment (i.e. CCS)
- CCS cannot constitute the “best system of emissions reduction” for coal utilities because it is not commercially viable
- EPA provided no rational basis for failing to address modified and reconstructed sources
- EPA failed to fully address the economic and energy impacts of the rule
- EPA should not regulate existing sources under § 111(d)
- EPA should not expand GHG NSPS to other sectors

Long-term Emissions Reductions for Heavy Duty Vehicles

- Commitment to develop post-2018 fuel economy standards for heavy duty vehicles
- Commitment to partner with industry leaders and other key stakeholders
- No timeline provided for regulations
- No details regarding substance of post-2018 standards
- **Takeaway:** Commitment to develop something, but no clear pathway or substantive details

Absence of Other Sectors

- Stationary Sources - focused solely on utility sector
 - Refineries – EPA has missed consent decree deadline
 - Portland cement – past statements that EPA was considering regulation
 - Other industrial sectors
 - Lack of reference does not mean EPA will not proceed with regulations
- Mobile Sources – focused solely on heavy duty vehicles
 - Off road vehicles
 - Marine engines
 - Aircraft
- Potential for NGO actions or court to force EPA to regulate
- **Takeaway:** Other sectors are not apparent top priority, but could be addressed at any time

Quiet on NEPA and EPA Fronts

- CAP includes aggressive plans to expand renewable energy projects on public lands
- No effort to streamline permitting requirements for NEPA and ESA
 - Strict procedural requirements for federal actions and permitting
 - Potential for significant delays in project approval
- No reference to draft NEPA guidance on climate change
 - Draft issued in February 2010
 - Purpose to guide federal agencies in analyzing effects of GHG emissions and climate change when describing environmental effects of projects
- **Takeaway:** Despite absence from CAP, Administration may finalize NEPA guidance in near term to assist federal agencies in NEPA analysis

Waking Up the International Arena

- Global lull following Copenhagen and Durban summits
- Commitment to take leading role in 2015 international climate conference
- Demands commitment from developing countries
 - “All countries must step up and play their part”
 - Acknowledges that agreement must be flexible to address differently situated countries
- **Takeaway:** Renewed effort to attempt to reach international agreement before end of term (legacy issue)

Thank You.