



Information Alert

State-Federal Relations Division

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

On June 19, the Environmental Protection Agency (EPA) [released](#) the Affordable Clean Energy (ACE) final rule, replacing the 2015 Clean Power Plan (CPP). The ACE final rule establishes emission guidelines for states to use when developing plans to address greenhouse gas (GHG) emissions from coal-fired electric generating units (EGUs), without setting individual state GHG emission limits, which was a primary component of CPP.

[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 current administration's request to defer further judicial proceedings following an [executive order](#) in March 2017 directing the EPA to review, revise or potentially rescind CPP. 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)." The administration subsequently released its proposed ACE rule in August 2018. For more information on the CPP, the withdrawal, or the proposed ACE rule 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 six "candidate technologies" to choose from to improve a plant's heat-rate efficiency, which EPA determined to be the best system of emissions reduction (BSER) for CO₂ reduction from coal-fired EGUs. Those technologies are: neural network/intelligent sootblowers, boiler feed pumps, air heater and duct leakage control, variable frequency drives, blade path upgrades, and to redesign, or replace the economizer.

ACE recognizes that “the states’ role is to develop plans that establish unit-specific standards of performance that reflect the application of the BSER,” and as such directs states to decide whether and how to require each coal plant within their border to install efficiency upgrades to reduce their emissions. It encourages states to consider factors such as a plant's "remaining useful life.” States will have three years from when ACE goes into effect to submit a state action plan, with EPA having six months to determine the completeness of state plan submissions. Once a plan is deemed complete, EPA will have one year to act on a state’s submission and determine if it is approved or disapproved. If EPA were to disapprove a state plan, or if a state did not submit a plan, EPA would have two years to issue a federal plan for that state.

As the final rule does not impose a total allowable GHG limit for states, EPA’s range of benefit and cost estimates vary. However, EPA Administrator Andrew Wheeler stated that the agency anticipates “U.S. power sector CO2 emissions [to] fall by as much as 35 percent below 2005 levels,” once ACE is fully implemented. The agency anticipates that ACE will reduce emissions of CO2, mercury, as well as “precursors for pollutants like fine particulate matter and ground-level ozone.”

Notably absent in the final rulemaking is a revision to 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. As part of the ACE proposed rule in August 2018, the administration proposed to 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. On a call EPA conducted after the final rule’s announcement, the agency hinted at addressing changes to the NSR permitting program in a later rulemaking.

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

Key Documents

- [Affordable Clean Energy Final Rule](#)
- [Regulatory Impact Analysis \(RIA\) for the Repeal of the Clean Power Plan, and the Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units](#)
- EPA Fact Sheets
 - [Overview of the Final ACE Rule](#)
 - [CO2 Emissions Trends](#)
 - [Overview of the RIA](#)
 - [Repeal of the Clean Power Plan](#)
 - [Revised CAA Section 111\(d\) Implementing Regulations](#)