MEMORANDUM

SUBJECT: NSPS OOOOa Reconsideration Process and Tiering of Rulemaking

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TO: Robert A. Kaplan
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THRU: Sara Breneman, Chief
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Background:

- *June 2016* - EPA issued the final NSPS OOOOa rule addressing air emissions of volatile organic compounds (VOC) and greenhouse gas emissions (GHG) for new Crude Oil and Natural Gas Facilities.
- *April 2017* - EPA announced it would grant petitions for reconsideration it had received on three specific issues (fugitive monitoring at low production wells, well-site pneumatic pump standards, and professional engineer certification requirement of closed vent system design capacity). EPA also committed to look broadly at the entire rule and potentially initiate reconsideration proceedings to suspend, revise, or rescind the rule.
- *November 2017* – Kickoff of rulemaking workgroup, formed of OAQPS, OAP, OGC, OECA, plus ORD and Regions 3, 5, 6 and 8 as members.
- *December 2017* – OAR proposed to split this rulemaking into two parts:
    - Policy Issues - Tier 1 – propose and final by spring 2019
        - Regulation of methane as a GHG
        - How to best define oil and gas source category
    - Technical Issues – Currently Tier 1, OAR proposed to "down-tier" to Tier 3 – Propose by March 2018 and Final by Summer 2018
        - Topics relating to implementation, standards and monitoring
- *Current* - OAR has asked for workgroup members' concurrence on down-tiering the Technical Issues portion of the rulemaking to Tier 3.

Issues:

Down-tiering for Technical Issues Portion of Rulemaking is not Consistent with EPA's Own Guidance on the Rulemaking Process

- *EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions*[1] states "The proposed tier for your action should be based on the highest tier level response for any single one of the following considerations."

  Tier 1 criteria include:

  - "The action requires extensive cross-agency involvement, with active participation from AAs/RAs and the decision-making involvement of the Administrator or the Deputy Administrator"; or
  - "The action has the potential for precedent-setting implementation issues, major economic impacts on other levels of government or the regulated community, or a high level of external interest."

  Tier 2 criteria include:

  - "The action may involve significant, precedent-setting policy implications, even if primarily within the lead office"; or
  - "The action will require extensive cross-agency participation, but the primary decision authority will be with the lead AA/RA."

  Tier 3 criteria include:

  - "The action is routine, is not controversial, has broad-based support, or implements statutory provisions with little or no discretion. Formal, extensive cross-agency interactions are not required to develop the action, although the lead office should work with interested offices, including the core offices, through informal discussions and/or formal agreements."

- *Meets Tier 1 criteria:* The Technical Issues rulemaking needs extensive involvement and review from participants across multiple EPA Divisions and Offices to ensure that any rule revisions are clear, enforceable, consistent with achieving the calculated emissions reductions and associated benefits projected by the original rule, and do not create conflicts with implementation of individual state rules. The original OOOOa rulemaking generated over 900,000 public comments, indicating a high level of external interest on this topic.

- *Exceeds Tiers 2 and 3 criteria:* The Technical Issues rulemaking is unusual and should not be considered routine. Although a few of the items proposed for review could be categorized as addressing minor technical clarifications, the remainder of the proposed items for review have the potential to be extremely broad in scope and impact. However, the full scope of the

[1] [HYPERLINK "http://intranet.epa.gov/actiondp/documents/adp09-24-15.pdf"]

proposed changes has not yet been defined in any meaningful level of detail. Specifically, changes to the fugitives monitoring program have the potential to be controversial to the variety of stakeholders in this rule, and require structured discussion among cross-agency workgroup members to ensure concerns are addressed.

Technical Issues Proposed for Review Are Not Yet Defined:

- There are numerous items currently on OAR's list for reconsideration, as provided to the workgroup in the request for down-tiering. However, the list does not give an indication of the anticipated scope or impact of potential changes, although many have the potential for broad impact, especially those relating to the standards for emissions monitoring and control requirements. At this point, the workgroup has not been provided any detail on what possible changes might look like in their final form. These potential changes should be discussed with formal cross-agency participation.

There is the Potential for Regulatory Uncertainty During the Gap Between Technical and Policy Issues Rulemakings

- The proposed timeline for the Technical Issues rulemaking places the final signature in August 2018. The final action for the Policy Issues rulemaking is approximately spring 2019. If there are significant changes proposed to the Policy Issues, this will create uncertainty among the regulated community and stakeholders such as delegated state enforcement programs regarding applicable requirements during the gap until the Policy Issues rulemaking becomes final. Keeping the Technical and Policy Issues rulemakings coupled on the same timeline will ensure avoidance of any unintended conflicts between the two rulemakings.

Recommendation:

- The Technical Issues component of this rulemaking should not be down-tiered to Tier 3, as it exceeds the requirements for being considered a Tier 2 or 3 action. It meets the Tier 1 criteria and should remain a Tier 1 action in order to ensure workgroup members have an adequate opportunity to review the proposed changes, and to streamline technical implementation alongside policy issues.