

National Tribal Air Association
Affordable Clean Energy Rule
Webinar Presentation, October 9, 2018



Summary of Proposed ACE Rule

- Replacement of Clean Power Plan (CPP) with the Affordable Clean Energy (ACE) Rule
- New regulations on how EPA implements GHG emission guidelines for existing sources
- Revisions to New Source Review (NSR) program



CPP compared to ACE

CPP	ACE
Applies to coal-fired and natural gas electricity generating units (EGUs)	Only applies to coal-fired power plants
Set emission reduction goals per state	No emission reduction goals
Set national emission standards at 1300 tons per MWh	No national emission standard
Best System of Emission Reduction (BSER) included three building blocks 1) inside the fenceline emissions reductions through efficiencies, 2) shifting generation to lower-emitting natural gas, and 3) shifting generation to renewable energy and energy efficiency	Best System of Emission Reduction (BSER) is stated as Heat Rate Improvement (HRI), with “candidate technologies.” Carbon capture and co-firing with biomass are not included in the candidate technologies.
Required states to consult with indigenous and vulnerable communities	No requirement to consult
Estimated reduction of 30% GHG emissions compared to 2005 emissions levels, by achieving regulatory compliance; further reductions are market dependent	Estimated reduction of 1.5% GHG emissions compared to 2005 emissions levels by achieving HRI; estimated 34% reduction in GHG emissions through market forces
Measures economic benefits that account for social and health benefits of reductions	Measures economic benefits as related to compliance costs
Directly addresses effects of GHG reductions on climate change	No mention of climate change
Estimated to prevent 2,700 - 6,600 premature deaths and 140,000 - 150,000 asthma attacks in children	Estimated to cost up to 1,400 premature deaths per year, and up to 48,000 new cases of exacerbated asthma

New Regulations on Implementation of Emissions Guidelines

- EPA offers Guidance on Best System of Emission Reduction (BSER) candidate technologies focused on heat rate efficiency of individual units at coal-fired power plants.
- States select BSER option and establish a standard of performance for each unit.
- Implementation of State Implementation Plan in 6-8 years.
- No actual GHG emission reductions required.
- Applies to all emissions from source categories under 111(d) of the CAA.

Revisions to the New Source Review (NSR) Program

- Incentivizes HRI at sources.
- Proposes a new preliminary applicability test for determining whether a physical or operational change made to an EGU may be a “major modification” triggering New Source Review.
- Won’t trigger non-attainment NSR or Prevention of Significant Deterioration (PSD) permitting.
- Increases co-pollutant emissions like NO_x, SO₂, and PM

ACE Procedural Process and Timeline

EPA develops emissions guidance for HRI
1-BSER candidate technologies
2-BSER ranges for emissions impacts



States apply BSER at each source, and determine which BSER will be used. Can do a variance for each source as well.



States have 3 years to develop the SIP, which consists of the BSER + emissions standard + other compliance mechanisms



EPA has 1 year to review the SIP. No requirement for states to reduce emissions or meet a standard, nor a requirement for EPA to say a standard has not been met.



States have 2 years to achieve compliance.
Extensions can be requested at any stage of this process.

Recurring Themes of Proposed Rules

- Maximizes state flexibility
 - *Does not set a national standard*
- Reduces costs for industry
 - *Does not consider costs to society and public health*
- Reduces burden on state permitting agencies
 - *No actual emissions reductions required*

Web Tools to Understand Tribal Impacts

- NREL Tribal Energy Atlas
 - <https://maps.nrel.gov/tribal-energy-atlas>
- EPA AirNow Interactive
 - <https://gispub.epa.gov/airnow/>
- Intergovernmental Panel on Climate Change Special Report
 - <http://www.ipcc.ch/report/sr15/>
- NTAA STAR Website
 - <https://tribalairquality.org>



NTAA Policy Response Kit for the ACE Rule

- ACT Fact Sheet
- Tribal Template Letter
- Webinar Recording
- NTAA comment letter

NTAA Proposed Comment Letter

- Four Major Areas
 - Impacts on Tribes – no Tribal consultation
 - Specific areas of concerns
 - Change in EPA role
 - Administrative law issues

Lack of Tribal Consultation

- 1984 EPA Policy
- EO 13175 (2000)
- EPA Tribal Consultation Policy (2011)
- Tribal Treaty Rights Supplemental Policy (2015)
- Data to support potential Tribal impacts

Specific Areas of Concern

- Limitation on “Candidate Technologies”
 - Does not include CCS or co-firing – but will consider for “compliance options”
- NSR Program Changes
 - Allows BSER requirements to by-pass NSR permitting
- SIP Implementation Timelines
 - Extends submission and compliance requirements by over 3 years

Change in EPA Role

- No national emission standard
- Reduces EPA role to setting BSER and providing information

Administrative Law Issues

- Change in EPA role is inconsistent with current practice
- BSEER severely limits emission reduction options, contrary to current case law
- Lack of national standard is inconsistent with prior practice, with no substantive reasoning or rationale to support
- Failure to rely on Endangerment Finding inconsistent with the record

NTAA's Recommendations

- The EPA must conduct government-to-government consultation with the potentially impacted Tribes, as required under the EPA Policy and EO 13175.
- The EPA should require states to conduct stakeholder outreach to Tribal communities – and other vulnerable communities – as part of the state's implementation plan.
- The EPA should retain the national emission standard for GHG emissions adopted in the CPP, as is required under the CAA.
- The EPA should include carbon capture and sequestration and biomass co-firing as “candidate technologies” for achieving national emission standards.
- The EPA should either develop, or promote the development of, a GHG emission credit trading scheme for EGUs to achieve emission standards.