



January 21, 2016

The Hon. Gina McCarthy  
Administrator, US Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
Mail Code 28221T  
Attn: Docket ID No. EPA-HQ-OAR-2015-0199  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Attn: Docket ID No. EPA-HQ-OAR-2015-0199**

**Re: Iowa Environmental Council Comments on EPA's Proposed 111(d) Federal Plan Requirements and Model Trading Rules**

Dear Administrator McCarthy:

The Iowa Environmental Council ("Council") appreciates the opportunity to comment on the Environmental Protection Agency's proposed 111(d) federal plan requirements and model trading rules to control carbon pollution from existing electric generating units.

As a 501(c)(3) nonprofit organization representing over 65 local, regional, and statewide organizations and hundreds of individual members, the Council works to promote public policy changes that provide a safe, healthy environment for all Iowans.

To that end, the Council strongly supports EPA's efforts to protect our nation's public and environmental health by reducing carbon pollution from existing power plants. The Council encourages EPA to finalize a federal plan/model trading rule as soon as possible to help guide and inform state planning efforts and encourage timely submittal of state plans.

The Council makes the following specific suggestions (detailed below), aimed at enhancing trading between states, promoting the growth of renewable energy and energy efficiency, and maximizing carbon reductions.

## I. FEDERAL PLAN STRUCTURE

**Approach (Rate vs. Mass):** EPA co-proposes two different approaches to a federal plan (i.e., a rate-based trading approach and a mass-based trading approach), but indicates it “intends to finalize a single approach for every state in which it promulgates a federal plan.”<sup>1</sup> EPA does, however, recognize “that it remains potentially possible to finalize a different approach to a federal plan in some circumstances [...]”<sup>2</sup>

In contemplating a federal plan approach, the Council supports EPA’s consideration of “the benefits of a broad trading program.”<sup>3</sup> The Council also urges EPA’s consideration of additional goals, including enhancing renewable energy and energy efficiency as compliance options and maximizing carbon pollution reductions to protect public health and the environment. To advance these goals, the Council supports retaining both approaches in the final rule, providing EPA with the option of implementing either a rate-based or mass-based federal plan based on the “unique circumstances of particular states.”<sup>4</sup>

Adopting a “single approach” may inhibit the aforementioned goals: For example, implementing a uniform approach for all states subject to a federal plan would not enable EPA to make certain that a sufficient number of states are participating in rate-based and mass-based trading programs, ensuring both trading programs are effective. By retaining the option of both mass-based and rate-based federal plans, EPA could help maximize trading by factoring in the availability of trading when implementing a federal plan in a particular state.

In addition, it is currently unclear whether a rate-based or mass-based approach would lead to earlier and/or larger emissions reductions. Retaining flexibility to implement both mass-based and rate-based plans will allow EPA to ensure energy, economic, environmental and public health goals are met when it implements federal plans.

EPA should retain the option of implementing either a rate or mass-based federal plan in the final rule<sup>5</sup> and should indicate the decision-making criteria by which it will assign a state a mass or rate-based federal plan.

**Relationship to Model Rules:** While EPA co-proposes two approaches to the federal plan, it indicates that “these proposed approaches also serve as two proposed model trading rules that states may adopt or tailor in designing their own plans.”<sup>6</sup>

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<sup>1</sup>80 FR 64968 (Oct. 23, 2015).

<sup>2</sup>*Id.* at 64970.

<sup>3</sup> *See id.* at 64968.

<sup>4</sup> *Id.* at 64970.

<sup>5</sup> *See id.* at 64970.

<sup>6</sup> *Id.* at 64970.

EPA states that the “regulatory text of each federal plan and corresponding model trading rule is identical,”<sup>7</sup> but goes on to note “exceptions within the text of the model rule” (e.g. the resources eligible for ERCs under the federal plan vary from the scope of resources eligible for ERCs under the model rule).<sup>8</sup> The agency further states that “EPA is not providing specific regulatory text that would, if finalized, actually promulgate a federal plan [...]”<sup>9</sup>

The Council supports EPA’s decision to propose federal plan approaches that also serve as model trading rules. However, discrepancies between the model rules and the federal plan approaches are confusing. Ideally, EPA should finalize regulatory text for both mass-based and rate-based model trading rules that is identical to mass-based and/or rate-based federal plans that may be promulgated at a later date (e.g., the same resources eligible for ERCs under the model rules should be eligible under federal plans, etc.). This is consistent with EPA’s prior rulemakings:

“The approach of proposing model trading rules that are identical in all key respects to federal plans that may be promulgated later is consistent with prior CAA section 111(d) and CAA section 110 rulemakings.”<sup>10</sup>

However, if EPA concludes that it will not finalize a federal plan that would be identical to the model trading rules, EPA should provide separate regulatory texts for the model trading rules and the federal plan. States can then adopt the model trading rules now and understand the likely differences between the model trading rules and the federal plan that EPA would implement. This approach would alleviate confusion about which components of the model rules are consistent with the federal plan and which components are not.

**Timing:** The proposed rule notes EPA’s intent to finalize both the rate-based and mass-based model trading rules in summer 2016.<sup>11</sup> EPA further indicates it “does not intend to finalize and implement the federal plan for any states prior to the agency’s action of determining a failure to submit a state plan or disapproving state plan.”<sup>12</sup>

As stated above, EPA should finalize regulatory text for model rules in summer 2016 that is identical to the regulatory text of federal plans that may be promulgated later. If the text of the federal plan and model trading rules continues to differ in the final rule (e.g. different clean energy resources remain eligible for credit in the proposed federal plan vs. the model rule), EPA should also finalize the federal plan framework as soon as summer 2016 and provide separate regulatory texts for the model trading rules and federal plan.

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<sup>7</sup> *Id.* at 64968 (I)(A).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 64975(II)(D).

<sup>10</sup> *Id.* at 664974.

<sup>11</sup> *Id.* at 64968.

<sup>12</sup> *Id.* at 64970.

If the EPA chooses to promulgate federal plans at a later date, the agency should also, at a minimum, indicate in the summer of 2016 whether: 1) EPA intends to promulgate a federal plan using a single approach for all states, and if so, 2) which approach EPA has selected for the federal plan (i.e., mass-based or rate-based). Again, the Council encourages EPA to retain the option of implementing both mass-based and rate-based federal plans.

## A. RATE-BASED APPROACH

**Subcategory Rate Goals:** The Council supports EPA’s proposed approach of applying emission standards under a rate-based federal plan as subcategorized rates to promote consistency and enhance trading.<sup>13</sup> EPA should finalize the rate-based model trading rule using the subcategory rate-based approach, requiring states that adopt the model rule to use subcategory rates in order for their plans to be “trading ready.”

**ERC Eligibility:** The proposed federal plan limits issuance of emission rate credits (ERCs) for renewable energy resources to wind, solar, geothermal, and hydropower (as well as new nuclear generation and capacity uprates at existing nuclear units).<sup>14</sup> Demand-side energy efficiency and combined heat and power are not eligible to earn ERCs under the proposed federal plan,<sup>15</sup> but would be eligible to earn ERCs under the proposed rate-based model trading rule.<sup>16</sup>

The Council supports broader eligibility for ERCs provided for in the model trading rules, (including the eligibility of energy efficiency and combined heat and power (CHP) to earn ERCs).

EPA should also permit a broad array of clean energy resources to earn ERCs under both a rate-based federal plan and model rule, including but not limited to wind, solar, CHP, and demand-side energy efficiency. At a minimum, RE resources eligible to earn ERCs under the rate-based federal plan and model rules should be the same as those eligible under state plans.<sup>17</sup>

As noted above, the Council also supports EPA adopting identical regulatory text for the federal plan and model trading rules. If EPA determines that it will not expand the eligible resources under the federal plan to include energy efficiency or CHP, EPA should adopt separate regulatory texts for the federal plan and model trading rules.

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<sup>13</sup> *Id.* at 64989 (IV)(A).

<sup>14</sup> *Id.* at 64994 (IV)(C)(3).

<sup>15</sup> *See id.*

<sup>16</sup> *See id.* at 64996(IV)(C)(3) and *see id.* at 65005 (IV)(D)(8)(g).

<sup>17</sup> *See* 60.16435(a)(4)(i)-(vi).

***Pre-Approval of ERCs:*** It is unclear in the proposed rule whether the “first step in the ERC issuance application process” must begin after an eligible resource (e.g., wind turbine or solar array) has been installed.<sup>18</sup> To enhance regulatory and market certainty, the final rule should provide a mechanism for determining pre-approval of ERC eligibility prior to a project’s construction, with the second step in the credit issuance application process occurring after the ERC resource is in operation (i.e., “generating”).<sup>19</sup>

## **B. MASS-BASED APPROACH**

***Allowance Set-Asides:*** The Council supports EPA’s proposed creation of allowance “set-asides” for the Clean Energy Incentive Program and for renewable energy (“RE”) projects. In the final rule, EPA should expand upon these incentives by:

- 1) Expanding the scope of the RE set-aside to also include energy efficiency (EE) and combined heat and power (CHP) projects, or
- 2) Creating separate CHP and EE set-asides.

The Council supports EPA’s proposed approach of placing allowances from retired EGUs into the RE set-aside for distribution to RE projects. Under the final rule, EPA should also allocate allowances from retired EGUs to RE/EE/CHP set-aside(s). We also encourage EPA to consider larger set-asides (e.g., larger than 5%) to achieve more deployment of cost-effective renewable energy and energy efficiency.

***Allowance Banking and Borrowing:*** The Council supports EPA’s decision to permit allowance banking for use in any future compliance period and urges the EPA to not permit borrowing across compliance periods.

## **II. CLEAN ENERGY INCENTIVE PROGRAM**

***Defining Low Income Communities:*** Definitions of “low income community” based on certain census tract concentrations of poverty may prohibit the implementation of EE projects in some rural areas of need. The Council encourages EPA to seek a definition of “low income community” that accounts for areas of rural poverty and which will not create barriers to project implementation in those communities.

***Timing/Eligibility:*** The Council supports EPA’s efforts to incentivize early implementation of renewable energy projects and energy efficiency in areas where there is the most need.

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<sup>18</sup> See 80 FR 64999(IV)(D)(6).

<sup>19</sup> *Id.* at 65000(D)(6).

Given tax incentive extensions for wind and solar (i.e., the production tax credit for wind and the investment tax credit for solar) recently passed by Congress and signed into law by President Obama,<sup>20</sup> increased development of wind and solar projects are likely to occur in the next several years. These extensions included a gradual phase-out of both the PTC and ITC, meaning that renewable project developers have an incentive to begin construction in 2016 for wind projects and by 2019 for solar projects. As such, the Council supports the EPA's proposed timeline to allow RE projects that "commence construction" after September 6, 2018 to be eligible to earn ERCs/allowances under the CEIP.<sup>21</sup> This time frame provides continuity in available incentives, with the ITC and PTC available in the next few years and the CEIP available as those incentives are phased out.

The Council does, however, support moving the eligibility date for low-income, EE projects from projects that "commence operations" in September 6, 2018 to projects that commence operations in September 6, 2016. There are no equivalent federal tax incentives driving the market for low income energy efficiency. These projects would provide multiple benefits to low income participants and society as a whole if installed earlier.

### III. CONCLUDING COMMENTS

The Council continues to support EPA's implementation of carbon emission guidelines for existing fossil fuel-fired electric generating units and in finalizing the federal plan and model rules and encourages EPA to continue in the same flexible and timely manner with which the agency finalized the EGs.

Retaining both rate and mass-based approaches in the final rule, utilizing identical regulatory text for the model rules and federal plan (if possible, per our comments above), and expanding ERC eligibility to a broader array of clean energy resources will help 1) provide predictability for both states and EGUs, 2) provide EPA with the flexibility to help to maximize carbon reductions and ensure a broad trading market for both ERCs and allowances, and 3) enhance the growth of energy efficiency and clean energy generation. Thank you for considering the above comments.

Sincerely,



Ralph Rosenberg  
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<sup>20</sup> See *Consolidated Appropriations Act, 2016*, H.R. 2029 ENR.

<sup>21</sup> 80 F.R. 65000 (IV)(C)(3).