

**ORAL ARGUMENT NOT YET SCHEDULED**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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American Lung Association, <i>et al.</i> ,		)	
		)	
<i>Petitioners,</i>		)	
		)	No. 19-1140
v.		)	(and consolidated cases)
		)	
U.S. Environmental Protection Agency, <i>et al.</i> ,		)	
		)	
<i>Respondents.</i>		)	
<hr/>		)	

**NOTICE REGARDING MOTION FOR ABEYANCE**

Environmental and Public Health Petitioners respectfully submit this Notice in connection with their motion to hold these consolidated cases in abeyance pending the Environmental Protection Agency’s final action on its proposal to amend its New Source Review regulations. Mot. of Env’tl and Pub. Health Pet’rs for Abeyance Pending Final Action on Proposed Revisions to the New Source Review Program and Final Action on Pets. for Admin. Recon., ECF No. 1807492 (Sept. 20, 2019) (“Abeyance Mot.”).

The New Source Review proposal was issued with, and as a complement to, the proposed Affordable Clean Energy (ACE) rule; it would relax existing pollution-control requirements to facilitate the kinds of coal-plant upgrades upon

which the ACE rule is based. Abeyance Mot. 7-10. As our Motion demonstrates, EPA's final action on that proposal will necessarily and profoundly affect review of the ACE rule. Abeyance Mot. 14-17.

By this Notice, we inform the Court that on November 20, 2019, the Office of Management and Budget released its latest Unified Agenda of Regulatory and Deregulatory Actions, which says that final action on the New Source Review proposal is expected by March 2020. A copy of the relevant page of the Unified Agenda is attached as Exhibit A.<sup>1</sup>

Respectfully submitted,

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<sup>1</sup> The entry for the New Source Review proposal is available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=2060-AU58>.

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Dated: November 20, 2019

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**CERTIFICATE OF SERVICE**

I certify that on November 20, 2019, the foregoing Notice Regarding Motion for Abeyance was filed via the Court's CM/ECF system, which will provide electronic copies to counsel of record.

/s/ Sean H. Donahue

## **EXHIBIT A**

**RIN Data****EPA/OAR****RIN:** 2060-AU58**Publication ID:** Fall 2019**Title:** •Hourly Emissions Increase Test for the New Source Review Program**Abstract:**

In August 2018, EPA proposed to revise the New Source Review (NSR) program in conjunction with the Affordable Clean Energy (ACE) rule to make available to states an NSR applicability test for electric generating unit (EGU) modifications based on hourly emissions. Under the proposed NSR revisions, if a physical or operational change would not increase the hourly emissions of the EGU facility, it would not trigger major NSR; however, if the EGU's hourly emissions would increase after the change, then the source facility's projected annual emissions increase would be reviewed using the existing NSR applicability test. This action will finalize the NSR revisions that are no longer part of the ACE rule, so this action is intended to finalize the NSR revisions through a separate rulemaking.

**Agency:** Environmental Protection Agency(EPA)**Priority:** Other Significant**RIN Status:** First time published in the Unified Agenda**Agenda Stage of Rulemaking:** Final Rule Stage**Major:** Yes**Unfunded Mandates:** No**EO 13771 Designation:** Deregulatory**CFR Citation:** [40 CFR 51](#) [40 CFR 52](#)**Legal Authority:** [42 U.S.C. 7401 et seq.](#)**Legal Deadline:** None**Timetable:**

Action	Date	FR Cite
Final Action	03/00/2020	

**Regulatory Flexibility Analysis Required:** No**Government Levels Affected:** Federal, State, Tribal**Small Entities Affected:** No**Federalism:** No**Included in the Regulatory Plan:** No**RIN Data Printed in the FR:** No**Agency Contact:**

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