

# ARKANSAS

## ENERGY & ENVIRONMENT

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July 31, 2019

The Honorable Cecile Bledsoe, Co-Chair  
and

The Honorable Jeff Wardlaw, Co-Chair  
Arkansas Legislative Council  
500 Woodlane St.  
Little Rock, AR 72201

Dear Senator Bledsoe and Representative Wardlaw:

Pursuant to Ark. Code Ann. § 8-3-209(a), the Arkansas Department of Energy and Environment, Division of Environmental Quality (ADEQ or “the Division”), requests a waiver of review and approval procedures for state emissions plans that are intended to meet requirements under § 111(d) of the Clean Air Act. Act 934 of 2019 establishes a process for waiver of the review and approval procedures under to Ark. Code Ann. §§ 8-3-203, 205, 206, 207. Such a waiver may be requested if the Division determines that the final federal emission guidelines do not require any one or more of the following:

1. Shifting generation from electric generating units powered by one fuel type to another fuel type;
2. Closing any fossil fuel-fired electric generating unit; or
3. Imposing a statewide greenhouse gas goal or other statewide greenhouse gas emissions limitation.

On July 8, 2019, the U.S. Environmental Protection Agency (EPA) promulgated “Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,” also known as the “Affordable Clean Energy Rule” or ACE, and repealed the previous emission guidelines known as the Clean Power Plan.<sup>1</sup> ADEQ has reviewed this rule and determined that the emission guidelines do not require any of the three items listed above. See 84 FR 32520 at 32580–81, which details the relevant requirements for state plans. These requirements will be codified at 40 C.F.R. §§ 60.5735a, 60.5740a, 60.5745a, 60.5750a, and 60.5755a. Because ADEQ has determined that the requirements for requesting a waiver pursuant to Ark. Code Ann. § 8-3-209 are met, ADEQ hereby requests that this matter be placed on the agenda for the September

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<sup>1</sup> <https://www.federalregister.gov/documents/2019/07/08/2019-13507/repeal-of-the-clean-power-plan-emission-guidelines-for-greenhouse-gas-emissions-from-existing>

20, 2019 Arkansas Legislative Council meeting to hold a vote on whether to grant a waiver for the purposes of the state plan that the Division will develop to comply with ACE.

Please let Stuart Spencer, Associate Director of the Office of Air Quality, know if you have any questions or need additional information regarding this request.

Sincerely,



Becky W. Keogh  
Secretary of the Arkansas Department of Energy & Environment  
Director of the Division of Environmental Quality

CC: Vicki Freeburn  
Bureau of Legislative Research  
One Capitol Mall, 5th Floor  
Little Rock, AR 72201

Michael Grappe  
Chief Program Officer  
[grappem@adeq.state.ar.us](mailto:grappem@adeq.state.ar.us)

Stuart Spencer  
Associate Director, Office of Air Quality  
[spencer@adeq.state.ar.us](mailto:spencer@adeq.state.ar.us)

## Executive Summary

The Department of Environmental Quality (DEQ) is seeking a legislative waiver of certain procedural requirements in order to facilitate the timely development of state emissions plans under section 111(d) of the Clean Air Act as a result of the Environmental Protection Agency's (EPA) recent promulgation of the Affordable Clean Energy (ACE) Rule, which regulates emissions of carbon dioxide from coal-fired power plants. The ACE Rule meets the waiver requirements by not requiring the (1) shifting of electricity generation from one source to another, (2) the closure of fossil fuel-fired power plants; or (3) the imposition of a statewide carbon dioxide limitation. If granted, the waiver would allow state plan development to proceed without additional reporting and approval requirements while adhering to the typical legislative review requirements.

## Background

Ark Code Ann. §§ 8-3-201–208 set procedures for approval of state emissions plans under section 111(d) of the Clean Air Act. These procedures were enacted in response to the previous presidential administration's Clean Power Plan, which was stayed by the Supreme Court and ultimately withdrawn by EPA on July 8, 2019. At the time of its issuance, the Clean Power Plan provoked widespread concern regarding its potential impact on “rates, reliability, employment, and manufacturing.”<sup>1</sup>

Act 934 of 2019 created a process to allow DEQ to seek a waiver from the Legislative Council of certain emissions plan studies and procedures<sup>2</sup> if the final emissions guidelines under section 111(d) do not require any one of the following: (1) the shifting of generation from one fuel type to another; (2) the closing of any fossil fuel-fired electric generating units; or (3) imposing statewide greenhouse gas goal or other statewide greenhouse gas limitation.

On July 8, 2019 EPA finalized the ACE Rule, which requires states to promulgate state plans to address carbon dioxide emissions from existing coal-fired power plants. After extensive review of the final rule, DEQ has concluded that the ACE Rule does not require any of the listed items.<sup>3</sup> The ACE Rule requires consideration of certain candidate technologies that would improve the efficiency of coal fired power plants within the fenceline. The ACE Rule explicitly prohibits any form of trading among power plants or any cap on carbon dioxide itself. In addition, the rule does not explicitly require the closure of any power plant or curtailment of any power plant's operations. As a result of this condition being met, DEQ submitted a request for waiver.

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<sup>1</sup> Ark. Code Ann. § 8-3-201

<sup>2</sup> Ark. Code Ann. §§ 8-3-203 and 8-3-205–8-3-207

<sup>3</sup> See EPA's fact sheet on the ACE Rule attached.

**FACT SHEET**  
**The Affordable Clean Energy Rule (ACE)**

**ACTION**

- On Wednesday, June 19, 2019, EPA issued the Affordable Clean Energy rule (ACE), an effort to provide existing coal-fired electric utility generating units, or EGUs, with achievable and realistic standards for reducing greenhouse gas (GHG) emissions.
- This action was finalized in conjunction with two related, but separate and distinct rulemakings:
  1. The repeal of the Clean Power Plan (CPP).
  2. Revised implementing regulations for ACE, ongoing emission guidelines, and all future emission guidelines for existing sources issued under the authority of Clean Air Act (CAA) section 111(d).
- ACE provides states with new emission guidelines that will inform the state's development of standards of performance to reduce carbon dioxide (CO<sub>2</sub>) emissions from existing coal-fired EGUs — consistent with EPA's role as defined in the CAA.

**PROMULGATING ACE AND ESTABLISHING EMISSION GUIDELINES**

- ACE establishes heat rate improvement (HRI), or efficiency improvement, as the best system of emissions reduction (BSER) for CO<sub>2</sub> from coal-fired EGUs.
  - Heat rate is a measure of the amount of energy required to generate a unit of electricity.
- By employing a broad range of HRI technologies and techniques, EGUs can more efficiently generate electricity with less carbon intensity.
  - An improvement to heat rate results in a reduction in the emission rate of an EGU (in terms of CO<sub>2</sub> emissions per unit of electricity produced).
- The BSER is the best technology or other measure that has been adequately demonstrated to improve emissions performance for a specific industry or process (a "source category"). In determining the BSER, EPA considers technical feasibility, cost, non-air quality health and environmental impacts, and energy requirements.
- The BSER must be applicable to, at, and on the premises of an affected facility.
- ACE lists six HRI "candidate technologies," as well as additional operating and maintenance practices.
- The six candidate technologies are:
  - Neural Network/Intelligent Sootblowers
  - Boiler Feed Pumps
  - Air Heater and Duct Leakage Control
  - Variable Frequency Drives
  - Blade Path Upgrade (Steam Turbine)
  - Redesign/Replace Economizer
- For each candidate technology, EPA has provided information regarding the degree of emission limitation achievable through application of the BSER as ranges of expected improvement and costs.

- States will establish unit-specific “standards of performance” that reflect the emission limitation achievable through application of the BSER technologies.
- These technologies, equipment upgrades, and best operating and maintenance practices were determined to comprise the BSER because they can be applied broadly and are expected to provide significant HRI without limitations due to geography, fuel type, etc.
- ACE recognizes that EPA’s statutory role is to determine the BSER and the degree of emission limitation achievable through application of the BSER, and that the states’ role is to develop plans that establish unit-specific standards of performance that reflect application of the BSER.
- The CAA provides that states establish the standards of performance and explicitly directs EPA to allow states to consider “the remaining useful life of the source” and other source-specific factors in establishing standards of performance.
- States will evaluate applicability to their existing sources of the six candidate technologies and improved operating and maintenance practices and take into consideration source-specific factors in establishing a standard of performance at the unit level.
- States will submit plans to EPA that establish standards of performance and include measures that provide for the implementation and enforcement of such standards.
- The plan submissions must explain how the state applied the BSER to each source – and how the state took other factors into consideration – in setting unit-specific standards. These plans are due in three years.

#### **BACKGROUND**

- ACE is promulgated under EPA’s authority in section 111 of the CAA.
- CAA section 111(d)(1) requires EPA to prescribe regulations under which states submit state plans for existing sources. This rulemaking’s legal interpretation more appropriately balances federal and state responsibilities as they are defined in the CAA.

#### **STAKEHOLDER INPUT**

- The advance notice of proposed rulemaking (ANPRM) for ACE received 270,000 public comments.
- The ACE proposal – which EPA issued in August 2018 – received 500,000 public comments and more than 200 people provided oral testimony at an October 1, 2018, public hearing in Chicago.

#### **FOR MORE INFORMATION**

- Additional fact sheets along with copies of the final rule and accompanying Regulatory Impact Analysis are on EPA’s website at <https://www.epa.gov/stationary-sources-air-pollution/affordable-clean-energy-rule>