



**National Tribal Air Association's Fact Sheet on
EPA's Affordable Clean Energy (ACE) Proposal**

What Is ACE?

The Affordable Clean Energy (ACE) proposal is the EPA's proposed replacement for the Clean Power Plan (CPP), which established emission guidelines for states to follow in limiting carbon dioxide (CO₂) and other greenhouse gas (GHG) emissions. Under the Clean Air Act (CAA), the Supreme Court held that CO₂ is covered under the CAA. Supported by the EPA's 2009 Endangerment Finding, CO₂ is considered to be a pollutant that may reasonably be anticipated to endanger public health or welfare and therefore must be regulated by the EPA. (See NTAA's Fact Sheet on the CPP for more information by visiting <http://www7.nau.edu/itep/main/ntaa/PolicyResponseKits/PPRepeal/>)

While both the CPP and ACE provide flexibility for states to determine how to reduce GHG emissions from electric generating units (EGUs), there are many differences:

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 fence line 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 ¹	Estimated to cost up to 1,400 premature deaths per year, and up to 48,000 new cases of exacerbated asthma
---	---

This rulemaking also includes a proposed change in regulations affecting the New Source Review (NSR) program to incentivize HRI at existing power plants, lowering the likelihood of a source triggering non-attainment NSR or Prevention of Significant Deterioration (PSD) permitting even if their emissions are ultimately increased.

The ACE and NSR proposals change the way EPA has regulated existing sources since the 1970s, and will likely have a spillover effect to other source categories in the future. Because the new proposals do not set an emissions rate limit, there would no longer be a national target to keep the playing field level across states, which would create a race to the bottom for which state can relax pollution controls the most. This is not in the spirit of the Clean Air Act, which was designed to eliminate state boundaries (since air knows no borders) and to protect public health.

How Does It Affect My Tribe?

At least 200 Tribes are within 50 miles of a coal or natural gas EGU. If your Tribe has a natural gas power plant located on or near Tribal lands, then your Tribal community could be directly impacted because the source would no longer be an affected source under this rule, and your Tribal community could suffer from increased (or not reduced) emissions of GHGs and other particulate matters, including mercury. Furthermore, Tribes that would have benefitted from the incentives to develop and provide renewable energy or energy efficiency efforts will lose the opportunity for economic development for their communities. While EPA has identified several economic advantages of implementing the ACE as opposed to the CPP, these benefits are not likely to flow to Indian Tribes.² Moreover, these economic benefits fail to consider the social cost of carbon, which encompasses human and environmental health concerns.

EPA acknowledges in their Regulatory Impact Analysis (RIA) that compared to the CPP, the ACE could lead to up to 1,400 more premature deaths per year due to an increase in particulate matter generated by coal fired EGUs that are “linked to heart and lung disease, up to 15,000 new cases of upper respiratory problems, a rise in bronchitis,” 48,000 new cases of exacerbated asthma, and at least 21,000 new missed school days.³ As stated in the Status of Tribal Air Report (STAR),⁴ American Indian/Alaska Native Villagers (AI/AN) children are 60% more likely to have asthma as non-Hispanic white children, and AI/AN adults are 30% more likely to suffer from heart disease. Due to these higher rates of health effects from air pollution, the statistics that EPA cites in the RIA will also be proportionally higher for AI/AN.

Continued emissions of GHGs will also perpetuate the effects of climate change already being suffered by AI/AN. Because AI/AN are disproportionately affected by environmental degradation

¹ <https://www.nrdc.org/experts/starla-yeh/how-epa-admin-wheeler-cooks-books-dirty-power-scram>
² https://www.epa.gov/sites/production/files/2018-08/documents/ace_cost-benefit.pdf
³ <https://www.nytimes.com/2018/08/21/climate/epa-coal-pollution-deaths.html>
⁴ <http://www7.nau.edu/itep/main/ntaa/Resources/StatusTribalAir/>

and climate change, and have a lesser degree of control over emissions from EGUs, the health of these communities and their lands will continue to be negatively impacted.

Lastly, the EPA does not require the states to consult with key stakeholders – including indigenous and vulnerable communities – as the states develop their state implementation plans (SIPs) and emission standards. For Tribes that may be directly impacted by the new replacement rule, there may be insufficient consultation with Tribes to protect Tribal interests and to include Tribes in the development of standards for EGUs that are on or near Tribal lands.

Where Can I Find More Information and Submit Comments?

Read the full Proposed Rule here:

https://www.epa.gov/sites/production/files/2018-08/documents/frn-ace-proposal_8.20.2018.pdf .

Access EPA's Fact Sheet on the Proposed ACE Rule here:

https://www.epa.gov/sites/production/files/2018-08/documents/ace_overview_0.pdf

Find EPA's Costs and Benefits Fact Sheet here:

https://www.epa.gov/sites/production/files/2018-08/documents/ace_cost-benefit.pdf

Compare ACE and CPP here: https://www.epa.gov/sites/production/files/2018-08/documents/ace-cpp_side_by_side.pdf

Reference the full Regulator Impact Analysis here:

https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf

Read NRDC's analysis here: <https://www.nrdc.org/experts/starla-yeh/how-epa-admin-wheeler-cooks-books-dirty-power-scam>

The NTAA is developing a Policy Response Kit for Tribes, including a template letter and this fact sheet. It will be posted on www.ntaatribalair.org under the Policy Response Kits tab. The comment period on ACE will close on October 31, 2018, however NTAA submitted a request to EPA for a comment period extension. Comments on the proposal should be identified by Docket ID No. EPA-HQ-OAR-2017-0355, and may be submitted by one of the following methods:

- Online: Go to <https://www.regulations.gov> and follow the online instructions.
- Email: Comments may be sent to a-and-r-Docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2017-0355 in the subject line of the message.
- Fax: Fax your comments to: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR2017-0355.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID No. EPA-HQ-OAR-2017-0355, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.
- Hand/Courier Delivery: EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2017-0355. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.