

First, the evaluation summarized in the Technical Memo excludes units that have shut down, will shut down, or will no longer burn coal/oil by December 31, 2028, or reported data in lbs/MWh.²⁶ By failing to include units that will shut down or no longer burn coal/oil by December 31, 2028, EPA is not appropriately accounting for units that are likely emitting fPM at levels closer to the current standard than the more stringent proposed fPM limit. EPA should have accounted for such units given that affected EGUs will have up to three years after the effective date of the final rule to demonstrate compliance with the revised limit, and some of the excluded units may not have retired or ceased burning coal or oil by the compliance deadline.²⁷ These units should be included when evaluating what fPM levels current technologies are capable of achieving.

If the final rule is issued before December 31, 2025, or if the announced retirements are delayed, these excluded units might become subject to a tighter standard that they cannot meet without large capital outlays to install PM control technology despite near-term projected fuel switches or retirement dates that would render such investments not cost-effective. Units that are retiring in the near-term and cannot meet the fPM limit without the installation of controls could be forced to shut down early, which could destabilize electric reliability in their service areas and could have long-lasting effects. Significant dollars would need to be spent to restart certain generating facilities if it is later determined that the decision to shut down early was detrimental to reliable grid operations. A compliance date based on three years after the final rule's effective date is inconsistent with other recent EPA rulemakings, which recognize that significant investments in emissions controls should not be required for EGUs that will retire in the near-term.

Second, the evaluation is based on selected quarterly data from 2017, 2019, and 2021.²⁸ The Agency fails to explain how and why it selected the specific quarterly data for those years for its evaluation when EPA has all quarterly tests and PM CEMS for the entire fleet since the effective date of the original MATS rule.²⁹ The Agency also fails to explain why it used a single quarter of data to present the unit's "baseline" and why "[t]he 99th percentile of the *lowest* quarter was chosen to describe the baseline fPM rate for each EGU."³⁰ This results in a questionable dataset comprised of an extremely small industry sample size and where a single data point is narrowed down for each EGU. For example, for Colstrip, EPA utilized a baseline of 0.018 lb/MMBtu fPM for Unit 3 and 0.021 lb/MMBtu fPM for Unit 4.³¹ These numbers do not reflect what is consistently achievable for Colstrip, as Colstrip has already optimized its existing controls to the greatest extent

²⁶ See Technical Memo at PDF p. 2.

²⁷ 88 Fed. Reg. at 24,868, fn. 20. EPA excluded units that have *announced* that they will shut down by the end of 2028 based on the National Electric Energy Data System ("NEEDS") database, but such retirement plans are not legally binding and thus such units should *not* be excluded from the Agency's evaluation.

²⁸ Technical Memo at PDF p. 2. ("Quarterly data from 2017 (variable quarters) and 2019 (quarters three and occasionally four) were first reviewed because data for all affected EGUs subject to numeric emissions limits had been previously extracted from CEDRI. In addition, the EPA obtained first and third quarter data for calendar year 2021 for a subset of EGUs with larger fPM rates (generally greater than 1.0E-02 lb/MMBtu for either 2017 or 2019).")

²⁹ The fact that this information had previously been extracted from CEDRI is no explanation at all. See *id.*

³⁰ Technical Memo at PDF p. 4. (emphasis added).

³¹ See *id.* at PDF p. 4; Appendix C, *id.* at PDF p. 46.