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114TH CONGRESS
1ST SESSION

S. 1324

[Report No. 114–159]

To require the Administrator of the Environmental Protection Agency to fulfill certain requirements before regulating standards of performance for new, modified, and reconstructed fossil fuel-fired electric utility generating units, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 13, 2015

Mrs. CAPITO (for herself, Mr. McCONNELL, Mr. INHOFE, Mr. MANCHIN, Mr. CORNYN, Mr. THUNE, Mr. BARRASSO, Mr. BLUNT, Mr. ALEXANDER, Mr. BOOZMAN, Mr. CASSIDY, Mr. COATS, Mr. COTTON, Mr. CRAPO, Mr. CRUZ, Mr. DAINES, Mr. ENZI, Mrs. FISCHER, Mr. HOEVEN, Mr. ISAKSON, Mr. PAUL, Mr. PERDUE, Mr. RISCH, Mr. ROUNDS, Mr. ROBERTS, Mr. TILLIS, Mr. WICKER, Mr. VITTER, Mr. SESSIONS, Ms. MURKOWSKI, Mr. SULLIVAN, Mr. COCHRAN, Mr. JOHNSON, Mr. SCOTT, Mr. MCCAIN, and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

OCTOBER 29, 2015

Reported by Mr. INHOFE, without amendment

A BILL

To require the Administrator of the Environmental Protection Agency to fulfill certain requirements before regulating standards of performance for new, modified, and reconstructed fossil fuel-fired electric utility generating units, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordable Reliable
 5 Electricity Now Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-
 9 trator” means the Administrator of the Environ-
 10 mental Protection Agency.

11 (2) DEMONSTRATION PROJECT.—The term
 12 “demonstration project” means a project to test or
 13 demonstrate the feasibility of a carbon capture and
 14 storage technology that has Federal Government
 15 funding or financial assistance.

16 (3) EXISTING SOURCE.—The term “existing
 17 source” has the meaning given the term in section
 18 111(a) of the Clean Air Act (42 U.S.C. 7411(a)).

19 (4) GREENHOUSE GAS.—The term “greenhouse
 20 gas” means any of the following:

21 (A) Carbon dioxide.

22 (B) Methane.

23 (C) Nitrous oxide.

24 (D) Sulfur hexafluoride.

25 (E) Hydrofluorocarbons.

1 (F) Perfluorocarbons.

2 (5) MODIFICATION.—The term “modification”
3 has the meaning given the term in section 111(a) of
4 the Clean Air Act (42 U.S.C. 7411(a)).

5 (6) MODIFIED SOURCE.—The term “modified
6 source” means any stationary source, the modifica-
7 tion of which is commenced after the date of enact-
8 ment of this Act.

9 (7) NEW SOURCE.—The term “new source” has
10 the meaning given the term in section 111(a) of the
11 Clean Air Act (42 U.S.C. 7411(a)).

12 (8) RECONSTRUCTED SOURCE.—The term “re-
13 constructed source” means any stationary source,
14 the reconstruction (as defined in section 60.15 of
15 title 40, Code of Federal Regulations (as in effect on
16 the date of enactment of this Act)) of which is com-
17 menced after the date of enactment of this Act.

18 **SEC. 3. STANDARDS OF PERFORMANCE FOR NEW, MODI-**
19 **FIED, AND RECONSTRUCTED FOSSIL FUEL-**
20 **FIRED ELECTRIC UTILITY GENERATING**
21 **UNITS.**

22 (a) LIMITATION.—The Administrator may not issue,
23 implement, or enforce any proposed or final rule, in whole
24 or in part, under section 111 of the Clean Air Act (42
25 U.S.C. 7411) that establishes a standard of performance

1 for emissions of any greenhouse gas from any new source,
 2 modified source, or reconstructed source that is a fossil
 3 fuel-fired electric utility generating unit, unless that rule
 4 meets the requirements of subsections (b) and (c).

5 (b) REQUIREMENTS.—In issuing any rule pursuant
 6 to section 111 of the Clean Air Act (42 U.S.C. 7411) es-
 7 tablishing standards of performance for emissions of any
 8 greenhouse gas from new sources, modified sources, or re-
 9 constructed sources that are fossil fuel-fired electric utility
 10 generating units, the Administrator, for purposes of estab-
 11 lishing those standards—

12 (1) shall separate sources fueled with coal and
 13 natural gas into separate categories; and

14 (2) shall not establish a standard based on the
 15 best system of emission reduction for new sources
 16 within a fossil-fuel category unless—

17 (A) the standard has been achieved, on av-
 18 erage, for at least 1 continuous 12-month pe-
 19 riod (excluding planned outages) by each of at
 20 least 6 units within that category—

21 (i) each of which is located at a dif-
 22 ferent electric generating station in the
 23 United States;

24 (ii) that, collectively, are representa-
 25 tive of the operating characteristics of elec-

1 tric generation at different locations in the
2 United States; and

3 (iii) each of which is operated for the
4 entire 12-month period on a full commer-
5 cial basis; and

6 (B) no results obtained from any dem-
7 onstration project are used in setting the stand-
8 ard.

9 (c) COAL WITH CERTAIN HEAT CONTENT.—

10 (1) SEPARATE SUBCATEGORY.—In carrying out
11 subsection (b)(1), the Administrator shall establish a
12 separate subcategory for new sources, modified
13 sources, or reconstructed sources that are fossil fuel-
14 fired electric utility generating units using coal with
15 an average heat content of 8,300 or less British
16 Thermal Units per pound.

17 (2) STANDARD.—Notwithstanding subsection
18 (b)(2), in issuing any rule pursuant to section 111
19 of the Clean Air Act (42 U.S.C. 7411) establishing
20 standards of performance for emissions of any
21 greenhouse gas from new, modified, or reconstructed
22 sources in the subcategory referred to in paragraph
23 (1), the Administrator shall not establish a standard
24 based on the best system of emission reduction un-
25 less—

(A) that standard has been achieved, on average, for at least 1 continuous 12-month period (excluding planned outages) by each of at least 3 units within that subcategory—

(i) each of which is located at a different electric generating station in the United States;

(ii) which, collectively, are representative of the operating characteristics of electric generation at different locations in the United States; and

(iii) each of which is operated for the entire 12-month period on a full commercial basis; and

(B) no results obtained from any demonstration project are used in establishing that standard.

SEC. 4. STANDARDS OF PERFORMANCE FOR EXISTING FOS-
SIL FUEL-FIRED ELECTRIC UTILITY GENER-
ATING UNITS, COMPLIANCE EXTENSION, AND
RATEPAYER PROTECTION.

(a) LIMITATION.—

(1) IN GENERAL.—The Administrator may not issue, implement, or enforce any proposed or final

1 rule described in paragraph (2), unless that rule
2 meets the requirements of subsection (b).

3 (2) DESCRIPTION OF RULE.—A rule referred to
4 in paragraph (1) is any proposed or final rule to ad-
5 dress carbon dioxide emissions from existing sources
6 that are fossil fuel-fired electric utility generating
7 units under section 111 of the Clean Air Act (42
8 U.S.C. 7411), including any final rule that suc-
9 ceeds—

10 (A) the proposed rule entitled “Carbon
11 Pollution Emission Guidelines for Existing Sta-
12 tionary Sources: Electric Utility Generating
13 Units” (79 Fed. Reg. 34830 (June 18, 2014));
14 or

15 (B) the supplemental proposed rule enti-
16 tled “Carbon Pollution Emission Guidelines for
17 Existing Stationary Sources: EGUs in Indian
18 Country and U.S. Territories; Multi-Jurisdic-
19 tional Partnerships” (79 Fed. Reg. 65482 (No-
20 vember 4, 2014)).

21 (b) REQUIREMENTS.—

22 (1) IN GENERAL.—Before issuing, imple-
23 menting, or enforcing any rule described in sub-
24 section (a)(2), the Administrator shall—

1 (A) submit to Congress a report describing
 2 the quantity of greenhouse gas emissions that
 3 the rule is projected to reduce, as compared to
 4 overall domestic and global greenhouse gas
 5 emissions;

6 (B) conduct modeling regarding the means
 7 by which the source rule in effect on the date
 8 of development of the proposed rule, if applica-
 9 ble, impacts each climate indicator used by the
 10 Administrator in developing the proposed rule;
 11 and

12 (C) issue State-specific model plans to
 13 demonstrate with specificity the areas in, and
 14 means by which, each State will be required to
 15 reduce the greenhouse gas emissions of the
 16 State under the rule.

17 (2) EXCLUSION.—A court shall not consider
 18 paragraph (1) in determining whether the Adminis-
 19 trator is authorized to issue any rule described in
 20 subsection (a)(2).

21 (c) RATEPAYER PROTECTIONS.—No State shall be
 22 required to adopt or submit a State plan, and no State
 23 or entity within a State shall become subject to a Federal
 24 plan, pursuant to any final rule described in subsection
 25 (a), if the Governor of the State makes a determination,

1 and notifies the Administrator, that implementation of the
 2 State or Federal plan would have a negative effect on—

3 (1) economic growth, competitiveness, and jobs
 4 in the State;

5 (2) the reliability of the electricity system of the
 6 State; or

7 (3) the electricity ratepayers of the State, in-
 8 cluding low-income ratepayers, by causing electricity
 9 rate increases.

10 (d) EXTENSION OF COMPLIANCE DATES.—

11 (1) DEFINITION OF COMPLIANCE DATE.—

12 (A) IN GENERAL.—In this subsection, the
 13 term “compliance date” means, with respect to
 14 any requirement of a final rule described in
 15 subsection (a)(2), the date by which any State,
 16 local, or tribal government or other person is
 17 first required to comply with the requirement.

18 (B) INCLUSION.—The term “compliance
 19 date” includes the date by which State plans
 20 are required to be submitted to the Adminis-
 21 trator under any final rule described in sub-
 22 section (a)(2).

23 (2) EXTENSIONS.—Each compliance date of
 24 any final rule described in subsection (a)(2) is

1 deemed to be extended by the time period equal to
2 the time period described in paragraph (3).

3 (3) PERIOD DESCRIBED.—The time period de-
4 scribed in this paragraph is the period of days
5 that—

6 (A) begins on the date that is 60 days
7 after the day on which notice of promulgation
8 of a final rule described in subsection (a)(2) ap-
9 pears in the Federal Register; and

10 (B) ends on the date on which judgement
11 becomes final, and no longer subject to further
12 appeal or review, in all actions (including any
13 action filed pursuant to section 307 of the
14 Clean Air Act (42 U.S.C. 7607)) that—

15 (i) are filed during the 60 days de-
16 scribed in paragraph (A); and

17 (ii) seek review of any aspect of the
18 rule.

19 **SEC. 5. LIMITATION ON EFFECT OF NONCOMPLIANCE.**

20 Notwithstanding any other provision of law, non-
21 compliance by a State with any proposed, modified, or
22 final rule described in section 3 or 4 applicable to any new,
23 modified, reconstructed, or existing source shall not con-
24 stitute a reason for imposing any highway sanction under

1 section 179(b)(1) of the Clean Air Act (42 U.S.C.
2 7509(b)(1)).

3 **SEC. 6. REPEAL OF EARLIER RULES AND GUIDELINES.**

4 The following rules shall be of no force or effect, and
5 shall be treated as though the rules had never been issued:

6 (1) The proposed rule—

7 (A) entitled “Standards of Performance
8 for Greenhouse Gas Emissions for New Sta-
9 tionary Sources: Electric Utility Generating
10 Units” (77 Fed. Reg. 22392 (April 13, 2012));
11 and

12 (B) withdrawn pursuant to the notice enti-
13 tled “Withdrawal of Proposed Standards of
14 Performance for Greenhouse Gas Emissions for
15 New Stationary Sources: Electric Utility Gener-
16 ating Units” (79 Fed. Reg. 1352 (January 8,
17 2014)).

18 (2) The proposed rule entitled “Standards of
19 Performance for Greenhouse Gas Emissions from
20 New Stationary Sources: Electric Utility Generating
21 Units” (79 Fed. Reg. 1430 (January 8, 2014)).

22 (3) The proposed rule entitled “Carbon Pollu-
23 tion Standards for Modified and Reconstructed Sta-
24 tionary Sources: Electric Utility Generating Units”
25 (79 Fed. Reg. 34960 (June 18, 2014)).

1 (4) With respect to the proposed rules described
 2 in paragraphs (1), (2), and (3), any successor or
 3 substantially similar proposed or final rule that—

4 (A) is issued prior to the date of enact-
 5 ment of this Act;

6 (B) is applicable to any new, modified, or
 7 reconstructed source that is a fossil fuel-fired
 8 electric utility generating unit; and

9 (C) does not meet the requirements under
 10 subsections (b) and (c) of section 3.

11 (5) Any proposed or final rule or guideline
 12 under section 111 of the Clean Air Act (42 U.S.C.
 13 7411) that—

14 (A) is issued prior to the date of enact-
 15 ment of this Act; and

16 (B) establishes any standard of perform-
 17 ance for emissions of any greenhouse gas from
 18 any modified source or reconstructed source
 19 that is a fossil fuel-fired electric utility gener-
 20 ating unit or apply to the emissions of any
 21 greenhouse gas from an existing source that is
 22 a fossil fuel-fired electric utility generating unit.

23 **SEC. 7. RESTATEMENT OF EXISTING LAW.**

24 Section 111(d) of the Clean Air Act (42 U.S.C.
 25 7411(d)) is amended—

1 (1) by striking “(d)(1) The Administrator” and
 2 inserting the following:

3 “(d) STANDARDS OF PERFORMANCE FOR EXISTING
 4 SOURCES; REMAINING USEFUL LIFE OF SOURCE.—

5 “(1) IN GENERAL.—The Administrator”;

6 (2) in paragraph (1)(A)(i), by striking “section
 7 108(a) or” and all that follows through “but” and
 8 insert “section 108(a) or emitted from a source cat-
 9 egory that is regulated under section 112, but”;

10 (3) by striking “(2) The Administrator” and in-
 11 serting the following:

12 “(2) AUTHORITY OF THE ADMINISTRATOR.—
 13 The Administrator”;

14 (4) in the undesignated matter at the end, by
 15 striking “In promulgating a standard” and inserting
 16 the following:

17 “(3) CONSIDERATIONS.—In promulgating a
 18 standard”; and

19 (5) by adding at the end the following:

20 “(4) PROHIBITION.—The Administrator shall
 21 not regulate as an existing source under this sub-
 22 section any source category regulated under section
 23 112.”.

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