

Implementation Elements for a Trading-Ready Rate-Based Plan

Rate

MANY STATES AND STAKEHOLDERS have called on the U.S. Environmental Protection Agency (EPA) to enable states to adopt “trading-ready” 111(d) plans that allow power plant owners the option to use rate-based credits from other states for compliance purposes without the two states entering into a formal agreement. Interstate rate-based trading presents challenges that mass-based trading does not, including the question of whether trading between two states with different rate-based goals significantly changes the environmental

outcome, and whether differences in what is credited from state to state will deter states from accepting each others credits. Assuming the issues can be resolved, a state would be trading ready as long as the state meets a basic set of minimum compatibility requirements established by EPA. Any power plant owner in a trading-ready state could use rate-based credits from any other trading-ready state. The table below walks through the steps of establishing a trading-ready rate-based program, noting some challenges in bold text.

| ESTABLISHING THE TRADING-READY PROGRAM | | |
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| STEP 1 | <p>Apply the EPA-prescribed rate? Differentiate? Merge goals with another state?</p> | <p>EPA is expected to prescribe a rate-based state goal for each state. So long as a state enforces the state rate on all affected units (B-2) or all utilities (B-1 & B-3), the state will meet its goal with certainty. If a state gives different utilities or types of units different rates, this complicates things and makes attainment of the goal uncertain. In its proposal, EPA says states must average their goals together in order to trade with each other—a requirement that is an obstacle to multistate collaboration.</p> |
| STEP 2 | <p>How much flexibility? Regulate at the utility level or plant level?</p> | <p>Every state must regulate the “affected units” at either plant/unit-level or utility-level. Plant/unit level regulation obligates each plant/unit to emit at or below the average emission rate standard or to acquire enough credits to adjust its emission rate to meet the standard. Utility level regulation gives utilities limited flexibility to average the emission rate across only their fleet (B-1). It is possible for the state to regulate at the utility level and leave the trading decision to the utility. (B-3).</p> |
| STEP 3 | <p>Develop Crediting Mechanism</p> | <p>State decides what will be credited within the boundaries of what EPA says is creditable. State then establishes a “credits desk” that takes applications for credits. State adopts rules governing the verification and issuance of credits. EPA may provide guidance.</p> |
| STEP 4 | <p>Develop Rulemaking Language</p> | <p>Although specific rulemaking language for this type of rate-based approach may not exist, some components from the mass-based rules on the books could be adapted for this purpose. EPA may also provide language through its federal implementation plan. Legal review of the components of the draft rule should be undertaken to determine whether legislation would be needed.</p> |
| STEP 5 | <p>Establish Tracking System for Emissions, Generation and Credits</p> | <p>The tracking system is where emissions and generation information is stored for each affected unit, along with an account for holding emissions credits. These systems already exist for mass-based systems at both the federal level and in some states and could be adapted to rate-based approaches. A state could engage a vendor to create a new tracking system or it could adapt and use an existing system. EPA could also provide a tracking system for states to use on an optional basis.</p> |
| STEP 6 | <p>Require emissions Reporting</p> | <p>Affected units already report emissions and gross generation (not net generation) under 40 CFR Part 75. Net generation and averaged emission rate would need to be reported. This information can be reported to a state tracking system.</p> |
| STEP 7 | <p>Finalize Rulemaking</p> | <p>In states where legislation is needed or desired, the legislation must precede proposal and final issuance of the rule language.</p> |

* References to B-1, B-2 and B-3 are to the approaches outlined in appendices B-1, B-2 and B-3, respectively, in the paper, *Choosing a Policy Pathway for State 111(d) Plans to Meet State Objectives*, by Franz T. Litz and Jennifer Macedonia, April 2015. These trading-ready program elements are a companion to that paper.

| ADMINISTERING THE TRADING-READY PROGRAM | | |
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| STEP 8 | Administer Crediting Mechanism | <p>State would administer “credits desk” to:</p> <ul style="list-style-type: none"> ■ Receive applications from parties that have carried out creditable activities (EE, RE, etc.) ■ Review applications and determine if credit-worthy ■ Issue credits <ul style="list-style-type: none"> ■ Hear from other parties on whether credits should be issued ■ Defend any challenge of issuance of credits (including citizen suit challenges under CAA) ■ Maintain rules for crediting over time |
| STEP 9 | Tracking System | <p>To administer the tracking system:</p> <ul style="list-style-type: none"> ■ Maintain emissions & generation accounts for each affected unit; ■ Maintain credit accounts; <ul style="list-style-type: none"> ■ Deposit issued credits into credit accounts; and ■ If trading offered, allow for transfers between account holders. |
| STEP 10 | Compliance Assessment | <p>At the end of each compliance period (1 or more years) the state determines a weighted average emission rate for each unit, adjusting for any credits acquired or transferred (A-2 & A-3). Units that perform at an emission rate above the required level and have not acquired credits are deemed in non-compliance. For utility-focused approach, state reviews compliance filing against emissions reports (A-1).</p> |
| STEP 11 | Enforcement | <p>In the event that a unit does not meet its prescribed rate after taking credits into account (B-2 & B-3), or the utility cannot demonstrate it meets its rate (B-1), then the state must enforce. Credits could be required as part of enforcement in addition to penalties. Questions have been raised about enforcement for credits that are issued in error or for activities that are not carried out or for credits that are successfully challenged.</p> |
| ALLOWING INTERSTATE TRADING | | |
| STEP 12 | To Merge or Not to Merge? | <p>If EPA sticks to its proposal and requires states to merge their rate-based goals in order to have trading between states, then states will need to agree to merge goals and do so up front in a coordinated fashion. This presents political and logistical challenges, as states will arrive at decisions at different times and need on-ramps and off-ramps.</p> |
| STEP 13 | Accepting Credits from other States with Rate-Based Programs | <p>A state may be able to connect to other states by allowing its sources to use credits from another state for compliance purposes. No formal agreement should be necessary as long as EPA allows trading between states that do not merge their goals and meet minimum compatibility requirements (e.g., a common unit of credit or conversion appropriate to the state’s rate-based goal). States that begin with a simple utility rate approach (B-1) could later allow plants to participate in trading (B-2 & B-3) across states.</p> |
| STEP 14 | Tracking Across States | <p>Ideally, to move credits from one state to another, both states would use the same tracking system, but separate tracking systems can work. In the case of a multistate utility, it is conceivable that transfers of credits could be “tracked” manually through utility reports, but affected states would have to coordinate to make sure credits are not used twice. EPA’s proposal calls for multistate plans where states file jointly. Many states and stakeholders have requested that EPA allow states to file separate plans that include multistate coordination.</p> |



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