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November 17, 2017

Via Certified Mail, E-mail, and Regulations.gov
Assistant Administrator William Wehrum
Office of Air and Radiation, Code 6101A
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Attn: RIN 2060-AT59; RIN 2060-AT65

RE: **Request for Publication of 40 C.F.R. Part 60 Subpart OOOOa Annual Compliance Reports and for Extension of Comment Periods on EPA's Notices of Data Availability in Support of Proposed Rules "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements" and "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements"**

Dear Assistant Administrator Wehrum:

The Attorneys General of California, Iowa, Maine, Maryland, the Commonwealth of Massachusetts, New Mexico, New York, Oregon, the Commonwealth of Pennsylvania, Rhode Island, Vermont, and the District of Columbia, the State of Colorado, and the Corporation Counsel of the City of Chicago ("States") respectfully request that the Environmental Protection Agency ("EPA") make public the data underlying EPA's recent notices of data availability in support of the proposed rules titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements" and "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements" (collectively, the "NODAs").[1] Specifically, we request that EPA make public the annual reports submitted to EPA pursuant to 40 C.F.R. Part 60, Subpart OOOOa, and any related records that have been created by EPA. In addition, we request that EPA extend the comment deadline for the NODAs to ninety days after the reports are made available to allow adequate time for review and comment.

[1] 82 Fed. Reg. 51,788 (Nov. 8, 2017); 82 Fed. Reg. 51,794 (Nov. 8, 2017).

On June 16, 2017, EPA proposed two rules that would collectively stay, for a period of two years and three months, the compliance requirements contained in the final rule titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," published in the Federal Register on June 3, 2016 (the "2016 Rule").[2] Our States submitted a comment letter strongly opposing EPA's proposed rules. Last week, EPA issued the NODAs discussing "the technological, resource, and economic challenges with implementing" certain compliance requirements in the 2016 Rule.[3] The NODAs reference feedback from stakeholders contending that affected facilities are unable to implement certain requirements in the 2016 Rule and therefore a stay or "extended phase-in" of compliance requirements is necessary. However, EPA's NODAs, despite their name, are devoid of data, and instead merely cite a few unsubstantiated comment letters in support of the NODAs' bald assertion of implementation challenges. EPA's failure to make data available is glaring given that the 2016 Rule, which is in effect, required affected facilities to submit to EPA annual reports documenting compliance with its requirements by October 31, 2017. Thus, EPA should currently be in possession of information and data that is directly relevant to the NODAs and the proposed rules. The public must have access to that information in order to adequately evaluate and comment on the NODAs.

We therefore request that EPA make public the annual reports submitted to the agency pursuant to 40 C.F.R. Part 60, Subpart OOOOa, and extend the comment deadline for the NODAs to ninety days after the reports are made available. An extension of the comment period is warranted given EPA's failure to provide the underlying data for the NODAs, thereby depriving the public and our States of the ability to effectively comment. An extension of ninety days is further warranted given EPA's discussion of new legal theories and technical issues in the NODAs, including, but not limited to, an updated economic analysis that both newly incorporates forgone climate benefits[4] and applies EPA's new "interim" domestic social cost of methane.

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[2] *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements*, 82 Fed. Reg. 27,641 (June 16, 2017); *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements*, 82 Fed. Reg. 27,645 (June 16, 2017).

[3] 82 Fed. Reg. 51,788 (Nov. 8, 2017).

[4] "Originally, EPA did not present estimates of the forgone climate benefits expected from the proposed two-year stay because quantitative estimates that were consistent with E.O. 13783 were not available at that time." Memorandum, "Estimated Cost Savings and Forgone Benefits Associated with the Proposed Rule, 'Oil and Natural Gas: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements'" (October 17, 2017), p. 7.

EPA has, in the past, granted an extension of the comment period when a NODA presents new technical information and legal justification for a proposed rule.[5] We ask that EPA follow its past precedent here and extend the comment period for ninety days to ensure that the public has sufficient time to review and comment on all the information available supporting its proposed rules.

Sincerely,

KAVITA P. LESSER
Deputy Attorney General

For XAVIER BECERRA
Attorney General of the State of California

[5] See *Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 12,681 (Mar. 6, 2014); Letter from Attorneys General for the States of West Virginia, Oklahoma, Alabama, South Carolina, Kansas, Texas, Nebraska, Wyoming, and Ohio to Gina McCarthy, EPA Administrator (Feb. 21, 2014) (both documents attached hereto).

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Proposed Rules

Federal Register
Vol. 79, No. 44
Thursday, March 6, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 70, 71 and 98

[EPA–HQ–OAR–2013–0495; FRL–9907–42–OAR]

RIN 2060–AQ91

Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: The EPA is announcing that the period for providing public comments on the January 8, 2014, proposed "Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units" and on the February 26, 2014, notice of data availability soliciting comment on the provisions in the Energy Policy Act of 2005, is being extended by 60 days.

DATES: *Comments.* The public comment period for the proposed rule published January 8, 2014 (79 FR 1352) and the notice of data availability published on February 26, 2014 (79 FR 10750), is being extended by 60 days to May 9, 2014, in order to provide the public additional time to submit comments and supporting information.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (79 FR 1352) for the addresses and detailed instructions.

Docket. Publicly available documents relevant to this action are available for public inspection either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. The EPA has established the official public docket No. EPA–HQ–OAR–2013–0495.

Worldwide Web. The EPA Web site containing information for this rulemaking is: *http://www2.epa.gov/carbon-pollution-standards.*

FOR FURTHER INFORMATION CONTACT: Dr. Nick Hutson, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–2968, facsimile number (919) 541–5450; email address: *hutson.nick@epa.gov* or Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–4003, facsimile number (919) 541–5450; email address: *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

The EPA is extending the public comment period for an additional 60 days. The public comment period will end on May 9, 2014, rather than March 10, 2014. This will ensure that the public has sufficient time to review and comment on all of the information available, including the proposed rule, the notice of data availability and other materials in the docket.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental Protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 98

Environmental protection, Greenhouse gases and monitoring, Reporting and recordkeeping requirements.

Dated: February 25, 2014.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2014–04633 Filed 3–5–14; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FMR Case 2012–102–4; Docket No. 2012–0014; Sequence No. 1]

RIN 3090–AJ30

Federal Management Regulation; Disposal and Reporting of Federal Electronic Assets (FEA)

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Proposed rule with request for comments.

SUMMARY: GSA is proposing to amend the Federal Management Regulation (FMR) by changing its personal property policy regarding the disposal and reporting of Federal Electronic Assets (FEA). The proposed changes are to provide policy for the safe handling and disposal of FEA, and make minor clarifying edits to existing policies.

DATES: Interested parties should submit comments in writing on or before May 5, 2014 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR Case 2012–102–4 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FMR Case 2012–102–4" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FMR Case 2012–102–4." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FMR Case 2012–102–4" on your attached document.
- Fax: 202–501–4067
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., Washington, DC 20405.

State of West Virginia
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Patrick Morrisey
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February 21, 2014

Via Certified Mail, Email & Regulations.gov (EPA-HQ-2013-0495)
The Honorable Gina McCarthy
Administrator
U.S. Environment Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
McCarthy.Gina@EPA.gov

Re: Request for withdrawal and re-proposal (EPA-HQ-2013-0495)

Dear Administrator McCarthy:

This letter concerns the Environmental Protection Agency's ("EPA") failure to provide meaningful opportunity for public comment on additional documents only recently docketed to the proposed Standards of Performance for Greenhouse Gas Emissions From Stationary Sources: Electric Utility Generating Units ("NSPS"),[1] which was published in the *Federal Register* on January 8, 2014.[2] In particular, the Notice of Data Availability ("NODA") and accompanying Technical Support Document ("TSD") were only docketed on February 6, *and neither has yet been published in the Federal Register*.[3] Despite this late docketing, EPA has not extended the period for public comments on the underlying proposal, which remain due by March 10, 2014. The public has barely a month to review and comment on one of the most wide-ranging and unprecedented rules ever to have been issued by a federal agency.

Section 307(d) of the Clean Air Act ("CAA") requires that upon publication, a proposal like the NSPS include a "statement of basis and purpose . . . [which] shall include a summary . . . [of the] . . . factual data on which the proposed rule is based, . . . the methodology used in obtaining the data and in analyzing the data, . . . [and the] major legal interpretations and policy

[1] 79 Fed. Reg. 1430 (Jan. 8, 2014).

[2] The Commonwealth of Kentucky has also made the same request in a previous letter to EPA.

[3] "Technical Support Document: Effect of EPAct 05 on BSER for New Fossil Fuel-fired Boilers and IGCCs, January 8, 2014", Docket No. EPA-HQ-2013-0495-1873, Feb. 6, 2014. The TSD is time-stamped January 8, 2014, but was not placed in the docket until February 6. Likewise, a pre-publication version of the NODA was not posted to the docket until February 6.

considerations underlying the proposed rule." 42 U.S.C. 7607(d). Critically, section 307(d) also requires that "[a]ll data, information, and documents . . . on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule." This was not done here.

Yet, EPA has only now released the NODA and TSD's full legal justification for the proposed NSPS, *more than halfway through the proposal's comment period ending on March 10, 2014*. These documents contain *new* technical information and legal interpretations addressing how EPA believes facilities can be considered under the proposed NSPS despite statutory prohibitions in the Energy Policy Act of 2005 to the contrary. The NODA and TSD make clear that the new information includes "major legal interpretations and policy considerations underlying the proposed rule" and addresses new "data, information and documents." Deprived of these documents, the notice of proposed rulemaking published on January 8 "fail[ed] to provide an accurate picture of the reasoning that has led [EPA] to the proposed rule." *Conn. Light & Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530–31 (D.C. Cir. 1982). This is particularly true where, as here, the proposal overhauls the electric generating sector on an unprecedented scale. *See Maryland v. Envtl. Prot. Agency*, 530 F.2d 213, 222 (4th Cir. 1975) (vacating rule due to EPA's failure to comply with notice and comment requirements, emphasizing the "drastic impact" that compliance with rule would have), *vacated on other grounds*, 431 U.S. 99 (1977).

The simultaneous comment deadline for the NODA and TSD provides insufficient time for stakeholders to meaningfully analyze and formulate comments not only on the proposed NSPS, but now also the NODA and TSD individually and as they relate to the proposal. In short, EPA is leaving the public with *less than a month* to not only complete comments on the proposal, but also fully analyze and provide comments on the 27 additional issues raised by the TSD. Forcing States and stakeholders to draft comments on the proposed NSPS, as well as the NODA and TSD by March 10, 2014, is unreasonable and will burden states. *See Conn. Light & Power Co.*, 673 F.2d at 530–31 ("An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary.").

Moreover, this failure to comply with section 307(d) places any final rule in serious legal jeopardy. *See Small Refiner Lead Phase-Down Task Force v. U.S.E.P.A.*, 705 F.2d 506, 540 (D.C. Cir. 1983) ("late docking [is] highly improper" and "prohibit[ed]. . . in no uncertain terms"); *Sierra Club v. Costle*, 657 F.2d 298, 396–400 (D.C. Cir. 1981) ("If . . . documents . . . upon which EPA intended to rely had been entered on the docket too late for any meaningful public comment . . . , then both the structure and spirit of section 307 would have been violated."); *see also Conn. Light & Power*, 673 F.2d at 530–31 ("If the notice of proposed rule-making fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency's proposals."); *Kennecott Corp. v. EPA*, 684 F.2d 1007, 1019 (D.C. Cir. 1982) (EPA improperly placed economic forecast data in the record only one week before issuing its final regulations); *Doe v. Rumsfeld*, 341 F. Supp. 2d 1 (D.D.C. 2004) (vacating rule because agency "deprived the

public of a meaningful opportunity to submit comments and participate in the administrative process mandated by law").

To comply with section 307(d), EPA must withdraw and re-propose the proposed NSPS so that major legal interpretations and policy considerations in the NODA and TSD are "included in the docket on the date of publication of the proposed rule." 42 U.S.C. § 7607(d). Therefore, the undersigned States request EPA withdraw and re-propose the NSPS to comply with applicable law, and provide interested parties 90 days to review and comment on the re-proposal. If EPA declines to do so, we request that the comment deadline for the proposed NSPS be extended to 90 days after publication of the NODA in the *Federal Register*, to allow for adequate review and comment on the proposed NSPS along with and in light of the new supporting data and major legal interpretations in the NODA and TSD.

Sincerely,

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