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

<table>
<thead>
<tr>
<th>CPP</th>
<th>ACE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applies to coal-fired and natural gas electricity generating units (EGUs)</td>
<td>Only applies to coal-fired power plants</td>
</tr>
<tr>
<td>Set emission reduction goals per state</td>
<td>No emission reduction goals</td>
</tr>
<tr>
<td>Set national emission standards at 1300 tons per MWh</td>
<td>No national emission standard</td>
</tr>
<tr>
<td>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</td>
<td>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.</td>
</tr>
<tr>
<td>Required states to consult with indigenous and vulnerable communities</td>
<td>No requirement to consult</td>
</tr>
<tr>
<td>Estimated reduction of 30% GHG emissions compared to 2005 emissions levels, by achieving regulatory compliance; further reductions are market dependent</td>
<td>Estimated reduction of 1.5% GHG emissions compared to 2005 emissions levels by achieving HRI; estimated 34% reduction in GHG emissions through market forces</td>
</tr>
<tr>
<td>Measures economic benefits that account for social and health benefits of reductions</td>
<td>Measures economic benefits as related to compliance costs</td>
</tr>
<tr>
<td>Directly addresses effects of GHG reductions on climate change</td>
<td>No mention of climate change</td>
</tr>
<tr>
<td>Estimated to prevent 2,700 - 6,600 premature deaths and 140,000 - 150,000 asthma attacks in children</td>
<td>Estimated to cost up to 1,400 premature deaths per year, and up to 48,000 new cases of exacerbated asthma</td>
</tr>
</tbody>
</table>
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 NOx, SO2, and PM
# ACE Procedural Process and Timeline

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
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<tbody>
<tr>
<td>EPA develops emissions guidance for HRI</td>
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</tr>
<tr>
<td>1-BSER candidate technologies</td>
<td>1-BSER candidate technologies</td>
</tr>
<tr>
<td>2-BSER ranges for emissions impacts</td>
<td>2-BSER ranges for emissions impacts</td>
</tr>
<tr>
<td>States apply BSER at each source, and determine which BSER will be</td>
<td>States apply BSER at each source, and determine which BSER will be used.</td>
</tr>
<tr>
<td>used. Can do a variance for each source as well.</td>
<td>States can do a variance for each source as well.</td>
</tr>
<tr>
<td>States have 3 years to develop the SIP, which consists of the BSER +</td>
<td>States have 3 years to develop the SIP, which consists of the BSER +</td>
</tr>
<tr>
<td>emissions standard + other compliance mechanisms</td>
<td>emissions standard + other compliance mechanisms</td>
</tr>
<tr>
<td>EPA has 1 year to review the SIP. No requirement for states to reduce</td>
<td>EPA has 1 year to review the SIP. No requirement for states to reduce</td>
</tr>
<tr>
<td>emissions or meet a standard, nor a requirement for EPA to say a</td>
<td>emissions or meet a standard, nor a requirement for EPA to say a standard</td>
</tr>
<tr>
<td>standard has not been met.</td>
<td>has not been met.</td>
</tr>
<tr>
<td>States have 2 years to achieve compliance.</td>
<td>States have 2 years to achieve compliance.</td>
</tr>
<tr>
<td>Extensions can be requested at any stage of this process.</td>
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</tr>
</tbody>
</table>
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](https://maps.nrel.gov/tribal-energy-atlas)

• EPA AirNow Interactive
  • [https://gispub.epa.gov/airnow/](https://gispub.epa.gov/airnow/)

• Intergovernmental Panel on Climate Change Special Report

• NTAA STAR Website
  • [https://tribalairquality.org](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
- BSER 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.