



## KENTUCKIANS FOR THE COMMONWEALTH

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*Action for Justice*

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### **Comments on EPA's proposed Federal Plan and Model Rules for the Clean Power Plan Docket ID No. EPA-HQ-OAR-2015-0199**

**Kentuckians For The Commonwealth** is a social justice organization with 10,000 members working to advance a vision for just, healthy and sustainable communities. We are pleased to offer these comments on the EPA's proposed **Federal Implementation Plan(s) and Model Trading Rules**, key components of the Clean Power Plan (CPP).

KFTC believes actions to reduce the risks and harms of global climate change are essential, and must be done in ways that prioritize economic, environmental and racial justice and a just transition for affected workers and communities. The Clean Power Plan creates an important opportunity to do just that. The policy gives states broad flexibility to comply in ways that generate jobs, improve health, advance equity, and reflect the vision and concerns of frontline communities. Of course, with great flexibility comes the great responsibility for the EPA to get the rules, parameters, and enforcement right.

As Kentuckians, we have a strong interest in the EPA's proposals for implementing the Clean Power Plan. All of Kentucky's energy eggs are in one basket, with 92% of our electricity coming from coal. Our political and energy systems have long been dominated by the coal industry and coal-heavy electric utilities. Although Kentucky's electricity rates have historically been low, average bills are actually quite high due to the fact that we use and waste a lot of electricity. Kentucky's homes and businesses rank 6<sup>th</sup> in per capita electricity use, making our families and economy especially vulnerable as rates rise.

Kentucky also has some of the nation's highest rates of premature death, asthma, lung cancer and chronic obstructive pulmonary disease linked to power plant pollution. And we are among the states with the lowest median household income, highest poverty rates, and highest energy burdens for low-income and people of color households. The data on these health and economic indicators are especially troubling for African-Americans and Latinos and in Appalachian Kentucky.

Kentucky's required emissions reductions under the Clean Power Plan are among the steepest in the country. Our Commonwealth lags far behind most states in efforts to promote energy efficiency, renewable energy, and clean energy jobs. Leading Kentucky politicians promise not to comply with the CPP, a decision that will eventually trigger a Federal Implementation Plan to be imposed by the EPA on our utilities.

For all these reasons, Kentuckians have a lot at stake in how the Clean Power Plan is implemented. As former KFTC chairperson Teri Blanton said in her comments to the EPA at a hearing in Atlanta in 2014, "For the sake of my grandchildren, and all of our children and grandchildren, the EPA has got to get this one right. We have all got to get this one right."

## **Our perspective on the proposed Federal Implementation Plans (FIP) and Model Trading Rules**

KFTC embraces the EPA's Clean Power Plan as a critical opportunity to limit carbon emissions and transform our energy system in ways that can benefit Kentuckians and all Americans. At the same time, we believe the proposed FIP and Model Trading Rules are problematic in many ways. They run the risk of incentivizing a massive shift, already underway, from coal to natural gas in America's power sector rather than contributing to a clean energy transformation. They open the door for a range of harmful energy sources, from nuclear to waste incineration. They dramatically under-invest in energy efficiency. And they rely heavily on problematic cap-and-trade programs as a primary system of compliance and enforcement.

### **A cap-and-trade approach is not protective enough of the health and well-being of frontline communities.**

Kentuckians For The Commonwealth and our allies in many frontline communities have grave concerns about cap-and-trade programs – whether rate-based or mass-based – which allow big polluters to continue shifting the burden to nearby communities. These schemes are vulnerable to corruption, fraud, and leakage. They can incentivize false and deeply problematic approaches to emission reduction, by awarding credits for types of energy generation and pollution offsets that are far from clean. In addition, cap and trade programs can result in an unjust distribution of costs and benefits. In the worst cases, they are a way of transferring wealth from rate-payers in heavily polluted places to investors who create new clean energy jobs and better health conditions elsewhere.

### **The EPA's default position for distributing allowances under a mass-based FIP or model rule is not equitable or just.**

Under the cap and trade system embodied in the EPA's mass-based FIP and model rules, the agency proposes as a default position that allowances will be distributed – for free – to the affected polluters, based on their historic generation. Also, retired coal plants will continue to receive all of those allowances – for free – for up to 4 years after they cease operations. States may choose a different approach for distributing allowances, including auctioning all or some, or creating specific set-asides for public purposes. But many states are likely to follow the EPA's default position, especially in places where political power is heavily concentrated. In those cases, the biggest polluters are likely to reap windfall profits. And their ratepayers will face rate increases without benefitting from programs that could be funded through the sale or auction of allowances – benefits that include improved health, new jobs, energy savings, worker transition programs, and customer rebates.

That undesirable outcome is even more likely in non-compliant states. In those case where a FIP must be imposed, the EPA must be willing to act in the state's place. That means the EPA must conduct meaningful public engagement and allow that input to inform the agency's plan for how allowances will be auctioned or distributed to meet important public purposes, including equity, energy efficiency, and just transition.

### **The proposed FIP and model trading rules do not adequately prioritize environmental justice and meaningful public engagement with vulnerable communities.**

In the case that a Federal Implementation Plan is required for a non-compliant state, the EPA's proposed FIP does not adequately address environmental justice nor ensure that the agency will conduct meaningful

public engagement with all stakeholders, including low-income and people of color communities and workers and communities most affected by the transition to cleaner energy sources.

In its proposed FIP, the agency minimizes concerns about disproportionate health impacts that could occur under a cap-and-trade system, saying that CO<sub>2</sub> is well mixed in the atmosphere and does not have acute health impacts due to inhalation at ambient levels. We point out that the EPA touts reductions in non-CO<sub>2</sub> emissions as important co-benefits of the Clean Power Plan, yet it does not seem to recognize the harm to health caused by those same emissions from dirty plants that are allowed, and may be perversely incentivized, to keep operating under proposed trading rules.

In non-compliant states where a FIP is imposed, the EPA should commit to follow its own guidance to states and conduct a meaningful public engagement process and an Environmental Justice analysis. And the agency should then be prepared and willing to shape each Federal Implementation Plan based on public input received and the results of a specific EJ analysis in the affected states. The agency's actions in states where a FIP is required should include:

- Meaningful engagement with all stakeholders, including affected workers, low-income residents and people of color, and people living in communities most affected by power plant pollution;
- An Environmental Justice analysis to identify the communities most impacted by multiple air and water pollutants from the energy sector and major industries;
- Analysis of whether the implementation of a proposed Federal Plan will have adverse impacts on the health of already overburdened communities;
- A continuous monitoring system to understand baseline and future emissions of CO<sub>2</sub> and co-pollutants in environmental justice communities, and a commitment to use "adaptive management" to address situations where local emissions may increase.
- Close work with stakeholders to design a Federal Implementation Plan that achieves significant pollution reductions in overburdened communities before allowances or credits may be used as a compliance tool by those power plants.

### **The FIP proposals and model rules are shockingly weak on energy efficiency.**

Energy efficiency programs are a least cost strategy to reduce power plant emissions and create important community and economic benefits. Energy efficiency investments can help ratepayers and utilities save money immediately and minimize exposure to rising future energy costs. Residential efficiency programs can significantly improve families' economic and housing security, especially in low and moderate-income households. Commercial and industrial energy efficiency programs can help businesses and industries preserve or expand existing jobs by slashing their energy costs and risks. Finally, investments in energy efficiency are a powerful driver of new, good, local jobs, including jobs in construction, installation, and the manufacture of energy efficiency products.

It is therefore troubling to see so many barriers, hurdles and exclusions for energy efficiency in the proposed FIP and model rules. For example:

- The proposed rate-based FIP does not allow energy efficiency measures (including combined heat and power systems, home weatherization, and other demand-side management approaches) to generate Emissions Reduction Credits, outside of the Clean Energy Incentive Program. This is problematic, since the very states requiring a federal plan are also likely to have weak energy efficiency policies of their

own. By disqualifying energy efficiency as a compliance option under a rate-based FIP, the EPA is greatly increasing the harm to ratepayers in non-complying states.

- In contrast, the EPA’s rate-based model trading rule does allow energy efficiency, including combined heat and power systems, to generate Emissions Reduction Credits if a state’s method for measurement and verification is “credible, rigorous, transparent and complete.” The EPA should hold itself to the same standard when implementing a federal plan.
- Energy efficiency also plays a minimal role under the EPA’s mass-based FIP and model rule. Outside of the Clean Energy Incentive Program, there is not a clearly defined mechanism in the EPA’s mass-based world for directly resourcing or incentivizing CO2 reductions achieved through energy efficiency. We strongly urge the EPA to revise the mass-based FIP and mass-based model rule to prioritize and meaningfully incentivize energy efficiency. To that end:
  - We strongly urge the agency to maximize the share of the Clean Energy Incentive set-aside that is reserved for low-income energy efficiency projects.
  - We support allowing energy efficiency, including combined heat and power, to qualify for allowances from the 5% set-aside that is currently available only for renewable energy under the proposed mass-based FIP and model rule. If so, the size of the set-aside should be increased to reflect the expansion of its purpose.
  - However, we have concerns about any approach to encouraging energy efficiency that relies only on sets asides of allowances that may later be awarded to specific energy efficiency projects for tons of CO2 avoided. Such approaches (including the CEIP) do not result in a meaningful financial incentive for residential energy efficiency retrofits, especially in low-income communities.
  - Within the context of the EPA’s mass-based FIP and model rule, the best approach we can find for adequately and directly incentivizing energy efficiency is for states or the EPA (in the case of a FIP) to auction allowances and re-invest a significant portion of that revenue in energy efficiency, including overall programs for industrial, commercial and residential, and specific programs for low-income residential customers. The EPA should provide a model trading rule that illustrates how that may best be done by states, and the agency should be prepared and willing to impose such an approach in non-compliant states.

### **The EPA should strengthen renewable energy provisions.**

There are a number of ways the EPA’s treatment of renewable energy should be strengthened:

- We urge the agency to increase the size of the proposed 5% set-aside for renewable energy under the mass-based FIP and model rule, especially after the inclusion of energy efficiency.
- We urge the EPA to remove barriers to small-scale distributed renewable energy generation in all versions of the FIP and model plans by allowing estimates of carbon reductions for renewable energy systems below 10 kW in size.

- The EPA asks whether a portion of the renewable energy set-aside should be designated for renewable energy projects that benefit low-income communities. We support this action.
- The EPA asks if it should limit renewable energy allowances to renewable projects whose owners/operators are affected fossil fuel generators. In a word, “no.”
- The EPA’s mass-based FIP and model rules say renewable energy allowances can only be generated by in-state renewable projects. We urge the agency to keep the existing provision as a way of ensuring access to health and economic benefits under the Clean Power Plan for residents in all states.
- Under the EPA proposals, unclaimed allowances in the renewable energy pool will be re-distributed to the states affected fossil generators. It would be far better, we believe, for any remaining allowances from that pool to directly support a just transition for affected workers and communities, as well as low-income energy efficiency and renewable energy projects.

**The proposed FIP and model rules should do more to ensure that low-income communities benefit from energy efficiency and renewable energy.**

The EPA’s proposals acknowledge and begin to address the critical importance of expanding access to energy efficiency within low-income communities. However, there are many ways the FIP and model rules should be strengthened to ensure that all people, especially those living in low-income and predominantly people of color communities, benefit from and have access to energy efficiency and renewable energy.

KFTC has already submitted comments on the Clean Energy Incentive Program. In addition to those comments, we add the following points about the CEIP:

- Under the CEIP, Kentucky is eligible for the fourth largest share of CEIP allowances or credits. That’s appropriate, as we have a steep hill to climb, high energy use, and high poverty rates. The allowances or credits we are eligible for under the CEIP far exceed the level of low-income energy savings we currently achieve, raising hopes that the program may spur increased investment. Unfortunately the value of the financial incentive provided by the CEIP to any specific residential efficiency project is likely to be very small – and not large enough to incentivize much additional activity or investment.
- For example, one well-regarded whole-house retrofit program in our state achieves an average of 3.5 tons of avoided CO<sub>2</sub> per year per house, for an average cost of about \$7,000. Under the CEIP, one of their home retrofits might qualify for a total of 14 allowances over a two-year period. If those allowances later prove to be valued at \$4-10, the project would receive \$56-140 through the CEIP. It is hard to imagine that is sufficient to promote program expansion. In fact, it is nowhere near what is actually needed to support and incentivize a just energy transition in our communities.

The EPA also asks whether a portion of mass-based allowances designated for renewable energy generators should be set aside for renewable energy projects that benefit low-income communities. We support this action. But it is important for these projects to be more than just physically located in low-income communities. There should be a significant number of allowances set aside for renewable energy projects that directly benefit low-income communities because they 1) directly provide energy to low-income households and lower home energy costs to those residents, 2) are owned or leased by residents, non-profits, or small businesses in the geographically defined low-income community, or 3) are owned or

leased by a local government, school or public agency in a geographically defined low-income community.

**The proposed FIP and model trading rules should not incentivize false solutions, including biomass and waste incineration, to qualify for credits or allowances.**

- The EPA’s rate-based model plan allows a wide range of biomass and waste incineration projects to qualify for Emissions Reduction Credits. The agency leaves it up to states to define and determine what types of technologies and waste streams will be eligible, leaving the door open for states to incentivize many forms of energy generation that are harmful to our health and climate. The EPA should follow its own science and not allow biomass and waste incineration to qualify as non-emitting sources.
- The EPA’s rate-based FIP appropriately excludes most forms of biomass and waste incineration, but asks for comments on whether to approve a limited number of specific feed-stocks from waste agricultural and forestry products for which there is no market. We point out that there is a big difference between energy generation that may be considered “sustainable” and energy generation that should qualify as a “zero-emitting” source under the Clean Power Plan. The EPA should not allow biomass to qualify as a non-emitting, or even low-emitting, form of renewable energy within the FIP or model rules. Similarly, co-fired biomass should not be allowed to qualify under a rate-based or a mass-based compliance approach.

**The EPA should do more to support a just transition for workers and communities.**

- Under both versions of a FIP, the EPA includes a provision to ensure that the jobs created by investments in energy efficiency and renewable energy are good jobs. It requires renewable energy and energy efficiency projects to demonstrate that their workers received some form of third party certification, including an apprentice-based program or other training programs, to qualify for credits or allowances. We support these provisions.
- The EPA’s model rules encourage, but do not require, states to adopt similar policies. We believe all states should be directed to meet the same standard.
- Within the Clean Power Plan rule, the EPA acknowledges that some communities and workers will be adversely affected by as our nation transitions to cleaner energy sources. The agency encourages states to “engage with those communities, workers and their representatives” and “consider targeting economic development resources to communities that are likely to be negatively affected...in support of efforts to diversify their economies, attract new sources of investment, and create new jobs.” If a Federal Implementation Plan is imposed, we call on the EPA and other federal agencies to commit to doing its own process of meaningful engagement with affected workers and communities and to make significant additional investments in supporting a just transition.
- We call on the EPA to design the FIP and model rules in ways that more directly support worker transition for those affected by the shift away from coal. For example, a portion of allowances from retired coal plants could be directed to support dislocated workers, as could unused allowances from the three set-asides, or a new set-aside could be proposed.

## Conclusion

To date, key policy makers in our state have indicated that the Commonwealth of Kentucky does not intend to comply with the Clean Power Plan. There is no public planning process underway at this time. In fact, our legislature has adopted a policy that makes it essentially impossible for Kentucky to submit a compliant state plan.

The positions taken by too many of our elected leaders do not reflect the aspirations of most Kentuckians who are united in our desire to live and raise our families in healthy communities with an abundance of good jobs and affordable, energy efficient housing options.

In the absence of state leadership, Kentuckians For The Commonwealth is organizing our own public engagement and planning process. Together we will write our own plan, the Empower Kentucky plan, describing Kentucky's best options for creating jobs, improving health, and addressing equity while also meeting or exceeding the requirements of the Clean Power Plan. We welcome all Kentuckians, along with the EPA and state policy makers, to attend a series of public forums in April and a summit in early June to engage in important conversations about our energy and economic future. (More information about this project can be found at [www.empowerkentucky.org](http://www.empowerkentucky.org).)

Thank you for careful consideration of these comments, and for your commitment to getting this one right.

Sincerely,



Dana Beasley Brown, chairperson  
Kentuckians For The Commonwealth