

The Affordable Clean Energy Rule

Proposed Rule:
August 2018

Current Status:
Litigation

Final Rule:
July 2019

The Clean Power Plan (CPP)...

In 2013, EPA proposed guidelines for states to follow in developing greenhouse gas (GHG) emissions regulations. Under Clean Air Act Section 111(d), the rule established state-specific carbon dioxide (CO₂) emissions goals and guidelines for states to develop and implement emissions reduction plans for new and existing sources based on what the EPA defined as the “best system of emissions reduction” (BSER). EPA determined BSER based on two main considerations: (1) Reducing the emissions by improving the efficiency of operations, and (2) addressing mass emissions by varying their utilization levels (i.e. energy generation/consumption). The final rule established three general BSER “building blocks”: (1) heat rate improvements; (2) fuel source switching; and (3) generation source switching.

...The Rollback

In 2017, EPA began working on action to repeal and replace the CPP, asserting that the Obama-era rule exceeded EPA’s authority. The final replacement rule, the Affordable Clean Energy (ACE) rule, departed from the CPP in three major respects: (1) BSER is only based on onsite, heat-rate efficiency improvement; (2) ACE rule provides states with a list of “candidate technologies” that can be used to establish standards of performance and be incorporated into their state plans; and (3) ACE adjusts regulations under CAA section 111(d) to give states more time and flexibility to develop their state plans. The proposed ACE rule included reforms to the New Source Review (NSR) permitting program – ostensibly to allow plants greater flexibility to make compliance-related efficiency upgrades – but these will be pursued in a separate rulemaking.

What Happened?

One of the most common objections to the CPP from industry groups was that it exceeded EPA’s authority under the Clean Air Act. EPA cited this as the primary basis for rescinding the rule, claiming that the CPP read the BSER standard too broadly to advance its political agenda of requiring a shift from fossil-fuel-fired generation to renewable energy. In the ACE rule, EPA determined the only BSER for CO₂ emissions from coal-fired electric utility generating units (EGUs) is heat rate improvement (HRI). As such, efficiency improvements were the permissible BSER retained from the CPP. Although carbon capture and sequestration were under consideration as potential options for BSER, they were not included in the final rule. ACE established new implementing regulations for section 111(d), which expressly grants states a wide degree of flexibility in establishing source-based standards. EPA stated that the ACE rule only applies to existing sources and expressed that it will pursue reforms to the NSR program in subsequent rulemakings.

Total Substantive “Asks” Adopted by Group		
Group	Obama Rule	ANPRM
<u>ACC</u>	3	N/A
<u>API</u>	3	4
<u>UARG</u>	1	7
<u>NMA</u>	6	7
<u>ACCCE</u>	2	5
<u>CoC</u>	N/A	3
<u>NAM</u>	N/A	5



Unique
“Asks”
Adopted in
Final Rule

23



Percentage of
Unique “Asks”
Adopted in Final
Rule

79%