



EPA Streamlining Efforts Look To ACE The Clean Power Plan

August 24, 2018 | [Air Emissions](#), [Environmental](#)



Anthony C. Sullivan
Partner

Following through on one of President Trump's first executive orders that instructed [EPA to repeal and replace the CPP](#), the EPA issued a [new proposal](#) on August 21 to replace the 2015 Clean Power Plan, along with supporting changes to the New Source Review (NSR) program.

The administration's draft regulation to address emissions from existing electric generating units (EGUs):

- Restricts consideration of potential emission reductions to those that can be found "within the fence line" of regulated facilities.
- Leverages the Clean Air Act's delegation of authority to individual states.
- Proposes a new interpretation of basic requirements that determine whether these EGUs' updates are subject to more stringent emissions limitations under NSR.

The administration believes it can achieve GHG (and other emission) reductions comparable to those planned under the CPP more quickly and more affordably with its [replacement proposal – the Affordable Clean Energy \(ACE\) rule](#).

RELATED PRACTICE AREAS

Air Quality
Environmental
Environmental Crimes and Investigations

RELATED TOPICS

Affordable Clean Energy (ACE)
Air Emissions
Clean Air Act
Clean Power Plan
Environmental Protection Agency (EPA)

Affordable Clean Energy Proposed Rule

The EPA is proposing to replace the Clean Power Plan's requirements with revised emissions guidelines that help the development, submittal, and implementation of state plans to reduce greenhouse gas emission from certain EGUs. In the proposed emissions guidelines, among other things, the agency is proposing to determine that heat rate improvement (HRI) measures are the best system of emission reduction (BSER) for existing coal-fired EGUs.

To give the owners/operators of EGUs more latitude to make efficiency improvements consistent with the EPA's proposed BSER without triggering onerous and costly NSR permit requirements, [the EPA also proposes amending the NSR regulations](#) to include an hourly emissions increase test for modifications at EGUs.

- The alternative approaches for implementing the proposed hourly emissions test are the same as certain alternatives that EPA proposed in a [2007 Supplemental Notice of Proposed Rulemaking](#), which stalled following public comment.
- EPA is proposing two alternatives for an hourly emissions test based on maximum *achieved* emissions (e., what the unit has actually emitted in the past) and one alternative based on maximum *achievable* emissions (i.e., what the unit could have emitted when operating at its maximum capacity).

Under each of the proposed alternatives, NSR applicability for projects undertaken at an EGU would be determined using a four-step applicability process. (The second step is the ACE proposal's new preliminary applicability test; the other three steps are part of the existing NSR process.)

(1) Will the project constitute a physical change or change in the method of operation (applying the current major NSR regulations)?

(2) If so, will the change result in an increase in the hourly emissions rate of the EGU (based either on the maximum achieved hourly emissions rate (Alternatives 1 and 2 in the proposal) or maximum achievable hourly emissions rate (Alternative 3 in the proposal)?

(3) If there is an increase in the unit's hourly emissions rate, is the project also predicted to result in a significant increase in annual emissions (applying the current major NSR regulations)?

(4) If the project is predicted to result in a significant increase in annual emissions, will there also be a significant *net* increase in annual emissions at the major stationary source (applying the current major NSR regulations)?

Proposed ACE Implementation and Review

These proposed changes, if finalized, could be tools available to individual states in implementing existing source performance standards for units that, if they were new, would be regulated under the Clean Air Act's New Source Performance Standards (i.e., CAA § 111(d) plans). States would have the option (but would not be required) to adopt the hourly test ultimately promulgated as part of the NSR provisions in their plans.

EPA will take comments on the proposal for 60 days after publication in the

Federal Register and will hold a public meeting. Further information is available [from EPA](#), including a [News Release](#); [Fact Sheet](#), and the [Proposed Rule](#).