

There has (rightly) been a lot of attention paid to the EPA proposed rule controlling greenhouse gas emissions from powerplants pursuant to Clean Air Act Section 111(d). All of that analysis – how effective the rule will be; how it will be implemented; the prospects for successful legal challenges to the rule – is important.

But I want to take a longer view. What is the long-term future of this rule, assuming it survives the inevitable legal challenges?

This is just a regulation, not an act of Congress. It was drafted by the EPA without any approval from the current Congress; it can equally be rescinded or revised by EPA without any Congressional action or approval as well.

Of course, rescission of this rule might be difficult for a future EPA because of the findings that greenhouse gases are pollutants under the Clean Air Act, which [mandates a range of regulatory actions](#) by the agency. But that doesn't mean that a future Administrator of the EPA couldn't try to water them down significantly, or even make them effectively meaningless.

Those changes won't happen while Obama is in the White House, but he is only there through January 2017, and this rule probably won't go final until sometime in 2015 or 2016, with legal challenges to follow. What about the next President in 2016? Could he or she rescind or gut these rules? Or a new President in 2020, or 2024? Rules are more fragile, easier to change than laws in our constitutional system.

To answer these questions, there are some important parallels to draw with Obamacare. Dan has already (facetiously) [talked about other similarities](#), but here I want to focus on real similarities in the political world.

The Affordable Care Act has had numerous brushes with death – repeated efforts by Congressional Republicans to kill it, the Presidential election in 2012, and a Supreme Court case. But it has survived them all. And now it looks likely that [Republicans are starting to resign themselves to not repealing the ACA](#), but changing it, adapting it, and working with it. Why?

Simply put, millions of Americans now depend on the ACA for their health insurance. It would be political suicide to strip those Americans of their health insurance. The

law has created facts on the ground that make it unrepealable – or at least any repeal must protect those Americans currently covered by the law, which means any replacement probably has to do [many of the things the ACA does, including the dreaded mandate](#).

What are the parallels with EPA's Clean Air Act rules?

The longer these rules are in place and operational, the more they will create their own facts on the ground. The more those facts on the ground are in place, the harder politically it will be to repeal the rule.

If utilities have invested in switching power plants from coal to natural gas, if they have invested in renewable energy to reduce emissions, if they have invested in energy efficiency upgrades for their ratepayers, then they will have invested based on these new rules. Utilities that have invested based on these rules will not be happy if the rules are changed back, and these investments are made less valuable. (It's noteworthy that many utilities are apparently [not so worried](#) about the rules as currently proposed.)

Moreover, many states may choose to allow “offsets” in which utilities can purchase credits to cover their emissions if they support activities by other parties that reduce emissions. (It's apparently a complicated question whether and how much the proposed rule allows offsets.) See [this story](#) about a Wisconsin dairy that invested in technology to capture methane from cow manure in order to take advantage of offsets from the California cap and trade system. People who invest based on the potential from income from offsets will not be happy if the rules change.

As another example of this dynamic, consider policies that established “net metering” for residential solar power installations – residences that produce solar power get paid by the utility for producing power for the utility's electric grid. Utilities have recently tried to raise the fees for net metering. Even in conservative states that should be more hostile to renewable energy – [like Arizona](#) – these efforts have run into a political backlash because tens of thousands of homeowners have come to rely on the cheap electricity they get as a result of their solar panels. In fact, [Tea Party activists have come to the defense of homeowners and opposed these utility efforts](#). (Even though the utilities are supported by some leading conservative activist groups.)

And this is the story that I think [explains](#) the state-level success of climate change legislation in California, and the landslide defeat at the ballotbox in 2010 of efforts to repeal that legislation. Many years of legislation in California supporting renewable energy and energy efficiency created an interest group landscape that made it very difficult to repeal climate change legislation, even in the middle of the Great Recession.

So just as Obamacare's fate in many ways turned on the results of the 2012 election, the most important determinant for the future of this rule is the next Presidential election. If the President elected in 2016 is supportive of this rule, it will survive for at least another four years. Investments by many powerful political actors will be made in reliance on that rule. And it will be that much harder to eliminate it.