

# FINAL SCIENCE TRANSPARENCY RULE

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## COURT DECISION: ACE RULE

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# Introduction – Science Transparency Rule

- December 30, 2020 - EPA finalized a rule called “*Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information*”.
- Rule establishes how EPA will consider the availability of underlying dose-response data that it relies upon to promulgate significant regulatory actions and develop influential scientific information.
- EPA shall give greater consideration to pivotal science where the underlying dose-response data are available in a manner sufficient for independent validation.



# Rule Requirements

## 1. Determination of studies that constitute pivotal science

EPA needs to determine which studies constitute pivotal science.

EPA needs to give greater consideration to those studies where the underlying dose-response data are available in a manner sufficient for independent validation.

For studies where no underlying dose-response data is publicly available, EPA will consider additional factors when determining the level of consideration to give those studies.

EPA intends to identify such studies in the documentation at the proposed rule stage for significant regulatory actions and when influential scientific information is disseminated for peer review.

# Rule Requirements

## 2. Identifying All Science Informing Significant Regulatory Actions

EPA needs to identify and make available all science that serves as the basis for informing a significant regulatory action to the extent permitted by law.

## 3. Requirements for Independent Peer Review of Pivotal Science

If the individual studies identified as pivotal science have already undergone journal peer review, EPA is not required to conduct a second review. However, the Agency can evaluate whether or not to initiate additional peer review, consistent with the OMB Bulletin for Peer Review and EPA Peer Review Manual.

# Rule Requirements

## 4. Administrator Exemptions to Rule

The final rule includes criteria for the Administrator to consider when granting case-by-case exemptions to the requirements of this rule.

If an exemption is granted, EPA is required to document the rationale for granting that exemption.

## Recent Court Action

The U.S. District Court for the District of Montana vacated the rule on February 1, 2021.

# Court Decision – ACE Rule

## Background

- June 19, 2019 - EPA issued the *Affordable Clean Energy* rule (ACE)
- The rule was an effort to provide existing coal-fired electric utility generating units (EGUs) with achievable and realistic standards for reducing greenhouse gas (GHG) emissions.
- As part of this rule, EPA repealed the Clean Power Plan (CPP) for reducing GHG emissions from existing EGUs.
- The major difference in the two plans is that while CPP allowed power generation shifting from higher emitting plants (e.g, coal fired) to lower emitting ones (e.g, natural gas fired) and zero emitting ones (renewable energy based), ACE rule prevented this approach for emission reduction and instead only allowed emission reduction at individual plants using measures such as, retrofits or add-ons.

# Court Decision – ACE Rule

- January 19, 2021 - The U.S. Court of Appeals for the DC Circuit vacated EPA's ACE Rule and associated implementation timeline.
- **Court ruling**
  - ACE Rule and its embedded repeal of the CPP hinged on a fundamental misconstruction of Section 111(d) of the Clean Air Act.
  - EPA misinterpreted that the statutory text in the above section expressly foreclosed consideration of GHG reduction measures other than those that apply at and to individual power plants.
  - While developing CPP, EPA did not consider more cost-effective measures such as, power generation using the cleanest sources that plants have already adopted and that have been demonstrated to work. Instead, it only chose add-ons or retrofits confined to the level of the individual fossil-fuel-fired power plant.