BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

New York Attorney General Eric T. Schneiderman
California Attorney General Xavier Becerra
Connecticut Attorney General George Jepsen
Illinois Attorney General Lisa Madigan
Iowa Attorney General Tom Miller
Maine Attorney General Janet T. Mills
Maryland Attorney General Brian E. Frosh
Massachusetts Attorney General Maura Healey
New Mexico Attorney General Hector H. Balderas
Oregon Attorney General Ellen F. Rosenblum
Pennsylvania Attorney General Josh Shapiro
Rhode Island Attorney General Peter F. Kilmartin
Vermont Attorney General Thomas J. Donovan, Jr.
Washington Attorney General Robert W. Ferguson
District of Columbia Attorney General Karl A. Racine
Chicago Corporation Counsel Edward N. Siskel

June 29, 2017

Scott Pruitt
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

RE: Clean Air Act Notice of Intent to Sue for Failure to Establish Guidelines for Standards of Performance for Methane Emissions from Existing Oil and Gas Operations under Clean Air Act Section 111(d)

Dear Administrator Pruitt:

The States of New York, California, Connecticut, Illinois, Iowa, Maine, Maryland, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, the City of Chicago, and the California Air Resources Board, respectfully request that the Environmental Protection Agency (EPA) remedy its failure under the Clean Air Act to establish guidelines for limiting methane emissions from existing sources in the oil and natural gas sector. EPA has determined that emissions of this potent greenhouse gas endanger public health and welfare, and that sources in the oil and natural gas sector are the largest industrial emitters of methane in the United States. In June 2016, pursuant to its authority under section 111(b) of the Clean Air Act, EPA promulgated standards to reduce methane emissions from new, reconstructed, and modified sources in the oil and natural gas sector. *See* Oil and Natural Gas Sector Emission Standards for New, Reconstructed and Modified Sources, 81 Fed. Reg. 35,824 (June 3, 2016) (New Source Rule). EPA's regulation of new sources triggered its mandatory obligation under section 111(d) of the Clean Air Act to issue guidelines for limiting methane emissions from existing sources in this category.

It has now been over one year since EPA promulgated the New Source Rule—and four-and-a-half years since New York and other states formally notified EPA that it was in violation of the Clean Air Act[1]—and yet EPA has failed to establish existing source guidelines. Instead, EPA recently unilaterally withdrew the Final Methane Information Collection Request (ICR) for the Oil and Natural Gas Industry, EPA ICR No. 2548.01, which sought information that EPA has said would be of "critical use in addressing existing source emissions." 81 Fed. Reg. 66,962 (Sept. 29, 2016). EPA's ongoing failure to address existing source methane emissions from the oil and gas sector, which accounts for the lion's share of methane emissions from oil and gas operations (an estimated 90 percent by 2018), violates the Clean Air Act and harms the health and welfare of our residents. Therefore, unless EPA promptly remedies this failure, the undersigned states intend to file suit at the expiration of the required notice period.

I. Background

Climate disruption from rising greenhouse gas concentrations is increasingly taking a toll on American families and businesses. Climate change is threatening more and more Americans with more frequent, severe or long-lasting extreme events, such as droughts, heat waves and wildfires, and flooding from sea-level rise, which will intensify over the coming decades. *See generally, Our Changing Planet*, U.S. Glob. Change Research Program for FY 2017, at 2. Methane is a very potent greenhouse gas – when including feedbacks, it warms the climate about thirty-four times more than carbon dioxide over a 100-year period, according to the Intergovernmental Panel on Climate Change, and on a twenty-year timeframe, it has about eighty-six times the global warming potential of carbon dioxide. EPA determined in its 2009 endangerment finding that methane is one of six well-mixed greenhouse gases that endanger public health and welfare. *See Endangerment and Cause of Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009). Major scientific assessments since the 2009 Endangerment Finding have confirmed and strengthened the conclusion that greenhouse gases, including methane, endanger public health and welfare. *See* 81 Fed. Reg. at 35,834. Combined, oil and natural gas systems are the largest source of methane emissions in the U.S. and the second largest industrial source of U.S. greenhouse gas emissions behind only electric power plants. *See id.* at 35,838. EPA must fully comply with its legal obligations under the Clean Air Act to regulate emissions that endanger public health and welfare by controlling this significant source of dangerous greenhouse gas pollution.

Section 111(b) of the Clean Air Act requires EPA to establish standards of performance governing the emission of air pollutants from new sources (NSPS) in a source category and to review, and if appropriate, revise, those standards at least every 8 years. *See* 42 U.S.C. § 7411(b)(1)(B). Section 111(d) of the Act and EPA's regulations also require EPA to issue emission guidelines covering any air pollutant from any existing oil and natural gas operations for which NSPS have been issued. *See id.* § 7411(d). EPA's regulations provide that such guidelines will be issued "[c]oncurrently upon or after proposal of [section 111(b)] standards of performance for the control of a designated pollutant from affected facilities." 40 C.F.R. § 60.22(a).

EPA listed crude oil and natural gas production as a source category that contributes significantly to air pollution that may reasonably be anticipated to endanger public health and welfare in 1979. *See Priority List and Additions to the List of Categories of Stationary Sources*, 44 Fed. Reg. 49,222 (Aug. 21, 1979). EPA originally promulgated standards of performance for the oil and natural gas sector in 1985. The 8-year deadline for reviewing these standards expired in 1993. EPA failed timely to review the

[1] *See* Clean Air Act Notice of Intent to Sue Letter to Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency, from New York, Connecticut, Delaware, Maryland, Massachusetts, Rhode Island, and Vermont (Dec. 11, 2012) (States' 2012 Notice of Intent to Sue Letter), attached hereto as Exhibit 1.

standards of performance, leading multiple groups to file suit in 2009 to compel such review. That case, *Wild Earth Guardians v. EPA*, No. 1:09-CV-00089 (D.D.C.), resulted in a consent decree setting forth a schedule for proposing any final revisions by November 30, 2011. EPA proposed revisions to the oil and natural gas NSPS in August 2011, 76 Fed. Reg. 52,738 (Aug. 23, 2011), and signed a final rule to complete the mandated review for oil and natural gas operations on April 17, 2012. 77 Fed. Reg. 49,490 (Aug. 16, 2012) (2012 Rule). However, despite previously determining in 2009 that methane and other greenhouse gases endanger public health and welfare, EPA did not establish performance standards or emission guidelines for methane emissions from this industrial sector in the 2012 Rule.

In December 11, 2012, New York, Connecticut, Delaware, Maryland, Massachusetts, Rhode Island, and Vermont notified EPA of their intent to sue the agency for violating the Clean Air Act by failing to adopt limits on methane emissions from equipment used in oil and natural gas production, processing, and transmission in the 2012 Rule. *See* States' 2012 Notice of Intent to Sue Letter, Ex. 1. As explained in our notice letter, EPA had determined that emissions of this potent greenhouse gas endanger public health and welfare, and that processes and equipment in the oil and natural gas sector emit vast quantities of methane. We further explained that EPA had compelling data, including from eighteen years of experience administering the Natural Gas Star Program, demonstrating that many measures to avoid (or reduce) methane leaks from new and existing oil and natural gas operations are available and cost-effective. In light of these findings, EPA's failure to determine in its 2012 rulemaking whether standards limiting methane emissions from oil and natural gas operations under section 111 of the Clean Air Act were appropriate was a violation of a nondiscretionary duty of the Administrator and constituted an unreasonable delay in taking agency action.

In June 2013, then-President Obama issued a Climate Action Plan that, among other things, committed his administration to developing a comprehensive, interagency strategy to reduce methane emissions. That strategy, released in March 2014, committed EPA to a number of activities, including assessing significant sources of methane and other emissions from the oil and natural gas sector, soliciting input from independent experts through a series of technical white papers, and determining how best to pursue further methane reductions from these sources. Many of the undersigned Attorneys General filed comments on the EPA white papers advocating for the direct regulation of methane from new and existing oil and natural gas development and delivery equipment. Because of EPA's actions demonstrating progress in addressing these sources, many of the undersigned also held the filing of a lawsuit in abeyance.

In September 2015, EPA proposed regulations to require new and modified equipment to meet standards to limit their methane emissions. 80 Fed. Reg. 56,593 (Sept. 18, 2015). Many of the undersigned Attorneys General submitted comments on the proposed standards for new and modified sources, and further urged EPA to move forward expeditiously with regulation of existing sources, which is mandated under the Clean Air Act once a rule on new and modified sources is finalized. In June 2016, EPA published notice of the New Source Rule, 81 Fed. Reg. 35,824, promulgating final performance standards for methane emissions from new and modified oil and natural gas sources.

EPA has not yet fulfilled its mandatory obligation under the Clean Air Act to issue guidelines for the control of methane emissions from existing oil and natural gas sources. Consequently, unless EPA takes the required actions by the end of the notice period, we intend to bring a suit in federal district court against you as EPA administrator and EPA for the agency's failure to perform the non-discretionary duty outlined in 42 U.S.C. § 7411(d) and 40 C.F.R. § 60.22(a), and for the agency's unreasonable delay in the performance of this duty. *See Environmental Defense Fund v. Thomas*, 870 F.2d 892, 897 (2d Cir. 1989); *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 194 (D.C. Cir. 2011). This letter provides notice as required under section 304 of the Clean Air Act, 42 U.S.C. § 7604, and 40 C.F.R. part 54. The suit will seek injunctive and declaratory relief, the costs of litigation, and may seek other relief.

II. EPA Failed to Perform Its Non-Discretionary Duty to Establish Emissions Guidelines.

Section 111(d) of the Clean Air Act requires EPA to address methane emissions from existing sources, once EPA establishes standards for new and modified facilities in such source category. 42 U.S.C. § 7411(d)(1)(A). The Act requires EPA to establish procedures under which each state submits to the agency a plan to adopt, implement, and enforce standards of performance for existing sources for certain pollutants. *Id.* § 7411(d). The existing source requirements apply to those pollutants, such as methane, that have not been identified as criteria pollutants or regulated as hazardous air pollutants, but that are regulated under the new source performance standards for a category of sources. *Id.* § 7411(d)(1). Thus, the Act creates a direct connection between the new source standards and those to be developed for existing sources.

EPA's issuance of standards of performance for methane emissions from new oil and natural gas sources triggered the agency's duty to propose guidelines for states to develop plans to limit methane emissions from existing sources under section 111(d). 42 U.S.C. § 7411(d); 40 C.F.R. § 60.21(a).[2] The series of statutory deadlines for promulgating new source performance standards in section 111(b)—including the requirements that EPA propose a NSPS one year after listing a source category, finalize the NSPS within one year of proposal, and review, and as necessary, revise, the NSPS every eight years—indicate that Congress intended EPA to move forward expeditiously with emission guidelines for existing sources under section 111(d). Because the process for submitting and approving state plans to adopt and implement EPA's section 111(d) emission guidelines usually takes several years, delayed issuance of the guidelines could quickly result in an overlap between state compliance with the guidelines and EPA's next mandatory eight-year review. Thus, the statutory structure evidences congressional intent for EPA to proceed promptly with proposed emission guidelines concurrently or shortly after finalizing a rule under section 111(b). Indeed, EPA has routinely used that approach when section 111(d) guidelines were required, most recently with the simultaneous promulgation of its emission standards and guidelines for emissions of landfill gas, including methane, from municipal solid waste landfills, and for carbon dioxide emissions from power plants. *See* 81 Fed. Reg. 59,332 & 81 Fed. Reg. 59,276 (Aug. 29, 2016) (simultaneous standards of performance and emission guidelines for municipal solid waste landfills); 80 Fed. Reg. 64,510 & 80 Fed. Reg. 64,662 (Oct. 23, 2015) (same for electric utility generating units); *see also* 62 Fed. Reg. 48,348 (Sept. 15, 1997) (same for hospital/medical/infectious waste incinerators); 61 Fed. Reg. 9905 (Mar. 12, 1996) (same for municipal solid waste landfills); 60 Fed. Reg. 65,387 (Dec. 19, 1995) (same for municipal waste combustors).

The need for EPA to proceed promptly with the regulation of existing sources is especially important because the lion's share of emissions from this sector comes from existing equipment. According to a recent analysis, sources in existence prior to 2012 are projected to be responsible for up to ninety percent of the methane emissions in the oil and natural gas sector in 2018. ICF Int'l, Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries 1 (2014).[3] This study further found that industry could cut emissions forty percent below the projected 2018 levels at an average annual cost of less than one cent per thousand cubic feet of natural gas produced. Taking into account the total economic value of the natural gas that would be recovered

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[2] EPA's unlawful administrative stay of the New Source Rule pending reconsideration, *see* 82 Fed. Reg. 25,730 (June 5, 2017), currently is being challenged in *Clean Air Council v. Pruitt*, No. 17-1145 (D.C. Cir.), and in no way obviates EPA's obligation under section 111(d) to issue guidelines for existing sources. Further, EPA's proposed rules to implement additional stays of the New Source Rule are without authority and similarly cannot forestall EPA's obligation under section 111(d).

[3] *Available at* https://www.edf.org/sites/default/files/methane_cost_curve_report.pdf.

through the use of additional emission controls, this forty percent reduction would yield savings of over $100 million dollars per year for the U.S. economy and consumers.

States have demonstrated that it is possible to cost-effectively control methane emission from both new and existing oil and natural gas operations. In the absence of federal action, a number of states—including Colorado, Pennsylvania, Ohio, Wyoming, and California—have proceeded with regulations or other legal requirements to prevent leaks from the oil and gas sector. Colorado's rules, passed in February 2014, govern both new and existing wells and require leak inspections either monthly, quarterly, or annually, depending on the size of the emissions. These regulations, which target methane emissions directly rather than as a co-benefit resulting from coincident reductions of other pollution from oil and natural gas operations, are expected to reduce methane emissions by approximately 65,000 tons per year. California's regulation, approved by the California Air Resources Board in March 2017, requires quarterly monitoring and repairing of methane leaks from both onshore and offshore oil and natural gas wells, natural gas processing facilities, compressor stations, and other equipment used in the processing and delivery of oil and natural gas, and requires oil and gas operators above a certain size to implement vapor recovery systems that will capture methane so that it can be reused. California's rules seek to curb methane emissions at oil and natural gas production facilities by up to 45 percent over the next nine years.[4] However, even with these robust state efforts, EPA action is needed, and indeed required under the Clean Air Act, to ensure strong, uniform federal guidelines for existing sources, especially in states with no such backstop programs.

In recognition of its obligation under the Clean Air Act to issue existing source guidelines, on the same day that it issued the New Source Rule, EPA published notice that it would be issuing an information collection request (ICR) to obtain "more specific information that would be of critical use in addressing existing source emissions pursuant to CAA section 111(d)." 81 Fed. Reg. 35,763, 35,764 (June 3, 2016). After two rounds of notice and comment and review by the Office of Management and Budget, resulting in narrower requests for information and lower compliance costs, EPA issued the Final Methane ICR on November 10, 2016. The ICR had two parts: (1) an operator survey, designed to obtain basic information from onshore oil and gas facilities to better understand the number and types of equipment at production facilities; and (2) a facility survey, sent to select oil and gas facilities to obtain more detailed information on sources of methane emissions and emissions control devices or practices. EPA began receiving the requested information from oil and gas operators beginning in January 2017. However, on March 2, 2017, without any notice or opportunity for comment, EPA withdrew the Final Methane ICR. 82 Fed. Reg. 12,817 (Mar. 7, 2017).

EPA's hasty withdrawal of the Final Methane ICR lacked any rational basis.[5] Moreover, EPA's mandatory statutory obligation to issue guidelines covering methane emissions from existing facilities in the oil and natural gas sector remains. Indeed, even without the ICR, EPA has substantial and sufficient information regarding the sources of emissions and pollution control technologies and practices for reducing methane emissions at existing oil and natural gas operations. For instance, through the voluntary Natural Gas Star Program, EPA has worked with oil and natural gas companies for decades to develop

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[4] New York is also moving ahead to develop, propose and adopt, as necessary, regulations to limit emissions from existing oil and gas transmission facilities, such as compressor stations, not regulated by the federal New Source Rule. *See* New York Methane Reduction Plan (May 2017), *available at* http://www.dec.ny.gov/docs/administration_pdf/mrpfinal.pdf.

[5] *See* Letter re Withdrawal of Final Methane ICR to Scott Pruitt, Administrator, from Massachusetts, California, District of Columbia, Illinois, Maine, Maryland, New York, Rhode Island, and Vermont (Apr. 3, 2017), attached hereto as Exhibit 2.

expertise in more than 100 cost-effective technologies and practices to reduce methane emissions.[6] EPA also has a vast amount of scientific and technical data on emissions and control strategies developed over the last several years, including from its white papers, the Greenhouse Gas Reporting Program, and its 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry.[7]

In sum, EPA's continuing failure, more than a year after promulgating the New Source Rule, to publish guidelines covering methane emissions from existing facilities in the oil and natural gas sector is contrary to section 111(d) of the Clean Air Act and the regulations implementing that section. *See* 42 U.S.C. § 7411(d); 40 C.F.R. § 60.22(a). We are therefore providing notice that we intend to sue you as EPA administrator and EPA for the agency's failure to take this non-discretionary action.

III. EPA Has Unreasonably Delayed Establishing Emissions Guidelines.

As set forth above, section 111(d) and 40 C.F.R. § 60.22(a) impose a non-discretionary duty to establish emissions guidelines covering existing sources. In addition, EPA has unreasonably delayed taking action on methane emissions from existing sources in the oil and natural gas sector.

EPA has published annual sector-by-sector inventories of U.S. greenhouse gas emissions since 1997, quantifying emissions since 1990.[8] Therefore, EPA has known since at least 1997 that oil and natural gas operations are one of the nation's largest methane sources. Similarly, EPA has long had ample data on cost-effective measures for controlling methane emissions from these sources. For example, EPA has been implementing the Natural Gas STAR Program, a voluntary public-private partnership with the oil and natural gas industry, since 1993. In 2008, EPA explained that through STAR Program, "many of [the] technologies and management practices" available to control methane emissions from the sector "have been well documented (including information on cost, benefits and reduction potential) and implemented in oil and gas systems throughout the U.S." EPA, Office of Air and Radiation, Technical Support Document for the Advanced Notice of Proposed Rulemaking for Greenhouse Gases; Stationary Sources, Section VII at 30 (June 2008). EPA has been assessing the significant emissions of methane from oil and natural gas operations and evaluating actions to address those emissions since at least 2011. *See* Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Proposed Rule, 76 Fed. Reg. 52,738, 52,756 (Aug. 23, 2011) ("[a]lthough this proposed rule does not include standards for regulating [methane emissions], we continue to assess these significant emissions and evaluate appropriate actions for addressing these concerns.")

Notwithstanding the detailed information EPA already has in its possession, the agency has unreasonably delayed establishing emissions guidelines for controlling methane emissions from existing oil and natural gas sector sources. *See* States' 2012 Notice of Intent to Sue Letter, Ex. 1. EPA's unreasonable delay in issuing these guidelines in turn delays both the date by which states must submit plans for the control of methane from existing oil and natural gas operations, 40 C.F.R. § 60.23(a), and the date by which existing sources must comply with approved pollution control standards, *see id.* § 60.24(c). Therefore, we are also providing a 180-day notice that we intend to sue you as EPA

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[6] *See* https://www.epa.gov/natural-gas-star-program/recommended-technologies-reduce-methane-emissions.

[7] *See, e.g.,* https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/2016-control-techniques-guidelines-oil-and.

[8] Links to each annual GHG emissions inventory are at https://www.epa.gov/ghgemissions/us-greenhouse-gas-inventory-report-archive and https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2015.

administrator and EPA for EPA's unreasonably delaying final agency action to issue emissions guidelines for methane emissions from existing oil and natural gas operations.

IV. Conclusion

EPA's issuance of the New Source Rule recognized that methane emissions endanger public health and welfare and that oil and natural gas operations account for a large share of methane emissions, and pointed to the urgent need to reduce these emissions from existing sources. The agency's long experience identifying successful control strategies that prevent wasting methane via leaks or that recover methane from oil and gas operations for productive uses confirms that there are cost-effective measures for this source category that would provide an appropriate basis for establishing guidelines for limiting methane emissions from existing sources. But EPA's failure to make progress in issuing such guidelines demonstrates that litigation may be needed to prompt the required agency action. Accordingly, the States of New York, California, Connecticut, Illinois, Iowa, Maine, Maryland, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, the City of Chicago, and the California Air Resources Board, give notice of their intent to sue for EPA's failure to complete the emissions guidelines for existing sources required by section 111(d) of the Clean Air Act and EPA's regulations at 40 C.F.R. § 60.22(a) and for the agency's unreasonable delay in the completion of that action.

We are willing to explore any effective means of resolving this matter without the need for litigation. However, if we do not hear from you within the applicable time periods provided in section 304 of the Act, we intend to file suit in United States District Court.

Very truly yours,

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General

By: Morgan Costello

MORGAN A. COSTELLO
MICHAEL J. MYERS
Assistant Attorneys General
Environmental Protection Bureau
The Capitol
Albany, NY 12224
(518) 776-2392

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General
KAVITA P. LESSER
Deputy Attorney General
California Department of Justice
300 South Spring Street
Los Angeles, CA 90013
(213) 897-2603

FOR THE CALIFORNIA AIR RESOURCES BOARD

XAVIER BECERRA
Attorney General
DANIEL M. LUCAS
Deputy Attorney General
California Department of Justice
300 South Spring Street
Los Angeles, CA 90013
(213) 897-0628

FOR THE STATE OF CONNECTICUT

GEORGE JEPSEN
Attorney General
MATTHEW LEVINE
ROBERT SNOOK
Assistant Attorneys General
Office of the Attorney General
55 Elm Street
Hartford, CT 06141-0120
(860) 808-5250

FOR THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
JAMES P. GIGNAC
Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0660

FOR THE STATE OF IOWA

TOM MILLER
Attorney General
JACOB LARSON
Assistant Attorney General
Environmental Law Division
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, IA 50319
(515) 281-5341

FOR THE STATE OF MAINE

JANET T. MILLS
Attorney General
GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
Maine Attorney General's Office
6 State House Station
Augusta, ME 04333-0006
(207) 626-8545

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
Attorney General
ROBERTA R. JAMES
Assistant Attorney General
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230
(410) 537-3748

FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
Attorney General
MELISSA HOFFER
Assistant Attorney General
Chief, Energy and Environment Bureau
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200

FOR THE STATE OF NEW MEXICO

HECTOR H. BALDERAS
Attorney General
WILLIAM GRANTHAM
BRIAN E. MCMATH
Consumer & Environmental Protection Division
New Mexico Office of the Attorney General
201 Third St. NW, Suite 300
Albuquerque, NM 87102
(505) 717-3500

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General
PAUL GARRAHAN
Attorney-in-Charge, Natural Resources Section
Oregon Department of Justice
1162 Court St. NE
Salem, OR 97301-4096
(503) 947-4593

FOR THE COMMONWEALTH OF PENNSYLVANIA

JOSH SHAPIRO
Attorney General
STEVEN J. SANTARSIERO
Chief Deputy Attorney General
Environmental Protection Section
Pennsylvania Office of the Attorney General
1000 Madison Avenue, Suite 310
Norristown, PA 19403
610-631-5971

FOR THE STATE OF RHODE ISLAND

PETER F. KILMARTIN
Attorney General
GREGORY S. SCHULTZ
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
Attorney General
NICHOLAS F. PERSAMPIERI
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-6902

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General
KATHARINE G. SHIREY
Assistant Attorney General
Washington State Attorney General's Office
PO Box 40117
Olympia, WA 98504
(360) 586-6769

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General
ROBYN R. BENDER
Deputy Attorney General
Public Advocacy Division
Office of the Attorney General
of the District of Columbia
441 Fourth St. NW Ste. 600-S
Washington, D.C. 20001
(202) 724-6610

FOR THE CITY OF CHICAGO

EDWARD N. SISKEL
Corporation Counsel
BENNA RUTH SOLOMON
Deputy Corporation Counsel
30 N. LaSalle Street, Suite 800
Chicago, IL 60602
(312) 744-7764

EXHIBIT 1

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

New York Attorney General Eric T. Schneiderman
Connecticut Attorney General George Jepsen
Delaware Attorney General Joseph R. Biden, II
Maryland Attorney General Douglas F. Gansler
Massachusetts Attorney General Martha Coakley
Rhode Island Attorney General Peter Kilmartin
Vermont Attorney General William H. Sorrell

December 11, 2012

Lisa P. Jackson
Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

RE: Clean Air Act Notice of Intent to Sue for Failure to Determine Whether Standards of Performance Are Appropriate for Methane Emissions from Oil and Gas Operations, and to Establish Such Standards and Related Guidelines for New and Existing Sources

Dear Administrator Jackson:

The States of New York, Connecticut, Delaware, Maryland, Rhode Island, and Vermont, and the Commonwealth of Massachusetts, respectfully request that the Environmental Protection Agency remedy its failure under the Clean Air Act to set performance standards for new sources and guidelines for existing sources that curb emissions of methane from the oil and gas sector. EPA has determined that emissions of this potent greenhouse gas endanger public health and welfare, and that processes and equipment in the oil and gas sector emit vast quantities of methane. Moreover, EPA has compelling data, including from 18 years of experience administering the Natural Gas Star Program, demonstrating that many measures to avoid (or reduce) methane emissions from new and existing oil and gas operations are available and cost-effective. Despite these findings, EPA has missed the applicable deadline for determining whether standards and guidelines limiting methane emissions from oil and gas operations under section 111 of the Clean Air Act are appropriate and for issuing such standards. EPA's ongoing failure to address the sector's methane emissions violates the Clean Air Act and harms the health and welfare of our residents.

I. Background

From severe droughts and heat waves to a string of devastating storms in the northeast over the last two years, it is becoming ever more apparent that increasing greenhouse gas pollution contributes to climate disruption in the U.S. and around the globe. Methane is a very potent greenhouse gas -- pound for pound, it warms the climate about 25 times more than carbon dioxide. EPA has found that the impacts of climate change caused by methane include "increased air and ocean temperatures, changes in

precipitation patterns, melting and thawing of global glaciers and ice, increasingly severe weather events, such as hurricanes of greater intensity and sea level rise." 77 Fed. Reg. 49,490, 49,535 (Aug. 23, 2011). Oil and gas systems are the largest source of methane emissions in the U.S. and the second largest industrial source of U.S. greenhouse gas emissions behind only electric power plants. For example, methane emissions from this sector make almost one-fifth of the contribution to climate change that carbon dioxide emissions from coal-fired power plants do. EPA must fully comply with its legal obligations under the Clean Air Act to regulate emissions that endanger public health and welfare by controlling this significant source of dangerous greenhouse gas pollution.

Section 111 of the Clean Air Act requires EPA to establish standards of performance governing the emission of air pollutants from new sources in the oil and gas sector and to review, and if appropriate, revise, those standards at least every 8 years. *See* 42 U.S.C. § 7411(b)(1)(B). As part of this 8-year review, EPA had a mandatory duty (1) to make a determination whether standards covering methane emissions are "appropriate," and, (2) if it is appropriate, to promulgate standards. The Act and EPA's regulations also require EPA to issue emission guidelines covering the release of methane from any existing oil and gas operations for which standards of performance have been issued. *See id.* § 7411(d); 40 C.F.R. § 60.22(a).

EPA originally promulgated standards of performance for the oil and gas sector in 1985. The 8-year deadline for reviewing these standards expired in 1993. EPA finally signed a rule to complete the mandated review for oil and gas operations on April 17, 2012. 77 Fed. Reg. 49,490 (Aug. 16, 2012). However, although the agency revised the standards for several pollutants, EPA did not make the required appropriateness determination regarding methane, nor did EPA establish performance standards or emission guidelines for methane emissions from this industrial sector.

Consequently, unless you promptly correct these failures, we intend to file suit in federal district court against you as EPA administrator and EPA for failures to timely:

(1) make the required determination whether standards of performance limiting methane emissions from oil and gas sources are appropriate and, if so, failing to timely issue revised performance standards limiting methane emissions from this source category; and

(2) issue emissions guidelines for the control of methane emissions from existing oil and gas sources.

Jurisdiction to adjudicate and enforce the Administrator's failure to carry out non-discretionary duties lies with the district court under section 304 of the Act. *See Environmental Defense Fund v. Thomas*, 870 F.2d 892, 897 (2d Cir. 1989); *Portland Cement Ass'n v. EPA*, 665 F.3d 177, 194 (D.C. Cir. 2011). This letter provides notice as required under section 304 of the Clean Air Act, 42 U.S.C. § 7604, and 40 C.F.R. part 54. Unless EPA takes the required actions by the end of the applicable notice period, we intend to bring a suit for EPA's failure to perform the non-discretionary duties outlined in 42 U.S.C. §§ 7411(b)(1)(B), 7411(d), and 40 C.F.R. § 60.22(a), and for the agency's unreasonable delay in the performance of these duties. The suit will seek injunctive and declaratory relief, the costs of litigation, and may seek other relief.

II. EPA Failed to Perform Its Non-Discretionary Duties to Determine Whether Standards of Performance for Methane Are Appropriate and, if so, to Establish Such Standards and Related Emissions Guidelines.

Section 111 of the Clean Air Act requires EPA to establish "standards of performance" for emissions of air pollutants from categories of new, modified, and existing sources. After EPA sets initial

standards of performance for a listed category, section 111(b)(1)(B) imposes a timetable for EPA to review and revise those standards: "The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by the subsection for promulgation of such standards." 42 U.S.C. § 7411(b)(1)(B). EPA failed timely to review the standards of performance that it initially established in 1985 for sources in the oil and gas sector, leading multiple groups to file suit in 2009 to compel such review. That case, *Wild Earth Guardians v. EPA*, No. 1:09-CV-00089 (D.D.C.), resulted in a consent decree setting forth a schedule for proposing any final revisions by November 30, 2011.

In August 2011, EPA proposed revisions to the oil and gas NSPS. 76 Fed. Reg. 52,738 (Aug. 23, 2011). EPA did not propose any standards for methane emissions, despite previously determining that methane and other greenhouse gases endanger public health and welfare. 74 Fed. Reg. 66,496 (Dec. 15, 2009). Numerous organizations submitted comments on the proposed rule stating that EPA was required, as part of its mandated 8-year statutory review, to determine whether it was "appropriate" to add standards of performance for additional, previously-unregulated pollutants, such as methane, and, if so, to revise them accordingly.

EPA signed a final rule revising some aspects of the oil and gas standards on April 17, 2012, which was published in the Federal Register on August 16, 2012. 77 Fed. Reg. 49,490. EPA failed to determine whether it is appropriate to establish methane standards. Instead, EPA stated that "[i]n this rule, we are not taking final action with respect to regulation of methane. Rather, we intend to continue to evaluate the appropriateness of regulating methane with an eye toward taking additional steps if appropriate." *Id.* at 49,513. The agency further stated that "over time," it would assess emissions data received pursuant to the recently implemented greenhouse gas emissions reporting program, but set forth no timetable for taking final action to address methane emissions. *Id.*

EPA's failure to decide one way or another within the 8-year statutory review deadline whether it is appropriate to revise the oil and gas NSPS to regulate methane emissions violates section 111(b)(1)(B) of the Clean Air Act. That section imposes a clear-cut nondiscretionary duty of timeliness that requires EPA to make a decision within the 8-year review period whether it is "appropriate" to revise the standards to regulate methane, regardless of whether the substance of that decision is discretionary. The Second Circuit Court of Appeals in *Thomas*, 870 F.2d at 900, held that substantially similar language contained in section 109(d) of the Clean Air Act -- which provides that, at five-year intervals, EPA "shall complete a thorough review" and "promulgate such new standards as may be appropriate"-- imposed a nondiscretionary duty to make a decision. In that case, like here, EPA had declined to make any formal decision to either revise or decline to revise the standards for a specific pollutant. EPA argued that its non-decision was unreviewable by the D.C. Circuit under section 307 because it involved no decision or other agency "action" and was also not subject to challenge in district courts under section 304 because it was discretionary." *Id.* at 896. The Court rejected EPA's argument, holding that EPA may not leave the matter "in a bureaucratic limbo subject neither to review in the District of Columbia Circuit nor to challenge in the district court. *Id.* at 900. While the Court agreed that the "as may be appropriate" language of section 109(d) provided EPA with discretion to determine whether revision was appropriate and what the substance of those revisions should be, the presence of the language "shall complete" and "required" in that section implied that the district court "has jurisdiction to compel the Administrator to make *some* formal decision whether or not to revise the [standards]." *Id.*

Here, section 111(b)(1)(B) contains the mandatory term "shall" -- which applies to both of the verbs "review" and "revise"-- and a clear-cut statutory deadline of "at least every 8 years." Because EPA cannot make any revisions without first completing its review, the language requires EPA to both complete the review and make the revisions within the 8-year review period. Therefore, a district court

has jurisdiction to compel EPA to make a determination one way or another as to whether revision of the oil and gas NSPS is appropriate and to issue any revision it determines is appropriate.

In addition, EPA has a mandatory duty to include in its 8-year review new pollutants like methane that it has not previously regulated, but that it has since determined endanger public health and welfare. It would be wholly inconsistent with the mandatory nature of section 111 if EPA could refuse to address, as part of its 8-year review, air pollutants that are emitted by an already-listed source category and that EPA has already determined endanger public health and welfare. Rather, the structure of the Act demonstrates Congress' intent that EPA thoroughly review and revise NSPS for a source category at least every 8 years and not limit such review to making changes to existing standards, but instead require EPA to enact more stringent air pollution requirements as circumstances change, as new information becomes available regarding the adverse public health and welfare effects of air pollutants, and as new technologies become available to control emissions of such pollutants. Congress contemplated the 8-year review to encompass EPA's revision of the standards to address other air pollutants, particularly those emitted by a source category that, based on current information, are now determined to significantly contribute to that source's endangerment of public health and welfare and/or for which there is demonstrated control technology available. Further, EPA's past practice confirms that the agency must consider during its 8-year review all of the air pollutants emitted by the source category under review and set NSPS for any of those pollutants that cause or contribute significantly to that source's endangerment of public health and welfare and for which there is demonstrated control technology. *See* 41 Fed. Reg. 3826-27 (Jan. 26, 1976) (addition of standards for SO_2 and CO in NSPS for primary aluminum reduction plants); 42 Fed. Reg. 22506-07 (May 3, 1977) (addition of standards for NO_X, SO_2, and CO in NSPS for lime manufacturing plants); 49 Fed. Reg. 25,106-07 (June 19, 1984) (addition of standards for PM, CO, and hydrocarbon emissions in NSPS for fossil fuel-fired industrial steam generating units).

EPA failed to act on regulation of methane under section 111 despite possessing extensive information that adding methane standards for oil and gas operations is "appropriate." In prior 8-year reviews of standards of performance under section 111, EPA has consistently applied two criteria in determining whether it is appropriate to include a standard for a health- and welfare-endangering air pollutant: (i) the extent of the source category's contribution to the emissions of the pollutant, and (ii) the availability of methods to reduce those emissions. *See, e.g.*, 75 Fed. Reg. 54,970 (Sept. 9, 2010) (finalizing new NO_x standard for cement plants). Applying these criteria to the oil and gas sector demonstrates that methane standards are appropriate at this time.

First, EPA has recognized that "processes in the Oil and Natural Gas source category emit significant amounts of methane." 76 Fed. Reg. at 52,756/1. Indeed, the proposal stated that the sector's methane emissions are equivalent to more than 328 million metric tons of carbon dioxide per year. *Id.* at 52,756/2. As a result, oil and gas operations are the second largest industrial source of U.S. greenhouse gas emissions, behind only electric power plants. *Cf.* 74 Fed. Reg. 16,448, 16,597 Table VIII-1 (April 10, 2009) (showing 2009 estimates of greenhouse gas emissions from other industrial source categories). As EPA explained in the 2012 final rule, "methane emissions from the oil and gas industry represent about 40 percent of the total methane emissions from all sources and account for about 5 percent of all CO_2e [carbon dioxide equivalent] emissions in the United States, with natural gas systems being the single largest contributor to United States anthropogenic methane emissions." 77 Fed. Reg. at 49,535/2. Although EPA projects that the standards adopted in the 2012 final rule for emissions of volatile organic compounds (VOCs) and hazardous air pollutants will have the incidental benefit of also reducing annual methane emissions by about 19 million metric tons CO_2e, *id.* at 49,535/3, the vast majority of methane emissions from this sector will remain uncontrolled.

EPA's failure even to consider directly controlling methane emissions through standards and guidelines resulted in the omission of controls for certain operations that emit large amounts of methane.

For example, EPA declined to establish standards for compressors and pneumatic controllers in the natural gas transmission and distribution segment asserting that, although this equipment emits large quantities of methane, much of the VOCs already have been removed by the time the natural gas stream reaches these sources. *See* 77 Fed. Reg. at 49,522-23 (declining to regulate transmission and distribution compressors because of "the relatively low level of VOC emitted from these sources").

Second, there are readily available methods to reduce methane emissions. In fact, the high methane content of these currently uncontrolled emissions means that adopting standards and guidelines that require methane emissions controls would be cost-effective (or even profitable) at many of these additional emission points. In the final rule, EPA recognized the economic value of emissions control measures for oil and gas equipment that lead to the recovery of hydrocarbon products, including methane, "that can be used on-site as fuel or reprocessed within the production process for sale." 77 Fed. Reg. at 49,534/1. Indeed, EPA found that the rule "will result in net annual costs savings of about $11 million (in 2008 dollars)." *Id.* By ending the waste of methane at sources of emissions not covered by the standards for VOCs, standards of performance that address methane emissions directly likely would add to the economic benefits of the rule. For instance, although compressors located at a wellhead or in the transmission, storage, and distribution segment are not covered under the rule, 77 Fed. Reg. at 49,492/2, EPA has determined that the payback period for compressor maintenance activities that reduce methane emissions is a mere 1 to 3 months. *See* EPA, "Reducing Methane Emissions from Compressor Rod Packing Systems" (Oct. 2006) at 1 (indicating payback periods from 1 to 3 months for compressor maintenance activities that reduce methane emissions). In addition, through EPA's voluntary Natural Gas Star Program, EPA has worked with oil and gas companies to identify more than 100 cost-effective technologies and practices to reduce methane emissions from sources of emissions not covered by the rule. *See* http://www.epa.gov/gasstar/tools/recommended.html.

Section 111(d) of the Clean Air Act also requires EPA to address methane emissions from existing sources, as well as from new and modified facilities. 42 U.S.C. § 7411(d)(1)(A). The Act requires EPA to establish procedures under which each state submits to the agency a plan to adopt, implement, and enforce standards of performance for existing sources for certain pollutants, and to promulgate standards of performance under such plans. *Id.* § 7411(d). The existing source requirements apply to those pollutants, such as methane, that have not been identified as criteria pollutants or hazardous air pollutants, but that are regulated under the new source performance standards for a category of sources. *Id.* § 7411(d)(1). Thus, the Act creates a direct connection between the new source standards and those to be developed for existing sources.

EPA's regulations require the agency to publish "emissions guidelines" "which reflect[] the degree of emission reduction achievable through the application of the best system of emission reduction which (taking into account the cost of such reduction) the Administrator has determined has been adequately demonstrated for designated facilities." 40 C.F.R. §§ 60.21(e), 60.22(a, b). These guidelines are implemented by state agencies who develop and submit to EPA plans to curb emissions of designated pollutants from existing sources. *Id.* § 60.23(a); 42 U.S.C. § 7411(d)(1). EPA has issued emission guidelines at the same time as new source standards for a listed category. *See* 62 Fed. Reg. 48,348 (Sept. 15, 1997) (standards of performance and emissions guidelines for hospital/medical/infectious waste incinerators); 61 Fed. Reg. 9905 (Mar. 12, 1996) (same for municipal solid waste landfills); 60 Fed. Reg. 65,387 (Dec. 19, 1995) (same for municipal waste combustors).

In sum, EPA has failed to review and update as necessary the existing oil and gas standards. EPA's continuing failure to make a final appropriateness determination during its 8-year review and to make the necessary revisions is contrary to section 111(b)(1)(B) of the Clean Air Act. *See* 42 U.S.C. § 7411(b)(1)(B). EPA's failure to make an appropriateness determination also has prevented EPA from fulfilling its duty to publish emissions guidelines covering methane emissions from existing facilities in

the oil and gas sector. EPA's continuing failure to publish these guidelines is contrary to section 111(d) of the Clean Air Act and the regulations implementing that section. *See* 42 U.S.C. § 7411(d); 40 C.F.R. § 60.22(a). We are therefore providing notice that, as of 60 days from the date of this letter, we intend to sue you as EPA administrator and EPA for EPA's failure to take these non-discretionary actions.

III. EPA Has Unreasonably Delayed Determining Whether Standards of Performance for Oil and Gas Operations Are Appropriate and, if so, Establishing Such Standards and Related Emissions Guidelines.

As set forth above, section 111(b)(1)(B) imposes a non-discretionary duty on EPA to review and, if appropriate, revise the NSPS for each category of sources, and section 111(d) and 40 C.F.R. § 60.22(a) impose a non-discretionary duty to establish emissions guidelines covering existing sources. Even if those provisions can be read to contain any ambiguity as to the deadline for these mandatory duties, EPA has unreasonably delayed taking action on methane emissions from the oil and gas sector.

EPA has long known the significance of the oil and gas sector's contribution to methane emissions and the availability and cost-effectiveness of measures for reducing those emissions. EPA's knowledge that oil and gas operations are one of the nation's largest methane sources dates to at least 1997, as the agency has published annual sector-by-sector inventories of U.S. greenhouse gas emissions since 1997, covering emissions since 1990.[1] Similarly, EPA has long had ample data on measures for controlling methane emissions. For example, in 2008, EPA explained that because of its experience implementing the agency's Natural Gas STAR Program, a voluntary public-private partnership with the oil and gas industry initiated in 1993, "many of [the] technologies and management practices" available to control methane emissions from the sector "have been well documented (including information on cost, benefits and reduction potential) and implemented in oil and gas systems throughout the U.S." EPA, Office of Air and Radiation, Technical Support Document for the Advanced Notice of Proposed Rulemaking for Greenhouse Gases; Stationary Sources, Section VII at 30 (June 2008).

EPA has been actively engaged in rulemaking to revise the oil and gas sector standards of performance at least since April 2010, when the agency began sending requests to visit regulated facilities to gather information. *See, e.g.*, Letter from K.C. Hustvedt, EPA, to Tom Monahan, ExxonMobil Production Co. (Apr. 30, 2010) Docket No. EPA–HQ–OAR–2010–0505-0053. In response to the 2009 litigation discussed above, EPA proposed revisions to the standards of performance for oil and gas operations in August 2011. 76 Fed. Reg. at 52,738. However, instead of drawing on the successes of the Natural Gas Star Program to propose a course of action, or even soliciting comment on the issue, the agency chose to ignore the problem. The proposal stated only that "[a]lthough this proposed rule does not include standards for regulating [methane emissions], we continue to assess these significant emissions and evaluate appropriate actions for addressing these concerns." *Id.* at 52,756/2. Multiple parties filed comments in November 2011 objecting to the failure to propose methane standards for this source category. Commenters argued that EPA had abundant evidence that uncontrolled methane emissions from oil and gas operations significantly contribute to atmospheric greenhouse gas pollution, that control measures are available and cost-effective, and that methane standards therefore are appropriate and legally required. *See, e.g.*, Comments of Sierra Club et al. at 74-80 (Nov. 30, 2011) Docket No. EPA–HQ–OAR–2010–0505-4240.

Notwithstanding these comments and the detailed information EPA already had in its possession, the agency has failed to make any appropriateness determination regarding the oil and gas sector's

[1] Links to each annual GHG emissions inventory are at http://www.epa.gov/climatechange/emissions/usgginv_archive.html.

methane emissions, or to propose or promulgate performance standards to meet its obligations under section 111(b)(1)(B) of the Act with regard to the oil and gas sector's methane emissions. EPA's failure to complete the rulemaking required under section 111(b)(1)(B) to address methane emissions from new and modified oil and gas operations has also resulted in an unreasonable delay in establishing emissions guidelines for the controlling methane emissions from existing oil and gas sector sources. EPA's unreasonable delay in issuing these guidelines in turn delays both the date by which states must submit plans for the control of methane from existing oil and gas operations, 40 C.F.R. § 60.23(a), and the date by which existing sources must comply with approved pollution control standards, *see id.* § 60.24(c). Therefore, we are also providing 180-day notice that we intend to sue you as EPA administrator and EPA for EPA's unreasonably delaying final agency action to determine whether standards for methane emissions from oil and gas operations are appropriate, to make the necessary revisions to 40 C.F.R. Part 60, and to issue emissions guidelines for methane emissions from existing oil and gas operations.

IV. Conclusion

EPA's acknowledgement that oil and gas operations account for a large share of methane emissions points to the urgent need to reduce these emissions. The agency's long experience with control strategies that recover methane emissions from oil and gas operations for productive uses confirms that there are cost-effective measures for this source category that would provide an appropriate basis for establishing a standard of performance for methane emissions. But EPA's failure to make progress in deciding whether standards are appropriate demonstrates that litigation may be needed to prompt the required agency action. Accordingly, the States of New York, Connecticut, Delaware, Maryland, Rhode Island, and Vermont, and the Commonwealth of Massachusetts, submit this notice of intent to sue for EPA's failure to complete the review of the standards of performance for oil and gas operations as mandated by section 111(b)(1)(B) of the Clean Air Act and for the agency's unreasonable delay in the completion of that action. The States of New York, Connecticut, Delaware, Maryland, Rhode Island, and Vermont, and the Commonwealth of Massachusetts, also give notice of their intent to sue for EPA's failure to complete the emissions guidelines for existing sources required by section 111(d) of the Clean Air Act and EPA's regulations at 40 C.F.R. § 60.22(a) and for the agency's unreasonable delay in the completion of that action.

We are willing to explore any effective means of resolving this matter without the need for litigation. However, if we do not hear from you within the applicable time periods provided in section 304 of the Act, we intend to file suit in United States District Court.

Very truly yours,

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN
Attorney General

By: Morgan Costello

MICHAEL J. MYERS
MORGAN A. COSTELLO
Assistant Attorneys General
Environmental Protection Bureau
The Capitol
Albany, NY 12224
(518) 473-5843

FOR THE STATE OF CONNECTICUT

GEORGE JEPSEN
Attorney General

KIMBERLY P. MASSICOTTE
MATTHEW I. LEVINE
Assistant Attorneys General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
(860) 808-5250

FOR THE STATE OF DELAWARE

JOSEPH R. BIDEN, III
Attorney General

VALERIE M. SATTERFIELD
Deputy Attorney General
Delaware Department of Justice
102 West Water Street, 3rd Floor
Dover, Delaware 19904
(302) 739-4636

FOR THE STATE OF MARYLAND

DOUGLAS F. GANSLER
Attorney General

MARY E. RAIVEL
Assistant Attorney General
Office of the Attorney General
Maryland Department of the Environment
1800 Washington Blvd., Suite 6048
Baltimore, Maryland 21230
(410) 537-3035

FOR THE STATE OF RHODE ISLAND

PETER F. KILMARTIN
Attorney General

GREGORY S. SCHULTZ
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
(401) 275-4400 x 2400

FOR THE STATE OF VERMONT

WILLIAM H. SORRELL
Attorney General

THEA J. SCHWARTZ
Assistant Attorneys General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-2359

FOR THE COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
Attorney General

CAROL IANCU
Assistant Attorney General
Environmental Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2428

EXHIBIT 2

Commonwealth of Massachusetts,
California, District of Columbia, Illinois, Maine, Maryland, New York,
Rhode Island, Vermont

April 3, 2017

Honorable Scott Pruitt
U.S. Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C., 20460

Re: Withdrawal of Information Collection Request (ICR) for the Oil and Natural Gas Industry, EPA ICR No. 2548.01 (Final Methane ICR)

Dear Administrator Pruitt:

We, the undersigned states, write to express our strong disagreement with your decision to withdraw the Final Methane ICR issued on November 10, 2016, regarding the Environmental Protection Agency's ("EPA") effort to regulate methane emissions from existing sources within the oil and gas sector pursuant to Clean Air Act section 111(d), 42 U.S.C. § 7411(d) ("Section 111(d)"). We urge you to reconsider that decision, or otherwise explain how EPA intends to fulfill its legal obligation to address methane leaks that are endangering public health and welfare.

You unilaterally withdrew the Final Methane ICR on March 2 with no meaningful explanation, let alone a reasoned one. The public had no window into the basis for your decision, and no understanding of how it relates to EPA's obligation to protect public health and the environment. We are troubled that your decision to withdraw the Final Methane ICR occurred immediately after the states of Texas, Alabama, Arizona, Kansas, Kentucky, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, and West Virginia wrote to you on March 1 requesting that you suspend and withdraw the ICR. These are the very states with whom you personally collaborated closely on your previous legal challenges to multiple EPA efforts to reduce greenhouse gas emissions, including the oil and gas sector methane new source performance standard issued pursuant to Clean Air Act section 111(b), 42 U.S.C. § 7411(b) ("Section 111(b)"). Despite your stated commitment to transparency, regulatory certainty, and the norms of administrative procedure, you pulled the Final Methane ICR without any opportunity for other states, stakeholders, and the general public to provide input—notwithstanding the fact that the ICR itself had been subject to two rounds of notice and comment prior to its finalization. *See* Proposed Information Collection Request; Comment Request; Information Collection Effort for Oil and Gas Facilities, 81 Fed. Reg. 35,763 (June 3, 2016); Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Collection Effort for Oil and Gas Facilities, 81 Fed. Reg. 66,962 (Sept. 29,

2016). Your arbitrary action demonstrates a disregard on your part for the mechanisms that ensure public participation in important governmental decision-making processes.

Americans are deeply concerned about the impacts of climate change, which are already being felt across the United States. Climate change is having a very real, significant, and adverse impact on American families and businesses. Just this month, after drought and unseasonably high temperatures set the stage, wildfires ravaged Kansas, Oklahoma, and Texas, destroying ranchlands and hundreds of heads of cattle, resulting in destruction so vast that ranchers are now referring to the fires as "our Hurricane Katrina."[1] Our failure to act will only worsen these impacts. *See generally*, *Our Changing Planet*, U.S. Global Change Research Program for FY 2017 at 2 (hereinafter, "USGCRP Report") (climate-driven impacts include risks to human health; more frequent and intense storms that threaten food security, infrastructure, and livelihoods; sea level rise and coastal flooding; international stability; and U.S. national security).

The National Aeronautics and Space Administration ("NASA") and the National Oceanic and Atmospheric Administration ("NOAA") have confirmed that 2016 was the warmest year on record globally.[2] NASA observed, "2016 is remarkably the third record year in a row in this series . . . . We don't expect record years every year, but the ongoing long-term warming trend is clear." *See also* USGCRP Report at 2 (internal citations omitted) ("The global environment is changing rapidly. . . . [G]lobally-averaged temperatures in 2015 shattered the previous record, which was set in 2014; and 2016 is on track to break the 2015 record."). According to NASA, the Earth's average temperature has risen about two degrees Fahrenheit since the late nineteenth century, due largely to increased carbon dioxide and other human-made emissions in the atmosphere. And most of that warming has occurred in our lifetimes, in the past thirty-five years. Indeed, sixteen of the seventeen warmest years on record have occurred since 2001.

Methane is a particularly powerful agent of climate change; pound-for-pound, methane warms the climate about thirty-four times more than carbon dioxide over a 100-year period, according to the Intergovernmental Panel on Climate Change, and on a twenty-year timeframe, has about eighty-six times the global warming potential of carbon dioxide. According to EPA, the oil and gas sector is the largest emitter of methane in the U.S., accounting for a third of total U.S. methane emissions.[3] Oil and gas production, transmission, and distribution results in

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1 Jack Healy, *Burying Their Cattle, Ranchers Call Wildfires 'Our Hurricane Katrina'*, N.Y. TIMES (Mar. 20, 2017), https://www.nytimes.com/2017/03/20/us/burying-their-cattle-ranchers-call-wildfires-our-hurricane-katrina.html?smprod=nytcore-iphone&smid=nytcore-iphone-share.

2 *NASA, NOAA Data Show 2016 Warmest Year on Record Globally*, NASA (Jan. 18, 2017), https://www.nasa.gov/press-release/nasa-noaa-data-show-2016-warmest-year-on-record-globally.

3 Chris Mooney, *The U.S. has been Emitting a lot More Methane than we Thought, Says EPA*, WASH. POST (Apr. 15, 2016), https://www.washingtonpost.com/news/energy-environment/wp/2016/04/15/epa-issues-large-upward-revision-to-u-s-methane-emissions/?utm_term=.9e451e916e23. *See also*, *Emissions of Greenhouse Gases in the U.S.*,

massive leakage of methane to the atmosphere—leakage that not only drives climate change, but also equates to lost revenue for producing states, and producers, transporters, and distributors of natural gas. Catching methane before it escapes to the atmosphere is good for the environment and good for the economy. Every ton of methane leaked to the atmosphere is a ton of methane that cannot be sold, and for producing states, may result in lost tax and royalty benefits. Conserving—not wasting—America's natural resources and making efficient use of them is a longstanding American value. Indeed, careful management of precious resources will better aid—not undermine—our efforts to become more energy-independent as a nation.

Existing sources within the oil and natural gas sector are projected to make up ninety percent of methane emissions from the sector in 2018.[4] A 2014 study by ICF International found that industry could cut emissions forty percent below projected 2018 levels at an average annual cost of *less than one cent per thousand cubic feet of natural gas.*[5] The capital investment required by industry would be $2.2 billion, representing less than one percent of typical annual industry capital expenditures.[6] Taking into account the total economic value of natural gas that would be recovered through use of additional emissions controls, a forty percent reduction is achievable and would *yield savings of over $100 million dollars per year for the U.S. economy and consumers.*[7] Operators would save, too—cost-effective methane reduction opportunities would generate over $164 million dollars per year net savings for operators.[8] States like Colorado and Wyoming have shown that it is possible to cost-effectively control these emissions—and their example has helped lay the groundwork for the federal Clean Air Act standards that are necessary to address this national problem.

Yet, despite these facts, you have done an about-face and withdrawn the Final Methane ICR, which would have allowed EPA to gain valuable information from industry in an effort to tailor a rule that would put in place controls to reduce emissions—in other words, conserve natural gas while generating savings for the American consumer.

Under Section 111(b) of the Clean Air Act, when the EPA administrator determines that a category of sources "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare," the Administrator "shall" include that

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U.S. ENERGY INFO. ADMIN. (Mar. 31, 2011), https://www.eia.gov/environment/emissions/ghg_report/ghg_methane.cfm (energy sector is largest source of U.S. methane emissions).

4 *Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries*, ICF INT'L 1-1 (2014), https://www.edf.org/sites/default/files/methane_cost_curve_report.pdf.

5 *Id.*

6 *Id.* at 1-2.

7 *Id.*

8 *Id.* at 4-3.

category on a list of stationary sources. 42 U.S.C. § 7411(b)(1)(A). Pursuant to Section 111(b), EPA previously listed crude oil and natural gas production as a source category that contributes significantly to air pollution that may reasonably be anticipated to endanger public health and welfare. *See Priority List and Additions to the List of Categories of Stationary Sources*, 44 Fed. Reg. 49,222 (Aug. 21, 1979).

Numerous scientific assessments, including, but not limited to, EPA's 2009 endangerment determination,[9] the assessments of the International Panel on Climate Change, the U.S. Global Change Research Program and the National Academy of Sciences, and scientific studies undertaken by states across the nation, establish that anthropogenic greenhouse gas emissions, including methane, may reasonably be anticipated to endanger public health or welfare. As described above, the oil and natural gas source category causes or contributes significantly to such greenhouse gas air pollution. As well, available technology can effectively and efficiently reduce methane emissions from the oil and natural gas industry. As a result, in 2015, EPA promulgated a final New Source Performance Standard under Clean Air Act Section 111(b) for methane emissions from new and modified oil and natural gas sources. *Oil and Natural Gas Sector Emission Standards for New, Reconstructed and Modified Sources*, 81 Fed. Reg. 35,824 (June 3, 2016).[10]

EPA is required to issue performance standards for existing oil and gas sector sources of methane emissions. *See* 42 U.S.C. § 7411(d). While not necessary for purposes of Section 111(d), EPA issued the ICR to assist in its development of standards that would be reasonable and workable for regulated entities. *See, e.g.*, 81 Fed. Reg. 35,764. All stakeholders, including industry, would benefit significantly from a transparent regulatory process designed to solicit key information regarding how the standards could be most effectively implemented.

For all these reasons, we urge you to reconsider your decision and reissue the Final Methane ICR, or otherwise explain how EPA intends to fulfill its legal obligation to address methane pollution under the Clean Air Act.

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9 *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act; Final Rule, 74 Fed. Reg. 66,496 (Dec. 15, 2009).

10 On March 28, President Trump issued an Executive Order requiring EPA to review, and if appropriate, publish for notice and comment rules "suspending, revising, or rescinding" the final New Source Performance Standard issued pursuant to Section 111(b) for methane emissions from new and modified oil and natural gas sources. *See* Executive Order, Section 7 (Mar. 28, 2017). Neither the Executive Order, nor any subsequent review, can vitiate EPA's legal obligation under the Clean Air Act to control oil and gas sector methane emissions. States will strongly oppose efforts to withdraw the methane NSPS, and will vigorously pursue legal action to ensure EPA complies with its obligation to regulate oil and gas sector methane emissions.

MAURA HEALEY
Attorney General of Massachusetts

By: MELISSA A. HOFFER
Assistant Attorney General
Chief, Energy & Environment Bureau
One Ashburton Place
Boston, MA 02108
(617) 963-2322

XAVIER BECERRA
Attorney General of California

By: KAVITA P. LESSER
Deputy Attorney General
California Department of Justice
300 South Spring Street
Los Angeles, CA 90013
(213) 897-2603

KARL A. RACINE
Attorney General for the District of Columbia

By: ROBYN R. BENDER
Deputy Attorney General
Public Advocacy Division
441 4th Street, NW
Suite 650 North
Washington, DC 20001
(202) 724-6610

LISA MADIGAN
Attorney General for the State of Illinois

By: JAMES P. GIGNAC
Assistant Attorney General
Environmental and Energy Counsel
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-0660

JANET T. MILLS
Attorney General for the State of Maine

By: GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
6 State House Station
Augusta, ME 04333-0006
(207) 626-8545

BRIAN E. FROSH
Attorney General of Maryland

200 St. Paul Place, 20th Fl.
Baltimore, Maryland 21202
(410) 576-6300

ERIC T. SCHNEIDERMAN
Attorney General of New York

By: Lemuel M. Srolovic
Assistant Attorney General
Chief, Environmental Protection Bureau
120 Broadway
New York, NY 10271
(212) 416-8448

PETER KILMARTIN
Rhode Island Attorney General

By: Gregory S. Schultz
Special Assistant Attorney General
150 South Main Street
Providence, RI - 02903
(401) 274-4400

THOMAS J. DONOVAN, JR.
Attorney General of Vermont

By: Nicholas F. Persampieri
Assistant Attorney General
Office of the Vermont Attorney General
109 State Street
Montpelier, Vermont 05609-1001
(802) 828-6902

Case No. _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, STATE OF CALIFORNIA, STATE OF VERMONT, STATE OF MARYLAND and COMMONWEALTH OF PENNSYLVANIA,

Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; JACK DANIELSON, in his capacity as Acting Deputy Administrator of the National Highway Traffic Safety Administration; and ELAINE L. CHAO, in her capacity as Secretary of the United States Department of Transportation,

Respondents.

PETITION FOR REVIEW OF A FINAL RULE OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
MONICA WAGNER
Deputy Chief
Environmental Protection Bureau
120 Broadway
New York, New York 10271
Tel: (212) 416-6351
Email: Monica.Wagner@ag.ny.gov

XAVIER BECERRA
Attorney General of the
State of California
DAVID ZAFT *(Admission Pending)*
Deputy Attorney General
Office of the Attorney General
300 S. Spring St., Suite 1702
Los Angeles, California 90013
Tel: (213) 897-2607
Email: David.Zaft@doj.ca.gov

Additional Counsel Listed on Signature Page

PETITION FOR REVIEW

Pursuant to the Energy Policy and Conservation Act, 49 U.S.C. § 32909, Section 702 of the Administrative Procedure Act, 5 U.S.C. § 702, and Rule 15 of the Federal Rules of Appellate Procedure, the States of New York, California, Vermont and Maryland, and the Commonwealth of Pennsylvania hereby petition this Court to review and set aside a final action taken by Respondents to indefinitely delay the effective date of a final rule increasing the civil penalty rate for violations of the Corporate Average Fuel Economy standards. The rule challenged herein is titled "Civil Penalties … Final rule; delay of effective date" and was published in the Federal Register at 82 Fed. Reg. 32139-40 (July 12, 2017).

A copy of the challenged final rule is attached as Exhibit A to this Petition.

Dated: September 8, 2017

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York

By: */s/ Monica Wagner*
MONICA WAGNER
Deputy Chief
Environmental Protection Bureau
120 Broadway
New York, New York 10271
Tel: (212) 416-6351
Email: Monica.Wagner@ag.ny.gov

Attorneys for Petitioner State of New York

THOMAS J. DONOVAN, JR.
Attorney General of the
State of Vermont

By: */s/ Kyle H. Landis-Marinello*
KYLE H. LANDIS-MARINELLO
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609-1001
Tel: (802) 828-3186
Email: Kyle.Landis-Marinello
@vermont.gov

Attorneys for Petitioner State of Vermont

XAVIER BECERRA
Attorney General of the
State of California
DAVID A. ZONANA
(Admission Pending)
Supervising Deputy Attorney General

By: */s/ David Zaft*
DAVID ZAFT *(Admission Pending)*
Deputy Attorney General
Office of the Attorney General
300 S. Spring St., Suite 1702
Los Angeles, California 90013
Tel: (213) 897-2607
Email: David.Zaft@doj.ca.gov
David.Zonana@doj.ca.gov

Attorneys for Petitioner State of California

JOSH SHAPIRO
Attorney General of the
Commonwealth of Pennsylvania

By: */s/ Jonathan Scott Goldman*
JONATHAN SCOTT GOLDMAN
(Admission Pending)
Executive Deputy Attorney General
Office of the Attorney General
Strawberry Square, 15th Floor
Harrisburg, Pennsylvania 17120
Tel: (717) 787-8058
Email: JGoldman@attorneygeneral.gov

Attorneys for Petitioner Commonwealth of Pennsylvania

BRIAN E. FROSH
Attorney General of the
State of Maryland

By: */s/ Steven M. Sullivan*
STEVEN M. SULLIVAN
(Admission Pending)
Solicitor General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
Tel: (410) 576-6427
Email: SSullivan@oag.state.md.us

Attorneys for Petitioner State of Maryland

EXHIBIT A

82 Federal Register 32139

Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule has no such effect on state, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

This final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 5, 2017, for publication.

List of Subjects in 38 CFR Part 74

Administrative practice and procedures, Privacy, Reporting and recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.

Dated: July 7, 2017.

Michael Shores,

Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

PART 74—VETERANS SMALL BUSINESS REGULATIONS

Accordingly, the interim rule amending 38 CFR part 74 which was published at 82 FR 11154 on February 21, 2017, is adopted as final without change.

[FR Doc. 2017–14600 Filed 7–11–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2016–0136]

RIN 2127–AL82

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; delay of effective date.

SUMMARY: NHTSA is delaying the effective date of the final rule entitled ''Civil Penalties,'' published in the **Federal Register** on December 28, 2016, because NHTSA is reconsidering the appropriate level for CAFE civil penalties.

DATES: As of July 7, 2017, the effective date of the final rule published in the **Federal Register** on December 28, 2016, at 81 FR 95489, is delayed indefinitely pending reconsideration.

FOR FURTHER INFORMATION CONTACT: Rebecca Schade, Office of Chief Counsel, at (202) 366–2992.

SUPPLEMENTARY INFORMATION: On July 5, 2016, NHTSA published an interim final rule updating the maximum civil penalty amounts for violations of statutes and regulations administered by NHTSA, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The penalty for exceeding an applicable Corporate Average Fuel Economy (CAFE) standard was among the penalties adjusted for inflation in the interim final rule. In accordance with the Inflation Adjustment Act and guidance on calculating the inflationary adjustment mandated by the Act issued by the Office of Management and Budget, NHTSA increased the civil penalty for failing to meet an applicable CAFE standard from $5.50 per tenth of a mile per gallon (mpg) to $14 per tenth of an mpg.

The Auto Alliance and Global Automakers jointly petitioned NHTSA for reconsideration of the interim final rule regarding the inflationary adjustment of CAFE non-compliance penalties (hereafter, the Alliance and Global petition will be referred to as the ''Industry Petition'') [1] on August 1, 2016. The Industry Petition argued that NHTSA used the wrong base year to calculate the inflationary adjustment to the CAFE civil penalty and raised concerns about applying the adjusted civil penalty retroactively. The Industry Petition also argued that in the event that NHTSA chose not to adopt the base year suggested in the petition, NHTSA should seek comment on whether NHTSA should adopt a lower penalty level than the one in the interim final rule based on ''negative economic impacts,'' as permitted by the Inflation Adjustment Act.

On December 28, 2016, NHTSA published a final rule in response to the Industry Petition.[2] To address concerns raised in the Industry Petition about applying the adjusted penalty retroactively, NHTSA delayed application of the $14 per tenth of an mpg penalty until the 2019 model year, which begins in October 2018 for most manufacturers. The final rule did not address the other points raised in the Industry Petition.

The December 28, 2016 final rule is not yet effective and would currently become effective on July 10, 2017.[3]

NHTSA is now reconsidering the final rule because the final rule did not give adequate consideration to all of the relevant issues, including the potential economic consequences of increasing CAFE penalties by potentially $1 billion per year, as estimated in the Industry Petition. Thus, in a separate document

[1] Jaguar Land Rover North America, LLC also filed a petition for reconsideration in response to the July 5, 2016 interim final rule raising the same concerns as those raised in the Industry Petition. Both petitions can be found in Docket No. NHTSA–2016–0075, accessible via *www.regulations.gov.*

[2] 81 FR 95489.

[3] 82 FR 8694 (Jan. 30, 2017); 82 FR 15302 (Mar. 28, 2017); 82 FR 29009 (June 27, 2017).

published in this **Federal Register**, NHTSA is seeking comment on whether $14 per tenth of an mpg is the appropriate penalty level for civil penalties for violations of CAFE standards given the requirements of the Inflation Adjustment Act and the Energy Policy and Conservation Act (EPCA) of 1975, which authorizes civil penalties for violations of CAFE standards.[4] Because NHTSA is reconsidering the final rule, NHTSA is delaying the effective date pending reconsideration.

There is good cause to implement this delay without notice and comment under 5 U.S.C. 553(b)(B) and 553(d)(3) because those procedures are impracticable, unnecessary, and contrary to the public interest in these circumstances, where the effective date of the rule is imminent. Moreover, the agency is, through a separate document, already seeking out public comments on the underlying issues, which may be extensive, and additional time will be required to thoughtfully consider and address those comments before deciding on the appropriate course of regulatory action. A delay in the effective date is therefore consistent with NHTSA's statutory authority to administer the CAFE standards program and its inherent authority to do so efficiently and in the public interest. In addition, no party will be harmed by the delay in the effective date of the rule. On the contrary, the rule does not increase CAFE penalties before Model Year 2019, and therefore, the delay will not affect the civil penalty amounts assessed against any manufacturer for violating a CAFE standard prior to the 2019 model year at the earliest, *i.e.,* until sometime in 2020. Therefore, the increased penalty rate set forth in the rule would not be applied for current violations, so there is no immediate, concrete impact from the delay.

Authority: Pub. L. 101–410, Pub. L. 104–134, Pub. L. 109–59, Pub. L. 114–74, Pub L. 114–94, 49 U.S.C. 32902 and 32912; delegation of authority at 49 CFR 1.81, 1.95.

Jack Danielson,

Acting Deputy Administrator.

[FR Doc. 2017–14526 Filed 7–7–17; 11:15 am]

BILLING CODE 4910–59–P

[4] NHTSA incorporates the discussions in the document seeking comment on the appropriate CAFE civil penalties level by reference.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2017–0059]

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Reconsideration of final rule; request for comments.

SUMMARY: NHTSA seeks comment on whether and how to amend the civil penalty rate for violations of Corporate Average Fuel Economy (CAFE) standards. NHTSA initially raised the civil penalty rate for CAFE standard violations for inflation in 2016, but upon further consideration, NHTSA believes that obtaining additional public input on how to proceed with CAFE civil penalties in the future will be helpful. Therefore, NHTSA is issuing this document to seek public comment as it *sua sponte* reconsiders its final rule regarding the appropriate inflationary adjustment for CAFE civil penalties.

DATES: *Comments:* Comments must be received by October 10, 2017. See the **SUPPLEMENTARY INFORMATION** section below for more information on submitting comments.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document. Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov*. Please see the ''Privacy Act'' heading below.

You may call the Docket Management Facility at 202–366–9324.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. NHTSA will continue to file relevant information in the Docket as it becomes available.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy*. Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

FOR FURTHER INFORMATION CONTACT: Thomas Healy, Office of the Chief Counsel, NHTSA, telephone (202) 366–2992, facsimile (202) 366–3820, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

NHTSA sets [1] and enforces [2] CAFE standards for the United States, and in doing so, assesses civil penalties against vehicle manufacturers who fall short of their compliance obligations and are unable to make up the shortfall with credits.[3] The amount of the civil penalty was originally set by statute in 1975, and for most of the duration of the CAFE program, has been $5.50 per each tenth of a mile per gallon that a manufacturer's fleet average CAFE level falls short of its compliance obligation, multiplied by the number of vehicles in the fleet [4] that has the shortfall. The basic equation for calculating a manufacturer's civil penalty amount is as follows:

[1] 49 U.S.C. 32902.

[2] 49 U.S.C. 32911, 32912.

[3] Credits may be either *earned* (for over-compliance by a given manufacturer's fleet, in a given model year) or *purchased* (in which case, another manufacturer earned the credits by over-complying and chose to sell that surplus). 49 U.S.C. 32903; 49 CFR part 538.

[4] A manufacturer may have up to three fleets of vehicles, for CAFE compliance purposes, in any given model year—a domestic passenger car fleet, an imported passenger car fleet, and a light truck fleet. Each fleet belonging to each manufacturer has its own compliance obligation, with the potential for either over-compliance or under-compliance. There is no overarching CAFE requirement for a manufacturer's total production.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, STATE OF CALIFORNIA, STATE OF CONNECTICUT, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MASSACHUSETTS, STATE OF OREGON, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, STATE OF VERMONT, STATE OF WASHINGTON, and CITY OF NEW YORK,

Docket No.

Petitioners,

v.

U.S. DEPARTMENT OF ENERGY and JAMES R. PERRY, Secretary, U.S. Department of Energy,

Respondents.

PETITION FOR REVIEW

Pursuant to Section 336(b)(1) of the Energy Policy and Conservation Act, 42 U.S.C. § 6306(b)(1), Section 702 of the Administrative Procedure Act, 5 U.S.C. § 702, and Rule 15 of the Federal Rules of Appellate Procedure, the State of New York, State of California, State of Connecticut, State of Illinois, State of Maine, Commonwealth of Massachusetts, State of Oregon, Pennsylvania Department of Environmental Protection, State of Vermont, State of Washington, and the City of New York, hereby petition this Court for review of final actions taken by Respondents at 82 Fed. Reg. 8806 *et seq*. (January 31, 2017), entitled "Energy Conservation Program: Energy Conservation Standards for Ceiling Fans," and at 82 Fed. Reg. 14427 *et seq*.

(March 21, 2017), entitled "Energy Conservation Program: Energy Conservation Standards for Ceiling Fans" (copies thereof attached hereto).

Dated: March 31, 2017

Respectfully submitted,

ERIC T. SCHNEIDERMAN
Attorney General of the
State of New York
Attorney for Petitioner State of New York

By: /s/ Timothy Hoffman
Timothy Hoffman, Assistant Attorney General
Lisa Kwong, Assistant Attorney General
Office of the Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
Tel: (716) 853-8465
(518) 776-2422
Email: Timothy.Hoffman@ag.ny.gov
Lisa.Kwong@ag.ny.gov

XAVIER BECERRA
Attorney General of the
State of California
Attorney for Petitioner State of California

By: /s/ Jamie Jefferson
Jamie Jefferson, Deputy Attorney General
Somerset Perry, Deputy Attorney General
Office of the Attorney General
California Department of Justice
1515 Clay St., 20th Floor
Oakland, California 94612
Tel: (510) 879-0280
Email: Jamie.Jefferson@doj.ca.gov

GEORGE JEPSEN
Attorney General of the
State of Connecticut
Attorney for Petitioner State of Connecticut

By: /s/ Robert Snook
Matthew Levine, Assistant Attorney General
Robert Snook, Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, Connecticut 06141-0120
Tel: (860) 808-5250
Email: Robert.Snook@ct.gov

LISA MADIGAN
Attorney General of the
State of Illinois
Attorney for Petitioner State of Illinois

By: /s/ James P. Gignac
James P. Gignac, Assistant Attorney General
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
Tel: (312) 814-0660
Email: jgignac@atg.state.il.us

JANET T. MILLS
Attorney General of the
State of Maine
Attorney for Petitioner State of Maine

By: /s/ Katherine Tierney
Katherine Tierney, Assistant Attorney General
Office of the Attorney General
State House Station 6
Augusta, ME 04333-0006
Tel: (207) 626-8800
Email: katherine.tierney@maine.gov

MAURA HEALEY
Attorney General of the
Commonwealth of Massachusetts
Attorney for Petitioner Commonwealth of
Massachusetts

By: /s/ I. Andrew Goldberg
I. Andrew Goldberg, Assistant Attorney General
Environmental Protection Division
Joseph Dorfler, Assistant Attorney General
Energy and Telecommunications Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, Massachusetts 02108
Tel: (617) 963-2429
(617) 963-2086
Email: andy.goldberg@state.ma.us
joseph.dorfler@state.ma.us

ELLEN F. ROSENBLUM
Attorney General of the
State of Oregon
Attorney for Petitioner State of Oregon

By: /s/ Benjamin Gutman
Benjamin Gutman, Solicitor General
Office of the Attorney General
Oregon Department of Justice
1162 Court Street, N.E.
Salem, Oregon 97301-4096
Tel: (503) 378-4402
Email: benjamin.gutman@doj.state.or.us

ALEXANDRA C. CHIARUTTINI
Chief Counsel
Attorney for Petitioner Pennsylvania Department of
Environmental Protection
PA Bar No. 80428

By: /s/ Robert A. Reiley
Robert A. Reiley
PA Bar No. 61319
Department of Environmental Protection
Office of Chief Counsel
400 Market Street, 16th Floor

P.O. Box 8464
Harrisburg, PA 17105-8464
Tel: (717) 787-4449
Email: rreiley@pa.gov

THOMAS J. DONOVAN, JR.
Attorney General
Office of the Attorney General
Attorney for Petitioner State of Vermont

By: /s/ Laura B. Murphy
Laura B. Murphy
Assistant Attorney General
Environmental Protection Division
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
Tel: (802) 828-1059
Email: laura.murphy@vermont.gov

BOB FERGUSON
Attorney General of Washington
Attorney for Petitioner State of Washington

By: /s/ Thomas J. Young
By: Thomas J. Young
Assistant Attorney General
Washington State Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
Tel: (360) 586-4608
Email: TomY@atg.wa.gov

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Petitioner City of New York

By: /s/ Susan E. Amron
Susan E. Amron, Chief,
Environmental Law Division
Sarah Kogel-Smucker, Senior Counsel
New York City Law Department
100 Church Street, Room 6-146

New York, New York 10007
Tel: (212) 356-2070
(212) 356-2315
Email: samron@law.nyc.gov
skogel@law.nyc.gov

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–6590. Email: *Ashey.Armstrong@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

On January 20, 2017, the Assistant to the President and Chief of Staff ("Chief of Staff") issued a memorandum, published in the **Federal Register** on January 24, 2017 (82 FR 8346), outlining the President's plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy ("DOE") hereby temporarily postpones the effective date of its final rule amending the test procedure for walk-in coolers and walk-in freezers (collectively, "walk-ins") published in the **Federal Register** on December 28, 2016. See 81 FR 95758. The December 28 rule clarifies certain specific aspects related to the testing of walk-in refrigeration systems, updates certain related certification and enforcement provisions, and establishes labeling requirements to assist in determining compliance with relevant walk-in standards. Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff's memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given that the memorandum was issued on January 20, 2017, and the previous effective date of the rule at issue was January 27, 2017. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 24, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–01956 Filed 1–26–17; 4:15 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–STD–0045]

RIN 1904–AD28

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; delay of effective date.

SUMMARY: This document delays the effective date of a recently published final rule amending the energy conservation standards for ceiling fans.

DATES: The effective date of the rule amending 10 CFR part 430 published in the **Federal Register** at 82 FR 6826 on January 19, 2017, is delayed to March 21, 2017.

FOR FURTHER INFORMATION CONTACT:

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashey.Armstrong@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 20, 2017, the Assistant to the President and Chief of Staff ("Chief of Staff") issued a memorandum, published in the **Federal Register** on January 24, 2017 (82 FR 8346), outlining the President's plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy ("DOE") hereby temporarily postpones the effective date of its final rule amending the energy conservation standards for ceiling fans published in the **Federal Register** on January 19, 2017. See 82 FR 6826. The January 19 rule establishes amended standards for ceiling fans that are expressed for each product class as the minimum allowable efficiency in terms of cubic feet per minute per watt ("CFM/W"), as a function of ceiling fan diameter. (The previous energy conservation standards applicable to ceiling fans were design standards prescribed in the Energy Policy and Conservation Act of 1975, as amended.) Consistent with the memorandum, DOE is temporarily postponing the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff's memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing for 60 days the effective date of this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 24, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–01958 Filed 1–30–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. EA–RM–16–PRDNA]

RIN 1992–AA52

Procedural Rules for DOE Nuclear Activities

AGENCY: Office of Enterprise Assessments, Office of Enforcement, Office of Nuclear Safety Enforcement, Department of Energy.

ACTION: Final rule; stay of regulations.

SUMMARY: This document stays DOE regulations for the assessment of civil penalties against certain contractors and subcontractors for violations of the prohibition against an employee who reports violations of law, mismanagement, waste, abuse or dangerous/unsafe workplace conditions, among other protected activities, concerning nuclear safety.

DATES: Effective January 31, 2017, 10 CFR 820.2 (the definition for "DOE Nuclear Safety Requirements"), 820.14, 820.20(a) and (b), and appendix A to part 820, section XIII, are stayed until March 21, 2017.

FOR FURTHER INFORMATION CONTACT:

Steven Simonson, U.S. Department of Energy, Office of Enterprise Assessments/Germantown Building, 1000 Independence Ave. SW., Washington, DC 20585–1290. Phone: (301) 903–2816. Email: *Steven.Simonson@hq.doe.gov.*

K.C. Michaels, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 586–3430. Email: *Kenneth.Michaels@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 20, 2017, the Assistant to the President and Chief of Staff ("Chief of Staff") issued a memorandum, published in the **Federal Register** on January 24, 2017 (82 FR 8346), outlining the President's plan for managing the Federal regulatory process at the outset of the new Administration. In implementation of one of the measures directed by that memorandum, the United States Department of Energy ("DOE") hereby temporarily stays regulations in its final rule amending its procedural rules for DOE nuclear activities published in the **Federal Register** on December 27, 2016. See 81 FR 94910. In the December 27 rule, DOE clarified that the Department may assess civil penalties against certain contractors and subcontractors for violations of the prohibition against retaliating against an employee who reports violations of law, mismanagement, waste, abuse, or dangerous/unsafe workplace conditions, among other protected activities, concerning nuclear safety (referred to as "whistleblowers"). Specifically, DOE clarified the definition of "DOE Nuclear Safety Requirements" and clarified that the prohibition against whistleblower retaliation is a DOE Nuclear Safety Requirement to the extent that it concerns nuclear safety. Consistent with the memorandum, DOE is temporarily staying regulations in the final rule by an additional 60 days starting from January 20, 2017. The temporary 60-day stay is necessary to give DOE officials the opportunity for further review and consideration of new regulations, consistent with the Chief of Staff's memorandum of January 20, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily staying this regulation pursuant to the previously-noted memorandum of the Chief of Staff and is exercising no discretion in implementing this specific provision of the memorandum.

As a result, seeking public comment on this stay is unnecessary and contrary to the public interest. It is also impracticable given that the memorandum was issued on January 20, 2017 and the previous effective date of the rule at issue was January 26, 2017. For these same reasons, DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on January 24, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–01959 Filed 1–30–17; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AD21

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (Reform Act), and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act).

DATES: This regulation is effective on January 31, 2017.

FOR FURTHER INFORMATION CONTACT: Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4124, TTY (703) 883–4056, or Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4082, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation through a final rulemaking to retain the deterrent effect of such penalties.

II. Background

A. Introduction

Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty [1] as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by

[1] *Note:* While the 1990 Act, as amended by 1996 and 2015 Acts, uses the term "civil monetary penalties" for these penalties or other sanctions, the Farm Credit Act and the FCA Regulations use the term "civil money penalties." Both terms have the same meaning. Accordingly, this rule uses the term civil money penalty, and both terms may be used interchangeably.

consideration during the original postponement of the effective date of the regulation establishing test procedures for compressors. Therefore, DOE hereby further temporarily postpones the effective date of that test procedure regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until July 3 2017, the date on which the statute requires compliance.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary and the statutory compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary's confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–05479 Filed 3–20–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–STD–0045]

RIN 1904–AD28

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further delays the effective date of a recently published final rule amending the energy conservation standards for ceiling fans.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR part 430 published in the **Federal Register** at 82 FR 6826 on January 19, 2017, delayed until March 21, 2017 at 82 FR 8806 on January 19, 2017, is further delayed until September 30, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–6590. Email: *Ashey.Armstrong@ee.doe.gov.*

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2017, the United States Department of Energy ("DOE") temporarily postponed the effective date of its final rule amending the energy conservation standards for ceiling fans published in the **Federal Register** on January 19, 2017. See 82 FR 8806. The January 31 rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy (Secretary) the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his position until March 3, 2017. As a result, the Secretary was unable to accomplish the review and consideration during the original postponement of the effective date of the regulation establishing energy conservation standards for ceiling fans. Therefore, DOE hereby further temporarily postpones the effective date of that energy conservation standards regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until September 30, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary. The January 21, 2020, compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary's confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–05477 Filed 3–20–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 435

[Docket No. EERE–2016–BT–STD–0003]

RIN 1904–AD56

Energy Efficiency Standards for the Design and Construction of New Federal Low-Rise Residential Buildings' Baseline Standards Update

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further temporarily postpones the effective date of a recently published final rule amending the baseline Federal building standards.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR part 435 published in the **Federal Register** at 82 FR 2857 on January 10, 2017, delayed until March 21, 2017 at 82 FR 9343 on February 6, 2017, is further delayed until September 30, 2017. The incorporation by reference of the publication listed in this rule is

Maryland
Department of
the Environment

Larry Hogan
Governor

Boyd Rutherford
Lieutenant Governor

Ben Grumbles
Secretary

July 20, 2017

CERTIFIED MAIL

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Notice of Intent to Sue Pursuant to the Clean Air Act for Failure to Perform a Non-Discretionary Duty to Approve or Disapprove a Section 126 Petition

Dear Administrator Pruitt:

The State of Maryland, by and through the Maryland Department of the Environment, hereby gives notice that it intends to bring suit under section 304 of the Clean Air Act, 42 U.S.C. § 7604, against the Administrator of the United States Environmental Protection Agency ("EPA"), for failure to perform a non-discretionary duty under the Clean Air Act, 42 U.S.C. §§ 7401 through 7671q.

Section 126(b) of the Clean Air Act, 42 U.S.C. § 7426(b), authorizes any state to petition the EPA for a finding that a major source or group of stationary sources in upwind states emits air pollutants in violation of the prohibition of Clean Air Act section 110(a)(2)(D)(i)[1] by contributing significantly to nonattainment or maintenance problems in downwind states. On November 16, 2016, Maryland served the EPA with a petition pursuant to section 126 of the Clean Air Act, seeking a finding that 36 power plant units located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting nitrogen oxides ("NOx") in violation of the prohibition of 42 U.S.C. § 7410(a)(2)(D)(i), commonly referred to as the "good neighbor provision", by significantly contributing to Maryland's nonattainment or interfering with its maintenance of the 2008 and the revised 2015 8-hour ozone National Ambient Air Quality Standards.

[1] The text of 42 U.S.C. § 7426(b) cross references Clean Air Act section 7410(a)(2)(D)(ii) instead of 7410(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to section 7410(a)(2)(D)(i). *See* Appalachian Power Co. v. EPA, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

Pursuant to 42 U.S.C. § 7426(b), "[w]ithin 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition." On January 3, 2017, the EPA issued itself a six-month extension of time to act on the petition pursuant to 42 U.S.C. § 7607(d)(10). *See* 82 Fed. Reg. 22-01 (January 3, 2017). In accordance with that extension, the EPA was required to act on Maryland's petition no later than July 15, 2017. *Id* at 23. As of the date of this notice, that deadline has expired.

To date, the EPA has not taken action on Maryland's section 126 petition, nor has the EPA held or scheduled a public hearing on the matter, despite its legal obligation to do so pursuant to 42 U.S.C. § 7426. Consequently, the State of Maryland is writing to provide notice that it intends to file suit against the Administrator and the EPA for failing to timely perform a nondiscretionary duty under the Clean Air Act to act on Maryland's petition. This letter provides notice under section 304 of the Clean Air Act, 42 U.S.C. § 7604(b), and 40 C.F.R. Part 54. Pursuant to 40 C.F.R. § 54.3, the Administrator is hereby notified that the name and address of the person giving the notice on behalf of the State of Maryland is shown below. Unless the EPA takes the required actions before the end of the applicable notice period, the State of Maryland intends to bring suit in the United States District Court for the District of Maryland under section 304 of the Clean Air Act, 42 U.S.C. § 7604(a)(2).

Sincerely,

Ben Grumbles
Secretary

cc: The Honorable Larry Hogan, Governor of Maryland
The Honorable Brian E. Frosh, Attorney General of Maryland
The Honorable Jeff Sessions, Attorney General of the United States