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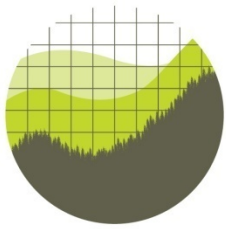
EPA's Clean Power Plan: A Primer



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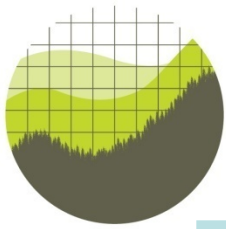
Legal Fellows

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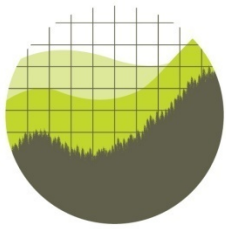
111(d): *The Basics*

- Authorizes EPA and states to create performance standards for existing sources of certain pollutants
- Only used six times since 1970
- Intended to serve a “gap-filling” role for pollutants that are *neither*
 - subject to a NAAQS under § 108, *nor*
 - regulated as “hazardous” under § 112
- Greenhouses gases like CO₂ fit this bill



111(d): *The Process*

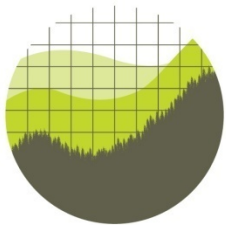
Step 0	EPA promulgates standards of performance for *new* sources in a category under § 111(b)
Step 1	EPA provides states with “emission guidelines” for existing sources in that category
Step 2	States design “a plan which establishes standards of performance” that are sufficient to achieve reductions consistent with EPA’s guidelines
Step 3	EPA determines whether state plan is “satisfactory”
Step 4	If state submits unsatisfactory plan (or no plan), EPA imposes federal plan



111(d) for Power Plants:

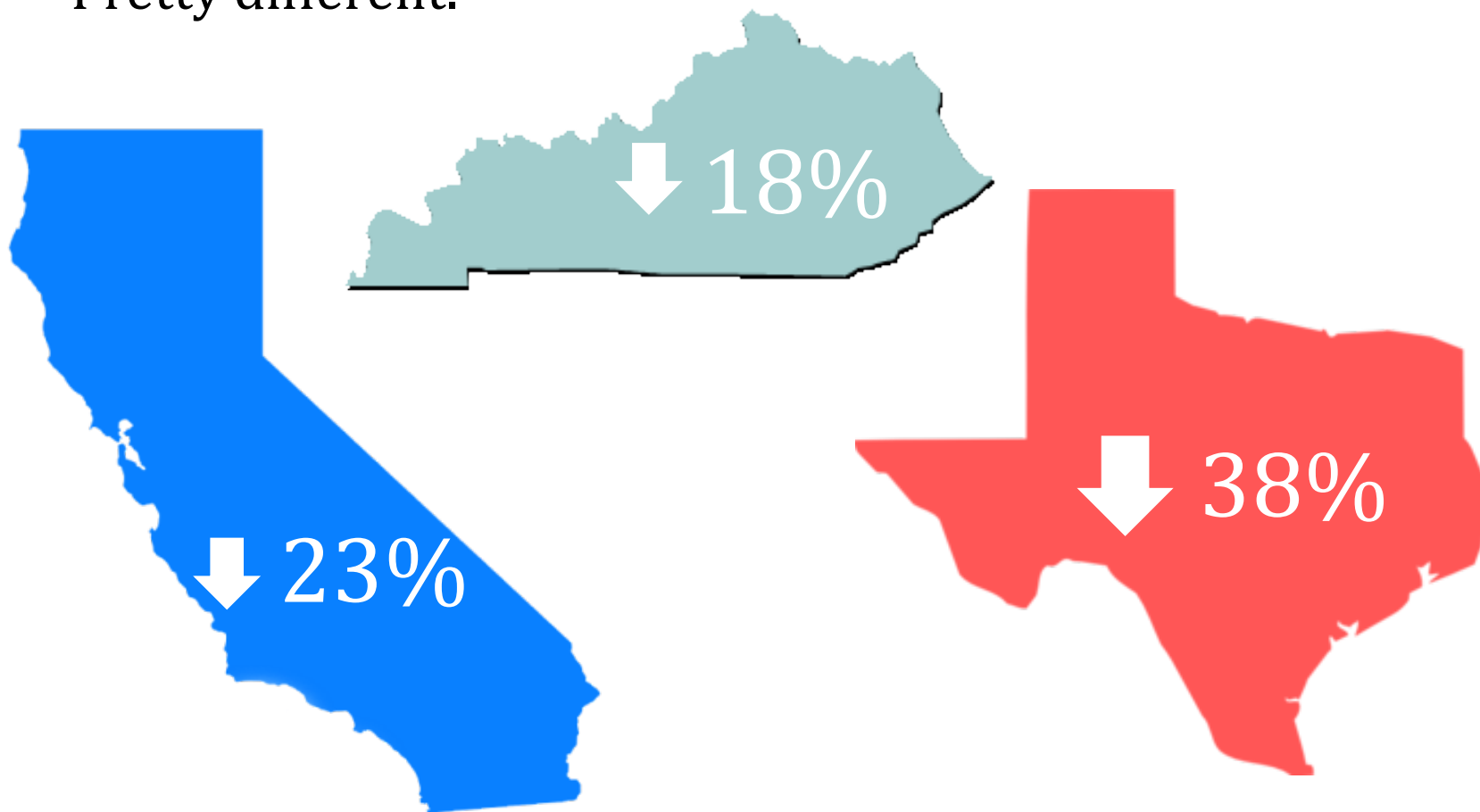
The Guidelines

- Nationally, projected to reduce power plants' total CO₂ emissions to **30% below 2005 levels by 2030** (18% below 2012 levels)
- **But** EPA's emission guidelines are neither mass-based nor nationally uniform
- Each state is assigned a different rate-based target
- How different are we talking?

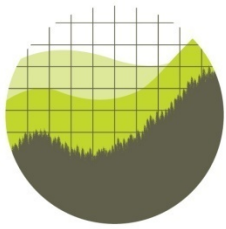


111(d) for Power Plants: *The Guidelines*

- Pretty different.



- Why the discrepancy?



111(d) for Power Plants:

The Best System of Emission Reduction

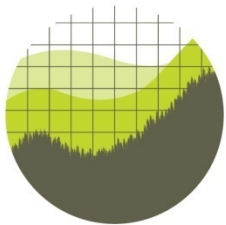
- Targets reflect the application of what EPA deems the “best system of emission reduction” that has been “adequately demonstrated”
- Best system for power plants consists of four “building blocks”

1 Increased efficiency at coal-fired plants

2 Increased use of existing gas-fired plants

3 Preservation of “at-risk” nuclear plants
Increased renewable generation

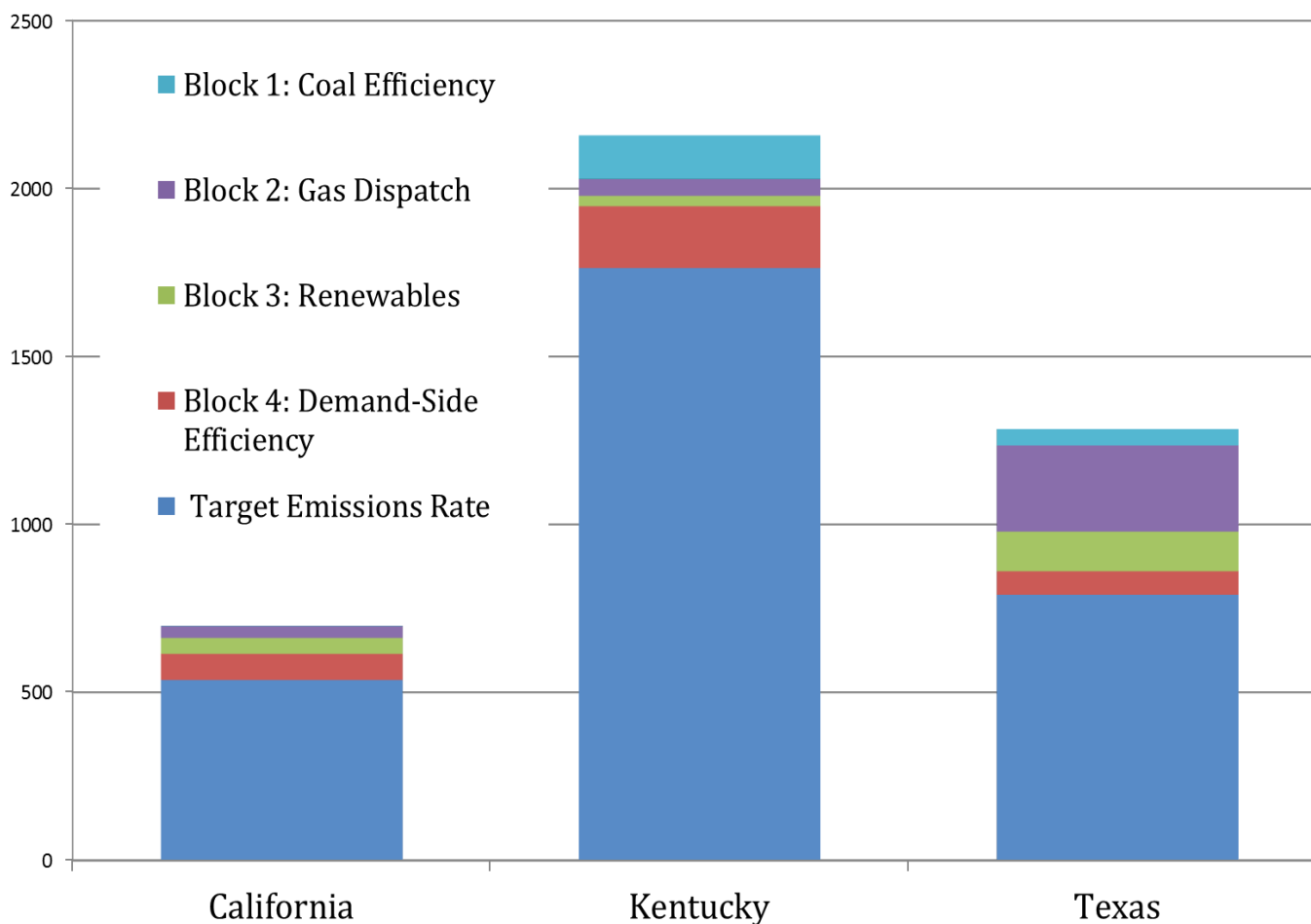
4 Increased demand-side energy savings

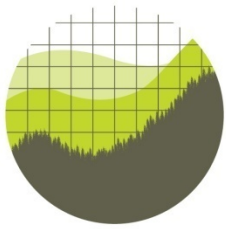


111(d) for Power Plants:

The Best System of Emission Reduction

- Application of building blocks yields very different results depending on state's existing energy mix





111(d) for Power Plants:

Costs & Benefits

Regional Compliance

Climate Benefits: \$30 billion

Health Co-Benefits: \$25 - 59 billion

Compliance Costs: \$7.3 billion

Net Benefits: \$48 – 82 billion

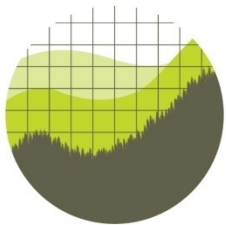
State Compliance

Climate Benefits: \$31 billion

Health Co-Benefits: \$27 - 62 billion

Compliance Costs: \$8.8 billion

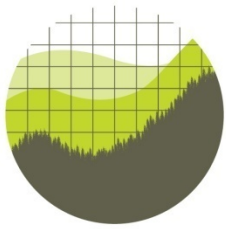
Net Benefits: \$49 – 84 billion



111(d) for Power Plants:

The Schedule

Dec. 1, 2014	Public submits comments on proposed guidelines
June 1, 2015	EPA finalizes guidelines
June 30, 2016	States submit plans*
June 30, 2017	EPA approves or rejects state plans
2020	States begin to make reductions
2030	States achieves full compliance

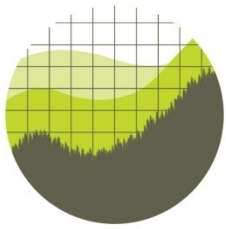


111(d) for Power Plants:

Legal Issues

- Some key legal issues likely to arise:
 - Drafting error in 1990 Amendments
 - Validity of EPA's interpretation of the “best system of emission reduction”
 - Use of the modified source rule as predicate

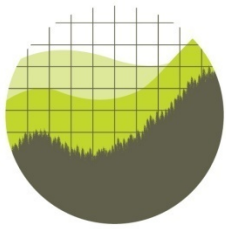




111(d) for Power Plants:

Drafting Error in 1990 Amendments

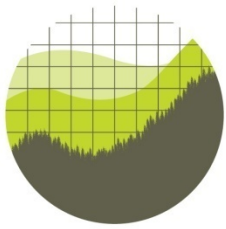
- Key sections for existing stationary sources:
 - 1) Section 108-110=criteria pollutants
 - 2) Section 112=Hazardous Air Pollutants
 - 3) Section 111(d)=Stationary Source Performance Standards
- In 1990, Congress revised the HAP program, including updating cross-references to other sections
 - Senate version: 111(d) applies to “any air pollutant ... not included on a **list** published under ... 112(b)”
 - House version: 111(d) applies to “any air pollutant ... not ... emitted from a **source category** which is regulated under Section 112”



111(d) for Power Plants:

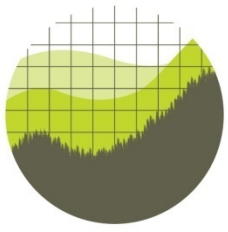
Interpretation of BSER

- States must submit to EPA a plan that establishes “standards of performance” for GHGs, which “reflect[] the degree of emission limitation achievable through the application of the **best system of emission reduction** which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated” (42 U.S.C. § 7411(a), (d))
- EPA offers two interpretations of the BSER:
 - Four building blocks, discussed above (primary)
 - Block 1+Reduction in EGU generation possible in plants based on Blocks 2-4 (alternative)



111(d) for Power Plants: *Modified Source Rule as Predicate*

- 111(d) applies only to pollutants “to which a standard of performance under this section would apply if such existing source were a new source” (42 U.S.C. § 7411(d)(1)(A)(ii))
- “New source” means “any stationary source, the construction or modification of which is commenced after the publication of regulations” (42 U.S.C. § 7411(a)(2))
- EPA has promulgated two proposed rules for “new sources” under 111(b):
 - A rule requiring the equivalent of CCS technology on new coal plants
 - A rule requiring reductions in CO₂ at modified or reconstructed plants



111(d) for Power Plants

Questions?