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## States backing off 'just say no' stances on Clean Power Plan

By [Annalee Grant](#)

In an effort to avoid having a plan imposed on his state by the U.S. EPA, West Virginia Gov. Earl Ray Tomblin has announced his state will develop a strategy to comply with the Clean Power Plan, despite the state's previous "just say no" stance.

West Virginia is the latest state to buck the [pleas](#) of Senate Majority Leader Mitch McConnell, R-Ky., for states to refuse to comply with the Clean Power Plan. The movement was referred to as "just say no" to the Clean Power Plan, and many states, including Indiana, Louisiana and Texas, signed on. The EPA, however, has authority under the Clean Air Act to impose a federal implementation plan, or FIP, on those states that do not comply. Many states, after digesting the rule and studying its impacts, have now begun to explore compliance options as the court battles over the rule get underway.

The Clean Power Plan establishes statewide carbon dioxide emissions standards for existing fossil fuel-fired electric generating units with the goal of cutting CO2 emissions by 32% — instead of 30% as initially proposed — as measured from a 2005 baseline by 2030.

ClearView Energy Partners in an Oct. 28 report noted that 15 of the 20 previous "just say no" states are now pursuing Clean Power Plan compliance. The EPA's FIP is less flexible than what a state could develop for itself because states will likely be required to use the building blocks laid out in the final Clean Power Plan, leaving other compliance options like energy efficiency programs or distributed renewable energy on the table. Most likely, the "just say no" states will appeal for more time to file their compliance plans to avoid making any investments before the rule is ruled on by the courts, ClearView said.

Other states that ClearView reported are now backing away from their "just say no" stance are Arizona, Arkansas, Louisiana, North Dakota, Nebraska, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and Wyoming, many of which have indicated they may seek more time to file their plans.

ClearView also predicted that even Republican presidential candidates that have pledged to overturn the rule would likely, if they take office, keep the rule in place. Even McConnell's home state of Kentucky announced in August following the release of the rule that it would explore developing a compliance plan to avoid being imposed one by the EPA, although ClearView did not include the state on the list of those who may seek more time to comply with the rule.

EPA Administrator Gina McCarthy said in September that both Democrat- and Republican- led states are most likely going to [submit plans](#). "The conversations with states continue to be incredibly encouraging," McCarthy said. "And that is regardless of what party we're talking about. I do know there [are] efforts for the Republicans to unite and not submit plans. I'm not seeing that reflected in the discussions with states at all."

## West Virginia's interim and final Clean Power Plan goals

RATE-BASED GOAL*	MASS-BASED GOAL**
Interim period 2022-2029	
1,534	58,083,089
Interim step 1 period 2022-2024	
1,671	62,557,024
Interim step 2 period 2025-2027	
1,500	56,762,771
Interim step 3 period 2028-2029	
1,380	53,352,666
Final goal 2030 and beyond	
1,305	51,325,342

Note that states may elect to set their own milestones for interim step periods 1, 2 and 3 as long as they meet the interim and final goals articulated in the emission guidelines. In its state plan, the state must define its interim step milestones and demonstrate how it will achieve these milestones, as well as the interim goal and final goal.

\* CO2 rate (lbs/Net MWh)

\*\* Annual average CO2 emissions in short tons.

Source: U.S. EPA

Credit: Cat Weeks

Regardless, McConnell has continued to fight the Clean Power Plan. The majority leader and many other lawmakers filed Oct. 27 a Congressional Review Act [resolution](#) seeking to undo the rule.

### West Virginia seeking public input

The West Virginia Department of Environmental Protection had already begun an initial feasibility study to [explore](#) the development of a plan, but Tomblin's comments reveal more about how the coal-heavy state might comply amid his continued hesitance to participate in the carbon emissions reduction plan. In 2014, West Virginia was the second biggest U.S. coal-producing state, mining just over 112 million tons, according to U.S. Energy Information Administration data.

"While I believe there are significant questions regarding the legality of the Clean Power Plan, these new rules have been put into place by the federal regulatory agency," Tomblin said in a statement. "Until a final legal decision has been made, we cannot afford to ignore them."

The state was the first to file a [lawsuit](#) against the Clean Power Plan after the rule appeared in the Federal Register Oct. 23, significant because the first petitioner to file a case becomes the name on a consolidated lawsuit. Many expect the Clean Power Plan to go all the way to the Supreme Court, and West Virginia Attorney General Patrick Morrisey has [pledged](#) to fight the rule tooth and nail.

Tomblin said submitting a state implementation plan will avoid having a compliance plan imposed on the state by the EPA. "If we can demonstrate that we put a lot of time and effort into developing a plan for West Virginia, we may have a better chance of lessening the harmful impacts these regulations could have on our miners, their families and communities," Tomblin said.

The governor's comments indicate the state will submit an initial plan by the September 2016 deadline and request an extension to September 2018 to fine tune the details. Tomblin also offered to work with the EPA should the state's offering not be up to par with the agency's expectations.

"If the EPA feels the state's plan does not meet its standards, we have at least developed a starting point that gives us the opportunity to work

toward a proposal that balances the environmental protection we all support with the economic growth and development we must maintain," he said.

Complicating West Virginia's Clean Power Plan compliance is new state legislation passed earlier this year that required the DEP to conduct a feasibility study of any compliance plan and the state legislature to approve that plan before it can be submitted to the EPA.