



Caught “Short”: Are You Better Off than You Were 14 Months Ago? Part Two

An Apples-to-Apples Comparison of **Mass-Based** State Emission Goals under the Proposed and Final Versions of the Clean Power Plan Rule

AUGUST 17, 2015

[Avi Zevin](#), [Kyle Danish](#), and [Stephen Fotis](#)

As we outlined last week, comparing the rate-based goals presented by EPA in its proposed Clean Power Plan with those presented in the final Clean Power Plan could lead to a misleading conclusion about the relative stringency of those goals.

It turns out that a similar hazard awaits those seeking to compare the mass-based goals.

In both the proposed and final Clean Power Plan rules, EPA gave each state the option to use a mass-based emission limit instead of its rate-based goal. How did states fare between the proposed and final Clean Power Plan with regard to mass-based goals? As with rate-based goals, a simple comparison between the numbers presented in the proposed rule and those presented in the final rule would be misleading. Below, we explain the issue, and provide adjusted goals that allow for a more accurate comparison

Mass-based Goals under the Proposed Clean Power Plan

Initially in the proposed Clean Power Plan, EPA gave states the opportunity to calculate their own equivalent mass-based goals and provided a [Technical Support Document](#) outlining the methodological considerations that states would be required to use when making such a calculation. Facing pressure from states and stakeholders, EPA later released a [Notice](#) and associated [Technical Support Document](#) providing additional information on the rate-to-mass translation. EPA included two acceptable methodologies for translation—one methodology for a state that only wanted to include *existing* fossil fuel-fired power plants in its compliance plan and a second methodology for states that chose to include both *existing and new* plants. EPA emphasized that these were not “prescriptive” methodologies, but rather “represent[ed] one particular way” of converting rate-based goals to mass-based equivalents.” In an appendix, EPA included Tables of mass-based Interim and Final goals under each methodology for each state.

Mass-based Goals under the Final Clean Power Plan

While states and others largely relied on these presumptively approvable mass-based goals when analyzing the proposed rule, some uncertainty remained and many requested a more formal equivalence determination from EPA. The final Clean Power Plan fulfills that request. EPA includes in the final rule legally equivalent mass-based goals that each state may choose to adopt in lieu of the rate-based goal. As in the proposed rule, EPA has included existing-unit-only mass-based goals and also mass-based goals for states that choose to include new units—which EPA calls the “new source complement.”

EPA made a number of changes to its translation methodologies and to the 2012 baseline of units used to calculate state goals that could have an effect on the stringency of those goals beyond what could be presented by a mere arithmetic comparison. Cataloguing all of these changes is beyond the scope of this alert. However, because of one critical change, direct comparison of the presumptively approvable state mass-based goals from EPA’s proposal with the mass-based goals included in the final Clean Power Plan is misleading as an indicator of the relative stringency of the proposed and final mass-based goals.

Caught Short

In its proposed rule Notice and Technical Support Document, EPA presented mass-based goals in *metric tons*—a measure of mass equal to 1000 kilograms. The final Clean Power Plan, however, presents mass-based goals in *short tons*—a distinct measure of mass equivalent to 2000 pounds, or 907.1847 kg kilograms.

Any attempt to compare how states fared as between the proposed and final rules when it comes to mass-based goals must first put those goals in the same unit of measure. Specifically, one can make an apples-to-apples comparison by going back to the proposed rule’s mass-based goals and converting them from metric tons to short tons.

Because one metric ton contains approximately 10% more mass than one short ton, this adjustment has an impact on the perceived change in stringency of the final mass-based goals for a number of states. So in comparing the final rule’s mass-based goals to the proposed goals, it is important to recognize that the units in the final rule are about 10 percent smaller, and thus the final rule’s mass-based targets are more stringent than a direct comparison of the two sets of “ton” limits would suggest. For a handful of states, while the mass-based targets in the final rule appear less stringent, the adjustment reveals that they are, in fact, somewhat *more* stringent. This is the case for Indiana, Michigan, Nebraska, and Ohio under the existing-unit-only targets and for Illinois, Louisiana, Michigan, Utah, and Wisconsin under the “new source complement” targets.

In the tables below, we present an accurate comparison of mass-based goals between the proposed and the final Clean Power Plan—both for existing-unit-only state plans and for those that also include new sources.

The adjustment allows for a better assessment of the differences in stringency between the proposed and final rules. These differences reflect the many other modifications that EPA implemented, including changes to the BSER methodology, the 2012 baseline, and projections about new sources. We have not attempted to quantify just how much the difference between the adjusted proposed mass-based goals and the final mass-based goals is attributable to each of these other modifications. Using consistent units of measure provides the right launching point for such an analysis.

So, before you go the extra kilometer in evaluating the change in stringency between the proposed and final mass-based goals, we urge you first to use a comparable unit of measure.

**Preliminary State-by-State Analysis of Relative Stringency of Existing Unit Mass-Based Goals
Between Proposed and Final Clean Power Plan Rule**

State	PROPOSED CPP 2030 Final Goal		FINAL CPP 2030 Final Goal	Percent Change from Adjusted Proposed to Final Existing Unit Mass Limit (positive % is decrease in stringency)
	Existing Unit Mass Limit (metric tons)	Adjusted Existing Unit Mass Limit (short tons) (adjustment factor ≈ 10%)	Existing Unit Mass Limit (short tons)	
Alabama	50,267	55,410	56,880	3%
Arizona	17,734	19,548	30,171	54%
Arkansas	20,096	22,152	30,323	37%
California	35,805	39,468	48,410	23%
Colorado	25,335	27,927	29,900	7%
Connecticut	4,265	4,701	6,942	48%
Delaware	2,972	3,276	4,712	44%
Florida	68,221	75,201	105,095	40%

State	PROPOSED CPP 2030 Final Goal		FINAL CPP 2030 Final Goal	Percent Change from Adjusted Proposed to Final Existing Unit Mass Limit (positive % is decrease in stringency)
	Existing Unit Mass Limit (metric tons)	Adjusted Existing Unit Mass Limit (short tons) (adjustment factor ≈ 10%)	Existing Unit Mass Limit (short tons)	
Georgia	31,676	34,917	46,347	33%
Idaho	468	516	1,493	189%
Illinois	58,471	64,453	66,477	3%
Indiana	73,090	80,568	76,114	-6%
Iowa	25,749	28,383	25,018	-12%
Kansas	24,081	26,545	21,991	-17%
Kentucky	70,203	77,386	63,126	-18%
Louisiana	26,823	29,567	35,427	20%
Maine	1,323	1,458	2,074	42%
Maryland	11,613	12,801	14,348	12%
Massachusetts	7,414	8,173	12,105	48%
Michigan	43,403	47,844	47,544	-1%
Minnesota	14,474	15,955	22,678	42%
Mississippi	16,449	18,132	25,304	40%
Missouri	55,792	61,500	55,463	-10%
Montana	12,828	14,140	11,303	-20%
Nebraska	18,142	19,998	18,273	-9%
Nevada	9,209	10,151	13,524	33%
New Hampshire	2,262	2,493	3,998	60%
New Jersey	6,741	7,431	16,600	123%
New Mexico	10,391	11,454	12,413	8%
New York	17,649	19,455	31,257	61%
North Carolina	36,918	40,695	51,266	26%
North Dakota	27,069	29,838	20,883	-30%
Ohio	68,751	75,785	73,770	-3%
Oklahoma	30,892	34,053	40,488	19%
Oregon	3,614	3,984	8,119	104%
Pennsylvania	72,272	79,666	89,822	13%
Rhode Island	2,924	3,223	3,522	9%
South Carolina	15,816	17,434	25,999	49%
South Dakota	1,602	1,766	3,539	100%
Tennessee	22,837	25,173	28,348	13%
Texas	135,937	149,845	189,589	27%
Utah	20,384	22,470	23,778	6%
Virginia	18,923	20,859	27,433	32%
Washington	2,862	3,155	10,739	240%
West Virginia	52,636	58,021	51,325	-12%
Wisconsin	25,275	27,861	27,987	0%
Wyoming	37,590	41,436	31,634	-24%

Preliminary State-by-State Analysis of Relative Stringency of New Source Complement Mass-Based Goals Between Proposed and Final Clean Power Plan Rule

State	PROPOSED CPP 2030 Final Goal		FINAL CPP 2030 Final Goal	Percent Change from Adjusted Proposed to Final New Source Complement Mass Limit (positive % is decrease in stringency)
	New Source Complement Mass Limit (metric tons)	Adjusted New Source Complement Mass Limit (short tons) (adjustment factor ≈ 10%)	New Source Complement Mass Limit (short tons)	
Alabama	59,214	65,272	57,636	-12%
Arizona	24,193	26,668	32,380	21%
Arkansas	23,527	25,934	30,686	18%
California	45,171	49,793	52,824	6%
Colorado	31,935	35,202	31,822	-10%
Connecticut	4,661	5,138	7,061	37%
Delaware	3,435	3,786	4,782	26%
Florida	83,259	91,777	106,642	16%
Georgia	42,394	46,731	46,945	0%
Idaho	990	1,091	1,639	50%
Illinois	65,574	72,283	67,199	-7%
Indiana	79,341	87,458	76,943	-12%
Iowa	28,496	31,411	25,282	-20%
Kansas	26,696	29,427	22,221	-24%
Kentucky	81,953	90,338	63,790	-29%
Louisiana	32,839	36,199	35,854	-1%
Maine	1,432	1,579	2,110	34%
Maryland	15,148	16,698	14,499	-13%
Massachusetts	8,204	9,043	12,304	36%
Michigan	46,725	51,505	48,094	-7%
Minnesota	17,218	18,980	22,931	21%
Mississippi	18,916	20,851	25,666	23%
Missouri	60,173	66,329	56,053	-15%
Montana	15,190	16,744	11,957	-29%
Nebraska	20,233	22,303	18,464	-17%
Nevada	11,396	12,562	14,719	17%
New Hampshire	2,392	2,637	4,061	54%
New Jersey	8,649	9,534	16,847	77%
New Mexico	13,337	14,702	13,230	-10%
New York	19,310	21,286	31,718	49%
North Carolina	45,165	49,786	51,877	4%
North Dakota	28,270	31,162	21,099	-32%
Ohio	75,116	82,801	74,608	-10%
Oklahoma	35,127	38,721	41,001	6%
Oregon	5,293	5,835	8,822	51%
Pennsylvania	79,618	87,764	90,931	4%
Rhode Island	3,074	3,389	3,584	6%
South Carolina	22,014	24,266	26,303	8%
South Dakota	2,000	2,205	3,580	62%
Tennessee	32,992	36,367	28,665	-21%
Texas	158,775	175,019	198,105	13%
Utah	24,165	26,637	25,301	-5%

State	PROPOSED CPP 2030 Final Goal		FINAL CPP 2030 Final Goal	Percent Change from Adjusted Proposed to Final New Source Complement Mass Limit (positive % is decrease in stringency)
	New Source Complement Mass Limit (metric tons)	Adjusted New Source Complement Mass Limit (short tons) (adjustment factor ≈ 10%)	New Source Complement Mass Limit (short tons)	
Virginia	24,494	27,000	27,830	3%
Washington	4,772	5,260	11,563	120%
West Virginia	54,566	60,149	51,857	-14%
Wisconsin	28,102	30,977	28,309	-9%
Wyoming	39,550	43,596	33,472	-23%

For more information

Van Ness Feldman will be preparing a comprehensive analysis of these rules that will be available on a cost-share basis. Our professionals are also available to provide counsel to companies and others as they assess the implications of the rule and prepare to submit comments to EPA. Please contact [Kyle Danish](#), [Stephen Fotis](#), or any other professionals in Van Ness Feldman's [Climate Change](#) or [Environmental](#) Practices for additional information on the analysis or on other matters related to these rules.

Follow us on Twitter [@VanNessFeldman](#)

© 2015 Van Ness Feldman, LLP. All Rights Reserved. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.