



Information Alert

State-Federal Relations Division

EPA Unveils its Affordable Clean Energy Rule, Replacing the Clean Power Plan

On Aug. 21, the Environmental Protection Agency (EPA) [proposed](#) the Affordable Clean Energy (ACE) rule to replace the 2015 Clean Power Plan (CPP), which the agency has separately [proposed](#) to repeal. The ACE rule would establish emission guidelines for states to develop plans to address greenhouse gas (GHG) emissions from existing coal-fired power plants, without setting individual state GHG emissions limits.

[Unveiled](#) in 2015, the CPP aimed to reduce GHG emissions by requiring states to develop plans to meet GHG emission limits established by the rule, and if not, the EPA would impose a federal implementation plan. Ten days after the rule was issued, 27 states petitioned the U.S. Court of Appeals of the District of Columbia for an emergency stay, while 18 states indicated their support for the rule. The D.C. Circuit [denied](#) the stay, but in February 2016, the U.S. Supreme Court stayed implementation of the rule pending judicial review by the D.C. Circuit.

While the D.C. Circuit heard oral arguments in September 2016, the court has continued to grant the Trump administration's request to defer further judicial proceedings following an [executive order](#) in March 2017 directing the EPA to review, revise or potentially rescind the rule. In October 2017, the EPA [proposed](#) to repeal the CPP, as it "exceeds EPA's statutory authority," and is "inconsistent with the Clean Air Act (CAA)." For more information on the CPP, or the withdrawal, read NCSL's webpage [here](#), and archived info alerts [here](#).

Similar to the CPP, ACE would provide states the flexibility to determine how to reduce GHG emissions. The CPP allowed states to meet their goals by implementing measures that occur both within and outside the fence line of their existing electrical power generation units, such as by adding more "renewable" energy or establishing emissions trading schemes (outside the fence) or improving a plant's heat-rate efficiency (inside).

ACE, however, proposes that states only be allowed to require actions within the fence line and supplies states with a list of "candidate technologies" to choose from to improve a plant's heat-rate efficiency. States would have three years from when ACE is finalized to submit a state action plan, with the EPA then providing one year to act on a state's submission. If the EPA were to disapprove a state plan, or if a state did not submit a plan, the EPA would have two years to issue a federal plan for that state.

As the ACE proposal would not, if finalized, impose a total allowable GHG limit for states, the EPA's range of benefit and cost estimates [vary](#) significantly. The EPA acknowledges in its own [regulatory analysis](#) that "as compared to the standards of performance that it replaces (i.e., the 2015 Clean Power Plan), implementing the proposed rule is expected to increase emissions of carbon dioxide (CO₂) and increase the level of emissions of certain pollutants in the atmosphere that adversely affect human health. These emissions include directly emitted fine particles sized 2.5 microns and smaller (PM_{2.5}), sulfur dioxide (SO₂), nitrogen dioxide (NO_x) and mercury (Hg). SO₂ and NO_x are each a precursor to ambient PM_{2.5}, and NO_x emissions are also a precursor in the formation of ambient ground-level ozone." However, the EPA also [found](#) that "the proposal will reduce CO₂ emissions from their current level."

In addition to these changes, the proposal would revise the EPA's [New Source Review \(NSR\) permitting program](#), a Clean Air Act program that requires industrial facilities to install modern pollution control equipment when constructed, or when making a change that would increase emissions significantly. The ACE proposal would allow states the option to only require a NSR when a physical or operational change made to an existing generating unit increases a unit's hourly rate of pollutant emissions. Such a change would mean that "fewer sources will trigger major NSR under an hourly emissions increase," [according to the EPA](#).

For any questions or concerns on the ACE proposed rule, or the withdrawal of the 2015 CPP, please contact NCSL staff [Kristen Hildreth](#) or [Ben Husch](#).

Key Documents

- [Affordable Clean Energy Proposed Rule](#)
- [Proposed Rule Regulatory Impact Analysis \(RIA\)](#)
- EPA Fact Sheets
 - [Overview of the proposed ACE rule](#)
 - [Costs and benefits](#)
 - [Permitting improvements under NSR program](#)
 - [Side-by-side comparison of ACE and CPP](#)