



John R. Kasich, Governor
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OCT 30 2018

United States Environmental Protection Agency
EPA Docket Center
Attn: Docket ID No. EPA-HQ-OAR-2017-0355

RE: Ohio EPA Comments on U.S. EPA's August 31, 2018 Proposed "Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program" [83 FR 44746]

Dear Acting Administrator Wheeler:

The Ohio Environmental Protection Agency (Ohio EPA) appreciates the opportunity to comment on the above referenced U.S. EPA proposed rulemaking regarding Clean Air Act (CAA) Section 111(d) to address greenhouse gas emissions from existing fossil fuel-fired electric generating units (EGUs). U.S. EPA previously finalized an emission guideline under this CAA Section 111(d) for these sources commonly referred to as the Clean Power Plan (CPP). Ohio EPA submitted comments indicating substantial concerns with the proposed CPP on December 1, 2014.¹ U.S. EPA proposed to repeal the CPP on October 16, 2017. [82 FR 48035] Ohio EPA supported such a repeal and provided comments on the proposal on April 25, 2018. And lastly, U.S. EPA provided an advanced notice of this proposed rulemaking (ANPRM) with an opportunity to comment on December 28, 2017. [82 FR 61507] Ohio EPA submitted comments on the ANPRM on February 26, 2018.

The CPP called for the unprecedented overhaul of the power generation, transmission and distribution system to limit carbon dioxide emissions by the federal government under the stationary source control program of CAA Section 111(d). Ohio disagreed with the legal underpinnings of this plan and we support the proposed changes that align the program

¹ Ohio EPA's comments on the proposed repeal does not include all the comments it made on the original proposal (docket ID No. EPA-HQ-OAR-2013-0602) and Ohio EPA does not waive any of the comments previously made that are not repeated here.

with the congressional intent of the CAA. In addition, wholly without intervention from the federal government, Ohio is undergoing a transformation in the energy and electric sector that is market driven. For example, Ohio's generation mix is being positively influenced by shale gas, renewables and energy efficiency which is keeping costs low, as well as reducing emissions. This is being accomplished without additional regulatory burden or other regulatory drivers. Specifically, Ohio utilities have reduced carbon dioxide emissions from electric generation by 38% from 2005 levels without a federal mandate or a multistate agreement.

Make no mistake, Ohio believes we have an obligation to be good stewards of the environment by having an energy policy that is protective of public health and air quality. Ohio EPA requests that U.S. EPA proceed to replace the CPP with ACE. Ace is, in our opinion, lawful, technically sound, and workable and will help Ohio continue to achieve our goal to protect Ohioans and the air we breathe. This is an opportunity for U.S. EPA to correct the significant flaws and illegality of the CPP. Please find attached our comments on the proposed rulemaking to replace the CPP with the Affordable Clean Energy (ACE) rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Butler". The signature is fluid and cursive, with the first name "Craig" being the most prominent.

Craig W. Butler
Director, Ohio EPA

Cc: Robert Hodanbosi, Chief, Ohio EPA Division of Air Pollution Control

Attachment

Ohio EPA Comments on the proposed “Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing regulations: Revisions to New Source Review Program” [83 FR 44746]

Introduction

The State of Ohio has been a manufacturing hub in the heart of the country since the industrial revolution. Fueled by affordable electricity, Ohio is home to a wide range of manufacturing jobs, from steel mills to glass plants to automobile manufacturing plants; these jobs are a vital part of both Ohio's and the country's workforce and economy. Ohio was ranked third in the nation in manufacturing employment in 2011². Any increases to electricity cost, will be very costly.

Manufacturing is not the only important piece of Ohio's economics, electricity is as well. U.S. Department of Labor, Bureau of Labor Statistics estimated in May 2017 Ohio employed 820 power distributors and dispatchers, making Ohio the third largest in the nation to employee workers in this category.³ In fact, based on July 2018 EIA data, Ohio ranks twelfth in electricity production in the nation⁴.

In the eastern and southeastern portions of the State, Ohioans have been mining coal for over two centuries. Our reliance on coal and diverse other mix of generation sources resulted in electricity prices that were 9% below the most up-to-date national 2018 average⁵. Even still, many Ohio families are struggling with high energy prices; 51% of low to middle income households spend an average of 17% of their after-tax income on energy. Increased energy prices would further strain these families⁶.

More recently Ohio has become a part of the new shale oil and gas industry with thousands of wells across the State. These wells contribute to the local and State economy by driving down unemployment and providing an economic boost. The renewable energy (RE) industry also continues to grow and diversify Ohio's portfolio with new hydroelectric power plants, wind farms and an emerging solar industry. Several State programs provide significant funding and help in developing end-use energy efficiency (EE). This more balanced Energy Portfolio has, worked to lower the emissions of pollutants, including greenhouse gasses (GHG), across the State.

The stated goal of the CPP was a 32% reduction in carbon dioxide (CO₂) emissions from 2005 levels nationwide. For Ohio specifically, the CPP required achievement of a 27.8% reduction in electric generating units (EGU) CO₂ emissions from 2012 levels by 2030. Further, the CPP projected that, in the absence of the rule, Ohio's 2020 EGU CO₂ emissions would be 103,946,835 tons. The CPP clearly failed to account for the rapidly changing nature of Ohio's fuel mix, which has resulted in dramatic CO₂ emission reductions beginning in 2009 and continuing. Figure 1, below, shows annual CO₂ emissions from all EGUs reporting emissions to the U.S. EPA's Clean Air Markets Database, years 1995-2017.

² Page 7: <http://www.ohiopoweredbymanufacturing.com/oma/OMA-Manufacturing-Counts-2012.pdf>

³ <http://www.bls.gov/oes/current/oes518012.htm>

⁴ <http://www.eia.gov/state/?sid=oh>

⁵ <http://www.eia.gov/state/?sid=oh>

⁶Eugene M. Trisko, Energy Cost Impacts on Ohio Families, Jan 2016

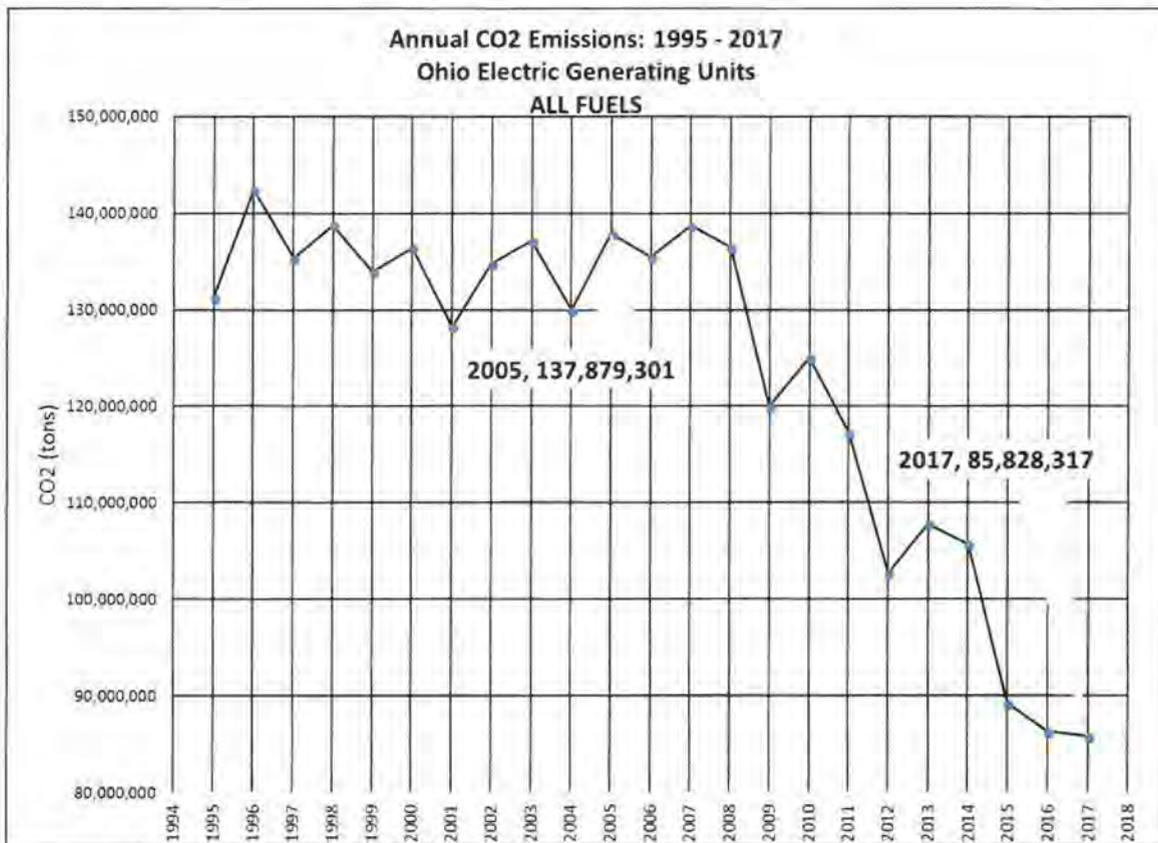


Figure 1: Annual EGU CO2 emissions, 1995-2017, all fuels.

The data in Figure 1 are telling in several ways. First, the significant decrease in CO2 emissions is readily apparent. Emission reductions from 2005 levels, 52,050,984 tons, was achieved in the absence of a federal mandate or a multistate agreement, and represents a 38% reduction in CO2 emissions. This reduction far exceeds the nationwide expectation of a 32% reduction by 2030. It should also be noted that Ohio's 2017 CO2 emissions, 85,828,317 tons, is less than the 88,512,313-ton Step 1 Interim Goal for Ohio as put forward in the CPP. It is remarkable that this Interim Goal was not to be achieved until 2022, and that Ohio achieved this milestone in 2016.

These reductions have occurred due to a combination of programs and initiatives implemented not only by Ohio EPA, but by federal agencies, other State agencies and other public entities, each with their own unique authority and ability to reduce emissions. We have argued and still believe that the CPP reached far into the roles of each of these public entities thus, undermining their authority and ability to implant these programs in the most effective manner, by placing them under the control of the federal government.

Also of great importance is the impact the CPP would have had on Ohio's deregulated energy market. The State of Ohio has transitioned from a vertically-integrated,

traditional rate-of-return utility construct, where an incumbent utility would provide service from generation to local distribution, to a competitive retail generation market, where customers can now choose their generation supplier. Electric utilities were required to divest their EGUs from their transmission and distribution functions. Today, the EGUs that were previously regulated through traditional rate-of-return ratemaking are divested from Ohio's electric transmission and distribution utilities.

The CPP would have impacted not only fossil fuel-fired electricity generators, but also the energy sector as a whole, from generation to transmission. U.S. EPA's own estimates that electricity and natural gas prices would rise as a result of this rule are of concern to Ohioans. The subsequent impact on Ohio residents, Ohio manufacturing, Ohio industrial sector and Ohio commercial sector would have been significant.

The CPP is flawed in its design and construction by attempting to revamp the power generation, transmission and distribution system under Section 111(d) of the Clean Air Act (CAA), a rarely-used section that reserves much authority and flexibility to the States. [82 FR 48035] The U.S. Supreme Court has held that vast regulatory expansions can only stem from clear Congressional authorization. Through its Section 111(d) rulemaking, U.S. EPA developed the CPP to broadly expand its regulatory reach from emission control to power generation, transmission and distribution control without having the clear authority under the CAA. U.S. EPA has the inherent authority to reconsider statutory interpretations as long as the agency provides a reasoned explanation. We believe U.S. EPA has properly exercised that inherent authority by proposing this Affordable Clean Energy (ACE) rule. This ACE rule proposes to replace the CPP in a way more consistent with the plain language and historic application of the Clean Air Act.

Under this proposal, U.S. EPA is soliciting comment on a variety of ACE provisions, including provisions relating to the implementing regulations for not only this Section 111(d) rulemaking but future rulemakings, and also provisions related to new source review (NSR) implications. Ohio EPA is providing our comments below.

1. C-1. U.S. EPA acknowledges rapid changes in the power sector and market drivers have resulted in significant reductions in CO₂ emissions from the power sector that were not anticipated at the time of the CPP proposal. However, some Annual Energy Outlook (AEO) cases predict increases in CO₂ from the power sector could be realized in the future. Given these uncertainties in long-term projections, U.S. EPA is requesting comment on applicability of those alternative results and on whether and how to consider ongoing and projected trends in developing CO₂ emission guidelines for the power sector. [83 FR 44751]

Ohio EPA agrees that rapid changes can result in quickly outdated data. The work put forth by U.S. EPA, States and affected sources to address Section 111(d) could be quickly overtaken by external market forces making those efforts redundant, or worse, put them in conflict with industry trends that are already reducing CO₂

emissions. Therefore, it is essential that U.S. EPA limit the scope of this Section 111(d) proposal to "inside-the-fence" traditional approaches.

2. C-2. This proposal includes additional legal rationale to support heat rate improvements (HRI) as the best system of emissions reduction (BSER) and solicits comment on that rationale. [83 FR 44752-44754]

First, U.S. EPA explained in the repeal proposal that reduced utilization does not fit within their historical and current interpretation of the BSER and that predicating Section 111(d) on a source's non-performance would inappropriately inject U.S. EPA into owner and operator production decisions. U.S. EPA acknowledges reduced utilization is not a valid system of emission reduction for purposes of establishing a standard of performance.

Second, U.S. EPA explained in the repeal proposal that interpretive constraints that may apply to interpreting Section 111(a)(1) (determining what types of measures may be considered as BSER) for the purpose of setting a new source standard under Section 111(b) reasonably may be applied to interpreting the BSER for purposes of setting an existing source standard under Section 111(d) as well. Given that "standard of performance" applies to Section 111 as a whole, applying same interpretative constraints may be required. U.S. EPA discussed how the best available control technology (BACT) analysis and BSER are linked by statutory text, explaining the top-down BACT approach and consideration of technical, energy, environmental and economic factors. In reviewing BACT guidance, EPA identified additional interpretive constraints that may be applied to Section 111. U.S. EPA discusses how prevention of significant deterioration (PSD) and Title V Permitting Guidance for GHGs emphasizes that BACT need not necessarily include inherently lower polluting processes that would fundamentally redefine the nature of the source. Specifically, BACT should not regulate the applicant's purpose or objective; e.g., applicants constructing a coal unit aren't required to consider building natural gas.

Third, notwithstanding the relationship between BACT and BSER, U.S. EPA believes measures "redefining the source" should be excluded from consideration for purposes of Section 111(d). U.S. EPA is proposing the BSER analysis need not include options that would redefine the source and therefore, U.S. EPA did not consider natural gas conversion or refueling.

Fourth, U.S. EPA describes the legislative history of Section 111 as confirming that Congress intended Section 111 to be source oriented. U.S. EPA compared their role and expertise to that of the Federal Energy Regulatory Commission (FERC), and similarly compared a State EPA's expertise to that of a State's Public Utility Commission. U.S. EPA acknowledges the current shifts in the power sector which already creates strain and reliability concerns, emphasizing the significant

uncertainties, which further supports the unreasonableness of basing BSER on generation shifting measures. U.S. EPA asserts that regardless of future mix, coal will continue to be used and BSER should be focused on making these plants as efficient as possible (taking into consideration technical feasibility considering cost) which will ensure CO2 reductions regardless of future energy mix.

Ohio EPA agrees with the proposal to return to a reading of Section 111(a)(1) (and its constituent term, “best system of emission reduction”) as being limited to emission reduction measures that can be applied to or at an individual stationary source. A Section 111(d) plan “establishes standards of performance for any existing source.” The plain language construction of the phrase “for any existing source” can only mean that the emissions standard must be set at a level that a source itself can achieve. Since the outset of the program, U.S. EPA has frequently referred to Section 111(d) as a technology-based approach. [40 FR 53340 (Nov. 17, 1974)] For example, in describing the legislative history of Section 111(d), the preamble states that “the intent to require a technology based approach [can] be inferred from placement of the provision in Section 111.” [Id. at 53342] The preamble goes on to explain that: “In summary, EPA believes Section 111(d) is a hybrid provision, intended to combine primary State responsibility for plan development and enforcement (as in Section 111) with the technology-based approach (making allowances for the costs of controlling existing sources) taken in Section 111 generally.” Because Section 111(d), like Section 111(b), is a source-specific technology-based provision, it follows that the emission guideline based on BSER should be of that nature as well. And in fact, all prior Section 111(d) rules have interpreted the CAA in this way.

The statute plainly focuses on particular sources, not the entire power generation, transmission and distribution system. Section 111(d)(1) specifically requires a State plan which “establishes standards of performance for any existing source” and goes on to state that “[r]egulations by the Administrator under this paragraph shall permit the state in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life [RUL] of the existing source in which such a standard applies.” “Existing source” is defined as “any stationary source other than a new source,” [Section 111(a)(6)] and “stationary source” is “any building, structure, facility, or installation which emits or may emit any air pollutant” [Section 111(a)(3)]. The statute directs a State to establish and apply a standard of performance only to particular existing sources and to take into account the RUL of those particular existing sources. A plain reading of this provision can only lead one to conclude that Congress meant for the provision to apply to specific individual sources.

Furthermore, Ohio EPA appreciates the return to a more robust cooperative federalism approach to regulating GHGs. Section 111(d)(1) commits U.S. EPA to a

State planning procedure similar to that of a State Implementation Plan (SIP) under Section 110. Accordingly, U.S. EPA must integrate the federal-State division of labor embodied in Section 110 with the Section 111 directive to ensure that sources are subject to emission limits achievable by the BSER that has been adequately demonstrated. States have the authority to establish and enforce a standard of performance that "reflects the degree of emission limitation achievable through application of the best system," Section 111(a)(1), and to devise the rules for implementing and enforcing that standard, Section 111(d)(1). Just as a State develops a SIP under Section 110, a State must come up with a Section 111(d) plan that is workable and cost-effective for that State, taking into account real world realities and challenges.

In addition, USEPA's recognition that its area of expertise is control of emissions at the source and not electricity management rings true to Ohio EPA, which fulfills a similar role in the State of Ohio. Nowhere does the CAA give U.S. EPA the authority to regulate the dispatch of power plants on the interstate grid. In Ohio, it is the EGU owners who decide in what manner to bid into the electricity market and for how much time. It is the Pennsylvania, New Jersey, Maryland (PJM) Regional Transmission Organization (RTO), under the authority of FERC, who determines dispatch order based on utilizing the least expensive resource first to meet energy demand. Ohio EPA only has the authority to regulate emissions of air contaminants from air contaminant sources, and does not have the authority to implement federally enforceable State mandated programs as were proposed in the CPP because they fell "outside-the-fenceline."

Finally, Ohio EPA agrees that the BSER analysis should not include options that would fundamentally redefine the nature of the source, just as the BACT analysis under PSD cannot do so. This decision is for an owner and operator to make when considering how to manage their power assets. Neither U.S. EPA nor Ohio EPA have the authority or expertise to dictate that decision.

3. U.S. EPA solicited comment during the ANPRM on HRI opportunities and numerous commenters, including Ohio EPA, stated HRIs must be evaluated on a unit-by-unit basis and that the operating mode has significant influence (e.g. base, cycling, load following). U.S. EPA acknowledges that heat rate is affected by design characteristics, site-specific factors and other operating conditions. Therefore, U.S. EPA has identified the "most impactful" technologies, equipment upgrades and best operating and maintenance practices and is providing a list of "candidate technologies" constituting the BSER. States will be expected to evaluate each BSER HRI when establishing standards. U.S. EPA is soliciting comment on the list of "candidate technologies" (C-7), any unlisted HRI that should be added (C-6), and how the list of reports, case studies and analyses can inform our understanding of potential HRI opportunities (C-8). [83 FR 44756 - 44760]

Ohio EPA appreciates U.S. EPA's acknowledgement of the need for unit-specific evaluations to be conducted by the States themselves. As U.S. EPA notes, not all of the listed HRIs may be available or appropriate for all types of EGUs and some may have already been deployed. This further reiterates the need for unit-specific evaluations. Ohio EPA also suggests U.S. EPA not finalize an exhaustive list of HRIs that would necessitate resource intensive evaluation while providing negligible benefits.

4. C-9. U.S. EPA continues to raise concerns that unit-level HRIs with reductions in variable operating costs could lead to increased utilization compared to other generating options – the “rebound effect”. As a result, U.S. EPA modeled a range of HRIs as a part of the Regulatory Impact Analysis (RIA) and the results indicate no cumulative increases in system-wide emissions relative to a scenario where no action is taken. While individual sources may increase generation, as a group, there is predicted lower emissions. U.S. EPA is seeking comment on the conclusion that system-wide emission decreases due to HRIs are likely to be larger than any system-wide increases due to increased operation. [83 FR 44761]

Just as with the CPP proposal and the ANPRM, U.S. EPA continues to cite concern that HRIs at coal-fired EGUs might make them more competitive and they will therefore increase their generation making them less effective at reducing CO2 emissions; the “rebound effect.” Ohio EPA continues to have difficulty with U.S. EPA's concern regarding a potential “rebound effect.” Unfortunately, any proposal that requires investment by an EGU to reduce emissions may result in that EGU operating more to get some return on their investment. This is how the free market should operate and the “rebound effect” should not be considered. Ohio EPA can think of no other federal or State regulatory requirement that requires significant monetary investment in a control strategy that reduces emissions (such as HRIs) coupled with an expectation that the investment should result in status quo or reduced operation. In general, the principle behind investment in control is that more efficient and well controlled facilities will operate more than less efficient and less controlled facilities. Any Section 111(d) plan will require investment of potentially millions of dollars to make coal-fired EGUs more efficient. Any possible “rebound effect” should not be a consideration under any rule.

5. U.S. EPA considered other systems of GHG emission reductions but found them not to be the BSER for reasons discussed in more detail in the proposal. U.S. EPA acknowledges there may be other methods and technologies, but States and sources are best suited to determine if they are appropriate and/or allowable measures. [83 FR 44761-44762]

C-12. U.S. EPA reiterates the belief that carbon capture and storage (CCS) (including partial) continue to be too costly but is accepting any new information on CCS availability, applicability, costs or technical feasibility. Also, while a comment

number was not provided, U.S. EPA requests comment on if fuel co-firing should be listed as an option in the BSER list. Although U.S. EPA may not consider it BSER, U.S. EPA proposes that States be allowed to use it as a compliance option.

As discussed in response to requests C-17 and C-18 below, Ohio EPA believes it is important to maintain flexibility for States to determine if alternative compliance options, such as fuel co-firing, are appropriate compliance options once a State determines unit specific standards to be met based upon the BSER.

Regardless, Ohio EPA continues to believe CCS should not be considered BSER as CCS is not currently a cost-effective nor technically feasible approach to reduce CO₂ at existing EGUs or even new coal-fired EGUs in the United States. Further, establishing such a requirement would mean existing sources would be subject to a more stringent standard under the BSER than that for Section 111(b) new sources. This would be a departure from how "standard of performance" has been used in the past and should be used now.

6. C-13. U.S. EPA is soliciting comment on whether States should determine source specific compliance schedules or if a uniform compliance schedule is appropriate. While the implementing regulations require U.S. EPA's emissions guidelines identify information such as a timeline for compliance with the standards, U.S. EPA is proposing to supersede this in accordance with newly proposed 40 CFR 60.20a and have States include appropriate compliance deadlines as a part of the State plan process. However, if a compliance schedule extends beyond 24 months from State submittal, U.S. EPA propose the State must include legally enforceable increments of progress. 40 CFR 60.24a(d)(1). [83 FR 44763]

Ohio EPA believes it is necessary for States to determine appropriate compliance schedules due to the source specific nature of this guideline and due to reliability concerns.

Ohio EPA provided comments on the ANPRM regarding concerns with timing of HRIs. While U.S. EPA has extended the timeline for implementation from 12 to 24 months, it still will likely not be feasible for all HRIs in a State, or across a region or the nation, to be completed within 24 months of plan submittal. This will undoubtedly cause reliability concerns. While longer timeframes are afforded if increments of progress are specified, those required increments of progress may also be challenging to forecast or meet given the nature of the sources subject to this Section 111(d). U.S. EPA needs to ensure flexibility is included in the rule, or at least in the interpretation of the increments of progress requirements. In addition, if increments of progress for every EGU in the State with HRIs extending beyond 24 months are required to be "legally enforceable" at the time of plan submittal, substantial resources and time for developing regulations and/or issuing federally

enforceable permits will be required. This will also be challenging in the regulatory timeframe. At a minimum, U.S. EPA must ensure that “legally enforceable” mechanisms include permits and/or enforceable State orders.

Another factor U.S. EPA is not considering is outage schedules already planned by EGUs. Altering an outage schedule can be quite costly. If U.S. EPA is not flexible on the timing, it could be determined to not be cost effective to implement the HRI.

Further, in viewing U.S. EPA’s list of candidate measures, it brings to question how U.S. EPA would envision the timing of implementing HRIs when several may be deemed the standard of performance for a facility, especially a facility with multiple units. Does U.S. EPA expect all HRIs to be conducted within the 24-month time period? How far beyond 24-months would be deemed acceptable? These are factors that warrant significant flexibility in implementing this rule while continuing to ensure grid reliability.

There are many considerations that must be made when implementing HRIs. It is unrealistic to assume that sufficient numbers of HRI projects across Ohio’s large coal-fired fleet with meaningful impact on achieving CO2 reductions for Ohio could be completed in short time frames without significantly impacting grid reliability, reserve capacity, and costs to consumers. And Ohio is just one State. These impacts will occur regionally and nationally when all States prepare to implement HRIs at the same time.

7. C-14. U.S. EPA states they envision the State will set standards based on considerations most appropriate to individual sources or groups (e.g., subcategories): historical emission rates, effect of potential HRIs (informed by U.S. EPA’s candidate technologies), or changes in operation of the units, among other factors a State thinks are relevant. Although some commenters have suggested providing default methodology that would be presumptively approvable, U.S. EPA is not doing so because it could be viewed as limiting a State’s ability to deviate from the prescribed methodology. U.S. EPA is requesting comment on approaches based on use of historical heat rate or emissions data for the individual sources. U.S. EPA suggests the circumstances and considerations in establishing standards for sources undergoing modifications are not the same as those under Section 111(d) but there are parallels and similarities. [83 FR 44764]

Ohio EPA believes a default methodology could be useful but could also be viewed as limiting. If U.S. EPA intends to provide default methodologies, they should be in the form of non-binding guidance and clearly stated as such. Ohio EPA is most concerned with the timing of this information. If provided, it is essential that such guidance be provided at the time the emission guideline is finalized. Otherwise,

Ohio EPA believes overly-prescriptive and/or ill-timed guidance can be more detrimental than no guidance at all.

8. C-15. 40 CFR 60.22a(b)(2) as proposed will specify an emission guideline include information on the degree of emission reduction but not require U.S. EPA provide a standard of performance that presumptively reflects such degree of emission reduction achievable through application of BSER. Rather, that is the State's role. The proposed new regulation clarifies the statute doesn't require a presumptive numerical standard as a part of the emission guideline. For this emissions guideline, U.S. EPA is proposing that an allowable emissions rate (i.e., rate-based standard in, e.g., lb CO₂/MWh-gross) be the form of the standard that States would include in their plan. Secondly, U.S. EPA is proposing the plan include only the one form of standard of performance (i.e., proposing only an allowable emission rate) to create continuity across States, prevent ambiguity, and to ensure as much simplicity as possible. U.S. EPA is soliciting comment on whether other forms of standards of performance should be allowed or whether a different form should be the primary. [83 FR 44764]

Ohio EPA believes this is an important issue for comment. Ohio EPA believes the nature of this Section 111(d) may be better suited to a different emissions limitation than an hourly limitation, or even better no emissions limitation at all.

Ohio EPA has provided comment in the past regarding the reality that heat rate degrades over time and variables can cause temporary fluctuations or degradation in heat rates. Sargent & Lundy acknowledge in an October 15, 2014 letter that "the performance of some of the evaluated heat rate improvement strategies degrade over time, even with the best maintenance practices. Therefore, depending on the strategy employed or the technology installed to reduce heat rate at an existing coal-fired EGU the unit heat rate initially obtained may increase over time." How will this be accounted for in an hourly limit? How will this be accounted for over time? This raises the question of how an emissions limit would be established in the first place. Ohio EPA believes much more thought must be given to this issue and an approach be developed that recognizes this reality. Ultimately, an emission rate likely is not appropriate for an HRI. Unlike other control strategies where an actual control device is installed and is expected to provide a percent reduction in a pollutant, this proposed Section 111(d) approach is more like a work practice that is designed to increase the efficiency of the unit itself. It is likely appropriate, and practical, to consider options other than an emissions limitation in this case.

If this proposal must proceed, U.S. EPA should revise 40 CFR 60.24a(b) so that a standard of performance must be an "allowable rate or limit, design, equipment, work practice or operational standard" established by the State and to also adjust the language in 40 CFR 60.5755a(a)(1) accordingly. This is consistent with the statute and the entirety of the proposed language of 40 CFR 60.24a. Ultimately,

under this Section 111(d) approach, the metric by which success would be determined is by an overall change in heat rate after HRIs are performed compared to prior to the HRI(s) being performed. It should be simple enough to have a legally enforceable requirement to perform an HRI(s) in accordance with best practices under specific compliance timelines, rather than any need to prescribe an emission limit associated with that HRI. This would address the variability in actual heat rate improvement for the same HRIs at different units and the variability of HRIs over time at the unit. Consistent with the statute, it is likely not feasible to prescribe or enforce an allowable emission limit as the standard of performance. A work practice, such as an HRI, may be all that should be required. This has been implemented in other air pollution control programs such as Reasonably Available Control Measures for fugitive dust.

9. C-16. U.S. EPA is requesting comment on the merits of differentiating between gross and net heat rate. Recognizing it could be important for partial load operations and it is also important in recognizing the improved efficiency obtained from equipment upgrades that reduce the auxiliary power demand. [83 FR 44765]

This further identifies the complexities associated with developing emissions limitations for HRIs. If U.S. EPA must establish an emission limitation requirement, these complexities along with those identified above for request C-15 must be addressed and accounted for.

10. U.S. EPA believes Section 111(d) allows considerable flexibility for states to set standards of performance for units and considerable latitude for implementing measures and standards for affected EGUs and so U.S. EPA proposes under ACE to grant States the freedom to give EGUs a wide range of possible compliance options for sources to use to meet standards. Once a State determines the standard, the State could allow a BSER technology or non-BSER technology or strategy to be used in meeting the standard. To ensure a non-BSER strategy actually reduces the emission rate, U.S. EPA is proposing they meet two criteria: (1) be implemented at the source itself, and (2) are measurable at the source of emissions using data, emissions monitoring equipment, or other methods to demonstrate compliance, such that they can be easily monitored, reported and verified at a unit. [83 FR 44765]

C-17. U.S. EPA is soliciting comment on whether the two criteria are appropriate or not, and why. Also, whether there may be other compliance flexibilities that might meet the two criteria.

C-18. U.S. EPA is also soliciting comment on whether certain non-BSER measures should be disallowed and if so under what criteria or rationale.

Ohio EPA believes it is important to maintain flexibility for States to determine if alternative compliance options are appropriate compliance options once a State determines unit specific standards to be met based upon the BSER. It should be up to the State to determine appropriateness of a given non-BSER measure. For example, if it is determined that a candidate HRI is not cost-effective given RUL, but a facility determines implementing that HRI in lieu of a cost-effective HRI is within their business plan, the State should have such flexibility to allow such an option. In addition, regional fuel supplies could make co-firing highly desirable for some sources even though it is not a cost-effective option for all sources and therefore, not appropriate as the BSER.

11. U.S. EPA is acknowledging the States have discretion to consider RUL and other factors in setting standards of performance. Ultimately, RUL impacts cost (i.e., less time to amortize cost of control). U.S. EPA believes when Congress mentions "other factors" that, generally, those other factors are ones that may substantially increase costs relative to a more typical unit. U.S. EPA is proposing one or more of the following factors be used to demonstrate the necessity for a variance from applying the standard of performance for a particular source based on RUL or other factors:

- Unreasonable cost of control resulting from plant age, location, or basic process design; (expected life, payback period for investments, timing of regulatory requirements)
- Physical impossibility of installing necessary control equipment; or (space of other physical barriers)
- Other factors specific to facility (or class of) that make application of a less stringent standard or final compliance time significantly more reasonable. (some HRIs are either not applicable or already implemented)

[83 FR 44766]

C-22. U.S. EPA is soliciting comment on the manner in which States should be permitted to exercise their statutory authority to take into account RUL and what "other factors" might be appropriate.

C-23. Further, U.S. EPA proposes this as a unit-by-unit determination weighing both value of cost of installation and CO₂ reductions. Therefore, U.S. EPA is proposing these factors are specific to a facility (or class) that make a variance from the emission guideline significantly more reasonable, as allowed under proposed 40 CFR 60.24a(e)(3). U.S. EPA is soliciting comment if other factors should be allowed per the proposed variance provision.

Section 111(d)(1) requires that U.S. EPA permit States to take into account an affected source's RUL, as well as other factors, when establishing an appropriate standard of performance. It is imperative then for States to have the flexibility take into consideration the degree of reduction, costs, RUL and other limitations, such as

grid reliability, when developing State plans. Maintaining flexibility to make these considerations on a case-by-case basis is important. U.S. EPA's third factor, "other factors specific to the facility" will allow this flexibility provided it is not later interpreted too narrowly (e.g., Ohio EPA interprets grid reliability to fall into this category).

12. C-24. U.S. EPA is proposing if a State uses the variance provision, they must demonstrate in the State plan that such application meets criteria outlined in this proposal, recognizing that some cases may result in no measures being applicable to a source. For example, when a very short RUL is applicable or when all measures have already been implemented. In such cases, U.S. EPA is proposing the State must still establish a standard of performance. U.S. EPA is taking comment on what a standard may look like in these cases. For example, an emission rate and compliance deadline where the rate would only be applicable if the source doesn't shut down by such date. Or, if all measures were already implemented, apply a business as usual rate without allowing backsliding. [83 FR 44766]

C-25. U.S. EPA is soliciting comment on if there are considerations in utilizing the variance provision, including potential interaction of the compliance flexibilities proposed in this proposal with utilization of the provisions. For example, would allowing trading and use of a variance result in an impermissibly less stringent application of BSER. [83 FR 44767]

C-26. U.S. EPA is also welcoming comment on the legality and appropriateness of utilizing this provision, generally, and in the context of specific compliance flexibilities that States may employ in developing plans. [83 FR 44767]

Proposed 40 CFR 60.24a(e)(3) sets forth a description of the factors that a state may consider when applying the standard of performance to a particular source. This provision is consistent with the directive from Congress under Section 111(d)(1) allowing a State to consider RUL, among other factors. As U.S. EPA points out, many of these "other factors" distill down to a consideration of cost and a State must have as much flexibility as possible given the unique circumstances of each source. Ohio EPA believes that U.S. EPA should not be any more specific of how a State handles such situations in this rule. There may be a multitude of scenarios, each with a unique solution, and attempting to define the parameters under which a State may address a scenario could complicate the ability of a State to establish an appropriate standard of performance for a particular source. States will and should carefully assess and prevent any possible negative interactions between a variance and some other option (e.g., trading) and ultimately U.S. EPA is responsible for reviewing and approving or disapproving State plans while ensuring the BSER and emissions guideline are met.

13. C-27. U.S. EPA is soliciting comment on any factors that may play a role in a State setting a standard of performance with considerations to NSR; meaning, in considering candidate technologies States should consider how HRI may trigger NSR and impact cost of the HRI. [83 FR 44767]

Ohio EPA is providing comments below regarding the continued concerns with HRIs triggering NSR requirements. U.S. EPA's proposed method for addressing potential NSR issues may relieve some sources from NSR but may not relieve others. Regardless, the proposed analyses required to determine if NSR will be applicable will also impose costs. A State must be able to take these costs into consideration as a part of setting a standard of performance while considering RUL and other factors.

14. C-28. U.S. EPA is soliciting comment on whether Section 111(d) authorizes States to include averaging (across a facility and across multiple existing sources) and trading between existing sources in plans. U.S. EPA is proposing to allow averaging among EGUs across a single facility because the BSER is predicated on measures implemented at the facility level. However, U.S. EPA is limiting the averaging to only affected EGUs at the facility because: (1) including non-affected units at the facility might not result in real reductions (e.g., averaging with NGCC that would have operated anyway) and generation shifting to lower emitting units is contrary to the intention of the rule; (2) U.S. EPA is currently considering if NGCC should be included as affected EGUs; and (3) it would mirror the BSER determination of this rule. [83 FR 44767]

U.S. EPA is also soliciting comment on: if facility wide averaging is appropriate and what other types of considerations should be involved (C-29) [83 FR 44767]; averaging affected EGUs with non-affected sources within a facility in limited case when they represent incremental new non-emitting capacity (e.g., integrated solar) (C-30) [83 FR 44767; and if there is a way to allow trading between effected EGUs across affected sources while not encouraging generation shifting (C-31) [83 FR 44768]

Lastly, U.S. EPA is soliciting on whether Section 111(d) should be read to not allow trading and averaging between sources (C-32). Specifically, U.S. EPA requests comment on: if averaging across multiple affected sources is allowed in plan, how would the system should conceptually work (C-33); how would it or would it not undermine BSER (C-34); for trading, what type of EM&V criteria should be required (C-35); should compliance instruments be banked (C-36); if averaging across multiple sources, what mechanisms would be needed to ensure compliance is maintained and tracked for purposes of providing for the implementation and enforcement of the standards of performance (C-37); which and/or if technology should be limited in the averaging program; (C-38); whether affected EGUs across

State lines could be able to average and what measures State plans should include to provide for implementation and enforcement of such multi-State averaging (C-39); issues of statutory interpretation, whether they are appropriate interpretations of Section 111(d) (C-40); and whether such averaging, trading, or “bubbling” compliance flexibilities as are available under other sections of title I of CAA suggest that such flexibilities should be afforded under Section 111(d) (C-41). [83 FR 44768]

Where an emissions limitation is necessary, Ohio EPA supports the concept of facility-wide averaging of affected EGUs across a single facility and believes it is consistent with a traditional Section 111(d) approach. U.S. EPA’s proposal notes that going beyond affected units at the facility could have practical and legal concerns [83 FR 44768]: (1) inconsistent with proposed BSER applying to and at an individual source; (2) if Section 111(d) authorized trading and averaging then the provision on RUL and other factors could be viewed as superfluous (averaging and trading could be viewed as eliminating the need to consider RUL); and (3) multiple practical concerns like the complexity of developing and implementing a State plan with averaging or trading and difficulty in ensuring robust compliance (e.g., EM&V for trading programs). Ohio EPA has similar concerns on the complexity of implementing an averaging scheme that goes beyond the affected EGUs at a given facility.

As noted in our comments on the ANPRM, Ohio EPA supports trading and market-based solutions, however, in this particular case, if HRIs will comprise BSER, Ohio EPA finds it difficult to envision a trading program that would be meaningful or meet Section 111(d).

U.S. EPA has interpreted the meaning of standard of performance under Section 111(d) to include a cap and trade program when it promulgated the Clean Air Mercury Rule (CAMR). [70 FR 28606 (May 18, 2005)]. CAMR established a national mercury emissions cap for new and existing EGUs. Although a federal appeals court eventually held that U.S. EPA did not properly regulate mercury emissions under Section 111 because the initial delisting of EGUs under Section 112 was unlawful, CAMR is instructive on how a cap and trade program might be justified and designed under Section 111(d). The cap and trade program created by CAMR was based on the availability and installation of control technology. The preamble to the final rule emphasized the fact that the BSER was a combination of the cap and trade mechanism and the technology needed to achieve the chosen cap level. In justifying the emission limits in CAMR, U.S. EPA explained in the preamble that “the technologies necessary to achieve the emission cap limits . . . have been adequately demonstrated.” It is clear that CAMR, while broader than previous Section 111(d) rules, was still within the traditional interpretation of standard of performance based on source-specific control technologies and limited

to affected facilities. Therefore, CAMR maintained the source-specific technology-based approach that is the foundation of Section 111.

Here, although a trading program covering an HRI approach for EGUs could be justified as focusing on the technology needed to achieve the chosen cap level, U.S. EPA may be underestimating the current efficiency of the remaining coal-fired EGU fleet. If a unit specific analysis is conducted from the menu of HRIs, it is likely all reasonable HRIs would be implemented. How then would additional credits be generated for trading? It is likely U.S. EPA would need to develop a complex trading program for a relatively small amount of emissions.

Ultimately, Ohio EPA continues to believe that a State could decide that the most appropriate approach may not need to establish emission limitations that necessitate averaging or trading but rather could simply rely on other methods of meeting a standard of performance, such as a work practice (HRI) as discussed in response to request C-15 above.

15. C-42. U.S. EPA is proposing new and carrying forward some of the same implementing regulations for Section 111(d) contained in 40 CFR Part 60, subpart B. U.S. EPA is proposing these apply for States to meet the requirements to include implementation and enforcement provisions under Section 111(d)(1)). U.S. EPA is requesting comment on if these are appropriate to meet these obligations or if other implementation or enforcement measures should be required. [83 FR 44768]

Ohio EPA is providing comment on specific requests below related to the implementing regulations that are new and being carried forward. In addition to those specific requests, Ohio EPA is providing the following comments on portions for which comment has not been requested or portions for which U.S. EPA states [83 FR 44770] are moved over without change and are ministerial action (and they are not soliciting comment). Note, Ohio EPA finds in some cases the sections referenced as being moved without change in fact do include changes.

- a. With respect to all of 40 CFR 60.23a [83 FR 44804-44805], Ohio EPA strongly suggests modeling the language directly after 40 CFR 51.102, or more efficiently, simply referencing that the notice and hearing requirements under 40 CFR 51.102 are sufficient for meeting the requirements of this rule. U.S. EPA should also apply the McCabe Memo⁷ to this proposal as it applies to the SIP program to clarify what is meant by the requirements in 40 CFR 51.102. U.S. EPA should adopt the requirements contained in 40 CFR 51.102 verbatim. This will necessitate an update to paragraph (g) also.

⁷ Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of "Letter Notices", Janet McCabe, April 6, 2011.

40 CFR 60.23a(d) also contains provisions for notification to the public. This provision requires "prominent advertising" of the hearing and states the internet should be satisfactory. The added sentence regarding the internet adds to much specificity (could be construed as the only alternative besides a newspaper). 40 CFR 51.102 does not include this specificity. This comment also applies to the provision regarding availability of the plan for public inspection. There is no need to include internet as an option. It could be viewed narrowly. "Prominent advertisement" is also clarified in the McCabe Memo.

40 CFR 60.23a(f) also contains provisions requiring maintaining the public hearing record for 2 years. This is an outdated requirement and not necessary. Documenting retention policies at the State level should be sufficient to ensure public records are maintained for sufficient time periods. In Ohio, this record would be maintained for a minimum of 5 years under our retention policy.

- b. With respect to 40 CFR 60.25a(e) [83 FR 44805], Ohio EPA strongly suggests U.S. EPA delete this unnecessary provision which requires the State to provide annual reports on progress in plan enforcement. This is an unnecessary and burdensome amount of oversight that is no longer necessary. Furthermore, this paragraph requires information be included in the annual report required under 40 CFR 51.321. 40 CFR 51.321 requires annual emissions reporting under U.S. EPA's Air Emissions Reporting Requirements (AERR). This would require States for the first time to begin reporting CO₂ emissions as a part of their annual emissions reporting. Surely this is an unintended consequence of Section 111(d) addressing a non-criteria pollutant with significant implications. There is more than sufficient reporting of GHG emissions under other federal programs and additional GHG reporting should not be necessary as a part of this rule. Ohio EPA urges U.S. EPA to correct this oversight.
- c. With respect to 40 CFR 60.28a(a) [83 FR 44807], U.S. EPA proposes that plan revisions be submitted within 12 months, or shorter, if required by the Administrator, after a final revised emission guideline is published. Plan revisions resulting from revised emission guidelines can be just as time consuming and resource intensive, with compliance timeline constraint issues just as relevant, as the original emission guidelines. The same timelines should apply to revisions as an initial plan requirement. This must be addressed to ensure significant issues are not encountered in the future if a revision to the emission guideline (if finalized) occurs.
- d. Ohio EPA believes there is a mistake in 40 CFR 60.5770a(b) where January 8, 2014 should be August 31, 2018.

e. There is an error in 40 CFR 60.5790a(a) where requirements from the CPP still remains in the language. Ohio EPA also questions if all the definitions in 40 CFR 60.5805a remain valid and necessary as some are not used in the subpart.

16. C-43. U.S. EPA is proposing States will be required to include monitoring, recordkeeping and reporting (MRR) necessary to provide for implementation and enforcement; however, States would have the flexibility to design their monitoring plan. Acknowledging most affected units already have MRR under 40 CFR Part 75, if the standard of performance is a unit's CO₂ emissions rate (e.g., lb/MWh), U.S. EPA is proposing the 40 CFR Part 75 meets the MRR requirement under the emission guideline. States also have discretion to establish averaging times but believes it could have different effects on the demonstration of compliance. Therefore, U.S. EPA is taking comment on if there should be any bounds or considerations to the averaging times allowed. [83 FR 44769]

Ohio EPA believes 40 CFR Part 75 should be an approvable approach and that a State should have the flexibility to allow for alternate approaches if appropriate and provides for implementation and enforcement. Ohio EPA recommends U.S. EPA relies on the State's expertise and discretion in determining appropriate averaging times and not limit those decisions via regulatory requirements. Rather, U.S. EPA can use the review and approval process to determine if an alternative MRR proposal meets the requirements for implementation and enforcement.

17. U.S. EPA is proposing State plans be submitted electronically. U.S. EPA is soliciting comment on whether electronic submittals are appropriate and less burdensome to States (C-44) or whether this should be the sole means of submitting State plans (C-45). [83 FR 44769]

Ohio EPA does not believe it is appropriate to require electronic submittals. If U.S. EPA desires to require electronic submittals, then U.S. EPA should provide for a rulemaking that does so for all submittal types and not just in the implementing regulations for specific requirements such as Section 111(d). Ohio EPA currently uses SPeCS and finds it valuable and beneficial for both States and U.S. EPA. However, Ohio EPA still has concerns with the system and prefers the ability to continue to provide paper/e-mailed submissions when necessary.

18. C-46. U.S. EPA is soliciting comment on the list of items, under 40 CFR 60.5740a, that must be in a State plan and whether this list is comprehensive to submit a State plan. [83 FR 44769]

U.S. EPA is referencing a list that includes several items for which Ohio EPA wishes to express concerns.

First, U.S. EPA is requiring under (a)(3) that the State include a demonstration that each EGU's standard of performance is quantifiable, non-duplicative, permanent, verifiable, and enforceable in accordance with 40 CFR 60.5755a, which provides definitions for each of those except non-duplicative. Ohio EPA is unsure of how non-duplicative would be applied in the context of an HRI project. U.S. EPA should provide more explanation and/or incorporate a definition under 40 CFR 60.5755a. However, Ohio EPA is concerned that depending on U.S. EPA's definition, additional concerns could become evident without an opportunity to comment. For example, will U.S. EPA say an HRI that is implemented as a part of another CAA program cannot be used to show compliance under Section 111(d)?

In addition, U.S. EPA also requires a demonstration that the requirements of 40 CFR 60.5755a are met under (a)(4)(v). These paragraphs are duplicative, and one should be removed.

Second, under (a)(4)(i), U.S. EPA is requiring a list of information required for each affected EGU regarding their future operation characteristics. This includes (A) Annual generation; (B) CO₂ emissions; (C) Fuel use, fuel prices (when applicable), fuel carbon content; (D) Fixed and variable operations and maintenance costs (when applicable); (E) Heat rates; and (F) Electric generation capacity and capacity factors. Ohio EPA fails to see the relevance of this requirement and it should be removed. It is the State's responsibility to determine the standard of performance by evaluating the menu of HRIs and determining which will be required to be implemented and what the resulting emissions limit should be. Any technical data necessary to support that conclusion would be included and the type of information could vary from source to source and HRI to HRI. The rule should provide nothing more than a general statement requiring technical support information sufficient to support the State's determination.

Third, under (a)(4)(ii), U.S. EPA is requiring a timeline for implementation of EGU-specific actions (if applicable). What does U.S. EPA mean by "actions" and "if applicable"? A timeline of actions as a part of the State plan should only be necessary when the timeline for compliance of an HRI is extended beyond the 24-month period proposed. As written, this paragraph could be construed to require a timeline for implementation within the 24-month period and for other types of actions.

Fourth, under (a)(4)(iii), U.S. EPA is requiring all wholesale electricity prices be reported. This paragraph should be removed. It has no relevance to this proposed Section 111(d) rule. This information is not even within the purview of a State environmental agency's knowledge nor should it be required to be in the future. It has no bearing on the ability for a State to implement and enforce the proposed standard of performance.

Fifth, under (a)(4)(iv), U.S. EPA is requiring this analysis cover a time period extending at least to 2035. This paragraph must be removed. It has no relevance to this proposed Section 111(d) rule. It has no bearing on the ability for a State to implement and enforce the proposed standard of performance. Further, much of this data is not even available, reasonable to request, or accurately forecastable for a period extending to 2035 (e.g., wholesale electricity prices).

U.S. EPA is asking that States predict the future of wholesale electricity prices and unit operations for approximately 15 years into the future. This would be pure guess work that may or may not have any relationship to reality. What if U.S. EPA does not believe our projections are accurate? Is this a reason for plan disapproval? In any event, these factors do not have a bearing on current conditions and the application of Section 111(d) to a facility.

Items one through four above raise another concern regarding confidentiality. Many of the items in this list may be considered business confidential by the affected entities and these same entities would have concerns if their business projections turned out to be inaccurate. Would these entities be held legally responsible for making false statements?

To reiterate, Ohio EPA has significant concern with many of the items being requested above. The proposed list goes far beyond what is necessary under this Section 111(d), may not be applicable under certain scenarios, and would be a resource intensive process for no benefit in this type of State plan. If U.S. EPA desires this type of data, U.S. EPA should find another method than requiring it through this mechanism.

Sixth, under (a)(5), U.S. EPA is requiring the State plan include a timeline of milestones that will be taken between the time of the State plan submittal *and [date three years after final promulgation of this rule in the Federal Register]* to ensure the plan is effective as of [date plan takes effect]. This is terribly confusing and likely erroneous or else needs clarification. As noted in proposed 40 CFR 60.5745a, the State plan is due *[date three years after final promulgation of this rule in the Federal Register]* which therefore means (a)(5) is proposing milestones for 0 days. And if a State plan is submitted late, it could be requiring milestones for a negative amount of time. Regardless, why would milestones be needed for this type of Section 111(d)? U.S. EPA is already proposing that compliance be achieved by affected units within 24 months of submittal of the State plan and any extension beyond would require increments of progress. This is more than sufficient. It should not be necessary for States to provide milestones within the 24-month period if that is what U.S. EPA expects. Ohio EPA suggests U.S. EPA remove this provision.

19. C-50. U.S. EPA is soliciting comment on the substance and the proposed regulatory text for the following changes [83 FR 44770]:

- a. C-52. Updated timing requirements or the submission of State plans. Noting the SIP and FIP timing requirements were revised in 1990 CAA amendments, U.S. EPA is proposing to accordingly update Section 111(d) consistent with Section 110 timing requirements. U.S. EPA is proposing to update the requirements to submit within 9 months (under 40 CFR 60.23(a)(1)) to 3 years after final notice of the availability of the final emission guideline. U.S. EPA is taking comment on this and on any other timeframes that may be appropriate given the flexibilities U.S. EPA intends to provide through this guideline. U.S. EPA is also proposing to give itself discretion to determine in a specific emission guideline that a shorter time period for State submittal is appropriate. [83 FR 44771]

Ohio EPA notes the current regulations (40 CFR 60.27) state that Administrator may “extend” the time for a plan submission while U.S. EPA is now proposing for all this time period to be “shortened”. While we understand U.S. EPA is aligning the time with Section 110, and therefore extending the timing from 9 months to 3 years, we do not believe it necessitates this proposed change. Section 110 has no similar authority to shorten submittal timeframes for States. Ohio EPA suggests U.S. EPA retains the language as is or provides flexibility to either shorten or extend the timeframes as determined necessary by the Administrator.

- b. Updated timing requirement for when increments of progress must be included as part of a State plan. 40 CFR 60.24(e)(1) currently requires any compliance schedule for State plans extending more than 12 months for the date required for submittal include legally enforceable increments of progress for each facility. U.S. EPA is proposing to update in order to align with new timelines proposed. [83 FR 44771]

Ohio EPA is providing comments regarding timing and increments of progress as a part of our response to request C-13 above.

- c. Completeness criteria and a process for determining completeness of State plan submissions similar to Section 110(k)(1) and (2). Similar to Section 110(k)(1), U.S. EPA is proposing completeness criteria to ensure State plans include certain minimum elements. U.S. EPA is proposing to adopt two types of criteria:
- Administrative: Based on the 8 elements of Section 110: 1- formal letter, 2- evidence adopted in code or regulation, 3-evidence of legal authority, 4-copy of official regulations or document, 5-evidence procedural requirements followed, 6-public notice consistent with 40 CFR 60.23, 7- public hearing certification, and 8- public comments complication with responses.

- Technical: 1-description of plan approach and geographic scope; 2-identification of each designated facility, emissions standards for each, and MRR; 3-compliance schedules/increments of progress; 4-demonstration the plan is projected to achieve emissions performance under the applicable emission guidelines; 5- documentation of the State recordkeeping and reporting requirements to determine the performance of the plan as a whole; and 6-demonstration that each emission standard is quantifiable, non-duplicate, permanent, verifiable and enforceable.

[83 FR 44772]

With respect to 40 CFR 60.27a(g)(2)(ii) [83 FR 44807], U.S. EPA is proposing the State plan be adopted in the "State code or body of regulations." This is an unduly burdensome requirement that should be updated. 40 CFR Part 51, Appendix V provides for "evidence that the State has adopted the plan in the State code or body of regulations; or issued the permit, order, consent agreement (hereafter "document") in final form. As written in this proposal, it would require all plans to go through a lengthy rulemaking or legislation process before a plan could even be deemed complete. It is essential this is corrected. A permit or consent order should be more than sufficient for adoption of requirements under Section 111(d) just as it is under Section 110. Note, the proposal refers to "document" in paragraph (iv); therefore, it was likely only an oversight in drafting the rule.

With respect to 40 CFR 60.27a(g)(3) [83 FR 44807], U.S. EPA proposes that the technical criteria are reviewed "in order to be deemed complete". Based on the elements in the list this seems less like a completeness determination (as is done for an administrative requirements) and more like an adequacy determination. It could be construed that the completeness determination that would be required by the 6-month mark or be considered complete by operation of law could apply to this list also. For example, U.S. EPA would need to determine that the plan is "projected to achieve emission performance" within the 6-month timeframe or that criteria is deemed complete by operation of law.

- d. C-56. Updated definition replacing "emission standard" with "standard of performance." U.S. EPA discusses their belief that the current definition of "emission standard" in the regulations is incomplete and requires clean up. For example, it encompasses equipment standards, which is an alternative form of standard under Section 111(h) under certain circumstances. Section 111(h) provides for other forms of alternatives like work practice standards which aren't covered under the existing definition of "emission standard." Further, the definition encompasses allowance systems which was added after CAMR which was vacated. Therefore, U.S. EPA is proposing to replace the definition with "standards of performance" that tracks with the definition provided under Section 111(a)(1). U.S. EPA is proposing to incorporate Section 111(h)'s allowance for

design, equipment, work practice, or operation standards as alternative standards of performance. The current regulations allow for plans to prescribe equipment specifications when emission rates are “clearly impracticable” as determined by U.S. EPA. Section 111(h)(1) allows for alternatives when standards of performance are “not feasible to prescribe or enforce” as those terms are defined under Section 111(h)(2). U.S. EPA is taking comment on this aspect of the proposal. [83 FR 44773]

Ohio EPA believes replacing “emissions standard” (a non-defined statutory term) with “standard of performance” (a defined statutory term) alleviates much confusion and more closely aligns the rule with the statute. Further, Ohio EPA supports allowing a State to identify a standard of performance prescribing design equipment, work practice, or operational standard, or combination thereof, when an emissions rate or limit is “not feasible to prescribe or enforce” (a concept borrowed from Section 111(h)) under proposed 40 CFR 60.24a(b). The concept of “standard of performance” in Section 111(a)(1) is underpinned by the “application of the best system of emission reduction which . . . has been adequately demonstrated.” A system of emission reduction that reflects an infeasible emissions limitation would be neither “best” nor “adequately demonstrated.” Thus, an adequately demonstrated best system of emission reduction may not be definitive emission rate or limit but instead may be a design equipment, work practice, or operational standard. A State must have the flexibility to determine whether an emission rate or limit is infeasible for reasons other than because a pollutant cannot be emitted through a particular conveyance or the lack of measurement methodology as contemplated by Section 111(h), and develop a State plan that includes some combination of design equipment, work practice, or operational standard as the appropriate standard of performance under the unique circumstances that confronts the affected sources in that State.

- e. Usage of the internet to satisfy certain public hearing requirements. [83 FR 44773]

Ohio EPA has addressed our comments regarding this proposed change above (see comments on C-42).

- 20. C-57. U.S. EPA argues Section 111(d)(1)(B) must permit States to take into account, among other things, RUL and that Congress explicitly envisioned a State's standard could vary from the guideline. Acknowledging that 40 CFR 60.24(f) contains a variance provision but attaches to that the distinction between health and welfare-based and is only available under U.S. EPA discretion. U.S. EPA notes this provision was promulgated before the addition of the RUL provision and they are inconsistent in that the variance provisions don't envision what is permitted under Section 111(d)(1)(B). U.S. EPA is proposing no distinction between health

and welfare based and is also proposing a new variance provision consistent with Section 111(d)(1)(B) for RUL and other factors, such as timing considerations like expected life of the source, payback period for investments, timing of regulatory requirements, or other unit-specific criteria. U.S. EPA is soliciting comment on how a new variance provision can permit States to take into account RUL and other factors, and what other factors might be. [83 FR 44773]

C-58. In addition, U.S. EPA is taking comment on whether the factors in 40 CFR 60.24(f) are appropriate to carry over to a new variance provision and if they adequately give meaning to the requirements of Section 111(d)(1)(B). These include: unreasonable cost of control resulting from plant age, location, or basic process design; physical impossibility of installing necessary control equipment; or other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable. [83 FR 44773]

Ohio EPA continues to reiterate that RUL and other factors must be permitted to be considered by the State when developing a Section 111(d) plan (see our comments above under C-22/C-23). Ohio EPA believes it is appropriate to clarify this in the implementation rule.

21. U.S. EPA acknowledges this Section 111(d) plan could result in an existing source undertaking a physical or operational change which may require an NSR permit depending on the amount of the emission increase from the change and the air quality in the location of the source. U.S. EPA discusses at length historical rulemakings that attempted to exempt environmentally beneficial projects or provide alternative applicability determinations. U.S. EPA also discussed the comments received throughout the CPP and ANPRM rulemakings, acknowledging the NSR implication being at issue and remaining at issue specifically for HRIs. Ultimately this has led to U.S. EPA proposing a new NSR applicability determination process for these affected units, and potentially other units. U.S. EPA is taking comment on a variety of requests (C-59, C-60, C-61, C-62, C-63, C-64, C-65, C-66, C-67, C-68, C-69, C-70, C-71) related to the NSR issue for which Ohio EPA is providing the following comments. [83 FR 44775-44783]

Ohio EPA continues to have significant concerns also recognizing the unintended consequences and disincentive associated with performing HRIs as a result of NSR requirements.

Triggering NSR adds time and cost for sources and more burden for permitting authorities and could hinder effective and prompt implementation of the Section 111(d) plans. And that time and cost is not offset by a reduction in pollution or health impacts compared to before the HRI would be performed. The HRI itself is the action leading to a reduction in pollution and potential health impacts. It is

essential to the success of this Section 111(d) process that the NSR issue be addressed, or we will likely find that taking into consideration the cost of NSR as a part of development of the standard of performance will lead to fewer HRIs being implemented.

U.S. EPA should choose the least intrusive and time-consuming option for addressing NSR with the least risk of triggering NSR as a result of this Section 111(d) plan. If NSR cannot be avoided for these sources, States must be able to consider the cost and timing of NSR as a factor in setting a standard and a timeline (C-59, C-60). U.S. EPA must be cognizant of the time and effort involved in developing an NSR permit when considering compliance schedules and take into account that multiple sources within the State will be going through the same process, with differing schedules for implementing HRIs, while ensuring grid reliability throughout the entire process. All of this will undoubtedly have an impact on timing.

U.S. EPA requests comment (C-62) on whether an NSR applicability test for EGUs apply to all EGUs as defined in 40 CFR 51.124(q) or whether it should be confined to a smaller subset of the power sector, such as only the affected EGUs making modifications to comply with Section 111(d). Ohio EPA believes an NSR exemption should be confined to sources subject under this Section 111(d).

With respect to U.S. EPA's request for comment (C-65) regarding the potential for emissions increases as a result of the proposed NSR changes, Ohio EPA believes it should not be a consideration. U.S. EPA's analysis shows that national CO₂ and other pollutants will essentially stay the same under ACE, or be slightly reduced, when compared to the CPP. But yes, some individual units may increase. As discussed in our response to request C-9 above, any potential risk of a "rebound effect" should not be considered and should not trigger major NSR.

Lastly, regardless of the above, some units may be subject to minor NSR within a State also. U.S. EPA must ensure that any State with a SIP approved minor NSR program is able to amend their requirements to exempt sources from minor NSR without the need for requiring a SIP revision prior to implementation and without the need for any anti-backsliding Section 110(l) demonstrations.

22. C-72. U.S. EPA is requesting comments on the need for State plan submittals and any estimates of burden and suggested methods for minimizing that burden. [83 FR 44783]

As noted in response to request C-46 above, U.S. EPA should consider providing additional funding to the States to implement this program.

23. U.S. EPA provided its Regulatory Impact Analysis (RIA) results and illustrative scenarios presenting the difference between the CPP and the concepts in ACE and a scenario with no CPP with the purpose of providing sufficient information to understand the impact of a full repeal of the CPP. U.S. EPA acknowledges these scenarios are projected to result in a decrease of annual CO₂ emissions of about 7 million to 30 million short tons relative to a future without a Section 111(d) regulation affecting the power sector. U.S. EPA requests comment on the illustrative scenarios although a specific comment number is not provided. [83 FR 44759]

Ohio EPA wishes to express concern with the comparison of the benefits associated with the CPP compared to ACE. The baseline for comparison should be the current state only, which does not include the CPP. The CPP has not been implemented and continues to be under litigation and any change in pollution or health impacts should only be compared to the current state. Clearly, as shown by U.S. EPA, there will be significant benefits to implementation of ACE.