

EPA says its new strict power plant rules will pass legal tests

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The EPA on Thursday announced a series of actions to address pollution from fossil fuel power generators, including a final rule for existing coal-

fired and new natural gas-fired plants that will eventually require them to capture 90 percent of their carbon dioxide emissions.

The agency said that the rules, which alter some of the timelines for implementing carbon capture systems outlined in last year's proposal, would result in \$370 billion in net climate and health benefits over the next two decades and avert 1.38 billion metric tons of carbon pollution through 2047.

In addition to the power plant regulations, the agency announced tighter mercury and air toxics standards, limits on the contaminants in wastewater discharge from [coal-fired power plants](#), and regulations on coal ash, a byproduct of burning coal.

"By finalizing these standards on the same day, we are ensuring that the power sector has the information needed to prepare for the future with confidence, enabling strong investment and planning decisions," EPA Administrator Michael S. Regan said on a call with reporters.

According to the Energy Department's Energy Information Administration, while coal accounts for only 19 percent of [electricity generation](#), it accounts for 55 percent of the total [carbon dioxide emissions](#) associated with the sector.

The Obama and Trump administrations' attempts to regulate carbon dioxide emissions from power plants were struck down by the courts. In a 2022 decision in *West Virginia v. EPA*, the Supreme Court ruled that under the Clean Air Act the EPA lacks the authority to regulate carbon emissions from power plants through a method of capping pollution because Congress did not explicitly authorize it.

Regan said that the agency had taken actions to ensure that the new rules will stand up to any potential legal challenge, and that the agency's

"thought process to measure twice and cut once" ensures that all four of the rules issued Thursday are within the bounds set by Congress.

In February the EPA announced that it was narrowing the proposed rules to exclude existing gas power plants and that the agency would focus on them through separate rulemaking, likely to come after the presidential election. Regan said at the time that would ensure a "stronger, more durable approach will achieve greater emissions reductions than the current proposal."

After the power plant regulations were proposed last year, some lawmakers predicted they could force plants to close by making them too costly to operate, affecting the reliability of the electric grid. If Republicans subject the rules to a Congressional Review Act joint resolution, however, such an action would face an all but certain veto from President Joe Biden.

In public comments last year a group of GOP senators requested the rules be withdrawn, arguing that if they're finalized "our country will face a crisis in [electricity supply](#) that will dwarf the regional outages that we have seen in California, Texas, and New England in recent years."

A group of moderate Democrats led by House Energy-Water Appropriations Subcommittee ranking member Marcy Kaptur, D-Ohio, raised similar concerns in a letter this week to the administration.

"Unfortunately, EPA's proposed rules have the potential to raise electricity rates, impact good paying jobs, and increase reliability risks for some of the most vulnerable members of our communities," the letter said. "Simply put, rural and low-income households and households of color are disproportionately impacted by higher energy costs."

Attempting to address concerns about grid reliability, the administration also announced actions at the Energy Department intended to hasten the expansion of transmission lines. Those include the establishment of the Coordinated Interagency Transmission Authorization and Permits program, which establishes a two-year timeline for approving federal transmission authorizations and permits.

Projects that use existing transmission rights of way would receive a categorical exclusion from the National Environmental Policy Act, allowing a less thorough environmental review.

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