

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Regan:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for the planned proposed rulemaking entitled “Emission Standards for New, Reconstructed, and Modified Sources in the Oil and Natural Gas Sector.” This notice of proposed rulemaking is being developed by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act (CAA).

On January 20, 2021, President Biden issued Executive Order (EO) 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” EO 13990 describes the Administration’s policy “to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.”

EO 13990 directs EPA to consider proposing a rulemaking to reduce methane emissions in the Oil and Natural Gas source category by suspending, revising, or rescinding previously issued new source performance standards. It also instructs EPA to consider proposing new regulations to establish comprehensive standards of performance and emission guidelines for methane and VOC emissions from existing operations in the oil and natural gas sector, including the exploration and production, processing, transmission, and storage segments.

In response to EO 13990, EPA is proposing NSPS amendments to include new or amended standards for GHG and VOC emissions for certain new, modified, and reconstructed equipment, processes, and activities across the oil and natural gas source category.

On July 15, 2021, the EPA’s Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Director of the Sector Policies and Programs Division of the EPA Office of Air Quality Planning and Standards, the Acting Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Acting Chief Counsel for Advocacy of the Small Business Administration (SBA). It is important to note that the Panel’s findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during this process as well as from public comment on the proposed rule. The options the Panel identified for reducing the rule’s economic impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with the CAA.

SUMMARY OF SMALL ENTITY OUTREACH

Prior to convening the Panel, EPA conducted outreach with small entities that will potentially be affected by these regulations. In June 2021, EPA invited SBA, OMB, and 22 potentially affected small entity representatives to a conference call and solicited comments from them on preliminary information sent to them. EPA shared the small entities’ written comments with the Panel as part of the Panel convening document.

After the SBAR Panel was convened, the Panel distributed additional information to the small entity representatives (SERs) on July 15, 2021, with additional materials sent on July 22, 2021, for their review and comment and in preparation for another outreach meeting. On July 29, 2021 and August 3, 2021, the Panel met with the SERs to hear their comments on the information distributed in these mailings. The SERs were asked to provide written feedback on ideas under consideration for the proposed rulemaking. The Panel received written comments from the SERs in response to the discussions at this meeting and the outreach materials. See Sections 6 and 7 of the Panel Report for a complete discussion of SERs' comments.

The SERs' full written comments are also included in Appendix B. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

PANEL FINDINGS AND DISCUSSION

Under section 609(b) of the RFA, the Panel is to report its findings related to these four items:

- 1) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.
- 2) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- 3) Identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap, or conflict with the proposed rule.
- 4) A description of any significant alternatives to the planned proposed rule which would minimize any significant economic impact of the proposed rule on small entities consistent with the stated objectives of the authorizing statute.

The Panel's most significant findings and discussion with respect to each of these items are summarized below. To read the full discussion of the Panel findings and recommendations, see Section 8 of the Panel Report.

A. Number and Types of Entities Affected

EPA is currently working to determine small business concentrations for affected facilities in the proposed rule. EPA estimates that 90 percent of well sites and 62 percent of natural gas processing plants are owned by small businesses.

B. Recordkeeping, Reporting, and Other Compliance Requirements

The Panel recommends that EPA assess ways to simplify the electronic reporting template for small businesses and offer small business consultation during the next update of the template. The Panel recommends that reporting and recordkeeping requirements should be aligned to existing business practices to the extent possible.

Advocacy recommends that EPA reduce reporting requirements to only information necessary to target enforcement with the NSPS. EPA believes that reporting should include information to assure compliance as well as target enforcement.

Advocacy recommends that EPA adopt the state equivalency provisions from the 2020 Technical Rule¹ for methane to the extent that existing state programs have the practical effect of regulating methane emissions as part of VOC emission controls. EPA recommends that the proposed revisions include state equivalency provisions for those states determined to be equivalent in the 2020 Technical Rule that regulate both VOC and methane. EPA recommends extending this equivalency determination to NSPS OOOOb for states that regulate both VOC and methane at a level equivalent to the new proposed NSPS.

C. Related Federal Rules

There are several federal rules related to the Oil and Natural Gas Sector, spanning various agencies:

- Department of Interior - Bureau of Land Management (BLM) and Bureau of Ocean Energy Management
- Department of Transportation - Pipeline and Hazardous Materials Safety Administration
- Department of Energy – Federal Energy Regulatory Commission
- Internal Revenue Service

Section 2.4 of the Panel Report contains a detailed discussion of the related federal rules.

D. Regulatory Flexibility Alternatives

Rule Scope

The Panel recommends that EPA solicit comment on appropriate definitions for ‘tight formation’ and ‘high rate, extended flowback’ to clarify the proposal’s applicability. Advocacy recommends that EPA propose definitions with numerical standards that give meaning to the entire regulatory definition of “hydraulic fracturing,” based on the SERs’ characterization of the distinction between geological formations and operational characteristics likely to be the source of significant methane emissions.

Fugitive Emissions Requirements – Monitoring Frequency

Advocacy recommends that EPA propose aligning the monitoring frequency in NSPS OOOOa with the revised provisions for VOCs in the 2020 Technical Rule. EPA recommends that it reanalyze the best system of emission reduction for both pollutants, acknowledging that what was found to not be cost-effective for VOC in the 2020 Technical Rule may change when accounting for emission reductions of both VOC and methane.

Fugitive Emissions Requirements – Low Production Well Sites

The Panel recommends EPA propose fugitive emission requirements that target sources with large emissions or super emitters. EPA and Advocacy recommend that such a proposal impose fewer requirements on sources that are less likely to emit methane and/or have demonstrated a history of insignificant emissions. Advocacy and EPA recommend that, if EPA proposes annual screening requirements, these requirements contain clear thresholds for follow-up monitoring, including a de minimis level that warrants no further action. Advocacy further recommends that EPA solicit comment on regulatory alternatives to minimize the number of well sites subject to monitoring, particularly at well sites that emit insignificant amounts of methane. EPA recommends that it solicit comment on regulatory alternatives that prioritize monitoring on well sites that emit significant amounts of methane.

The Panel further recommends that EPA solicit comment on regulatory alternatives for low production well sites. EPA and Advocacy note that such a solicitation should include a range of options, including exempting these sites and providing an offramp for well sites that later become low production well sites, such as EPA has proposed in the past. The Panel recommends that EPA solicit comment on the factors that could make certain well sites less likely to emit methane, including geologic features, equipment

¹ Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration. 85 FR 57398 (September 15, 2020).

onsite, production levels, and any other factors that could establish the basis for an exemption or off-ramp. The Panel further recommends that EPA solicit comment for additional data, such as the DOE study, that assess the emissions from low production well sites and subsequently use this data to evaluate how monitoring requirements can be tailored to address sources mostly likely to be the sources of largest emissions and, if warranted, subcategorize sources unlikely to emit significant amounts of methane.

Fugitive Emissions Requirements – Exemptions

EPA and Advocacy recommend that EPA should maintain the wellhead-only exemption from fugitive emissions requirements in NSPS OOOOa and propose a similar provision in the proposal for NSPS OOOOb.

Fugitive Emissions Requirements – Monitoring Technology

The Panel recommends continuing to allow EPA Method 21 as an option for fugitive emissions monitoring. The Panel recommends that EPA engage in additional outreach to small entities to ensure that there is an adequate understanding of the requirements and flexibilities that are already part of Method 21.

EPA recommends maintaining audio, visual, and olfactory (AVO) inspections in limited circumstances in NSPS OOOOb. Advocacy recommends EPA propose allowing AVO as an alternative in limited circumstances, such as part of an off-ramp for facilities unlikely to emit more than insignificant methane or with a demonstrated history of insignificant emissions.

Fugitive Emissions Requirements – Alternative Technology

The Panel recommends that EPA consider the cost and scope of alternative technologies and propose alternative screening technologies. EPA and Advocacy support proposing alternative screening technology as a compliance option rather than an additional regulatory requirement. The Panel further recommends that EPA try to minimize significant additional reporting and recordkeeping requirements. EPA and Advocacy recommend proposing emissions thresholds for alternative screening technology that would allow small businesses to adopt any alternative compliance options without significant additional reporting or recordkeeping requirements and without needing to seek prior approval or changes to Clean Air Act permits.

Pneumatic Controllers

EPA and Advocacy recommend that EPA only propose zero emission controllers at sites with reliable and consistent onsite power available and clearly state that the intent is not require the installation of electric services for this purpose.

Liquids Unloading

Advocacy recommends that EPA not propose liquids unloading requirements. Advocacy is concerned that a best management practice written into a regulation, particularly one that is very 'site-specific,' will not provide small entities clear instructions and lead to confusion and significant risk of unwarranted enforcement actions. In addition, Advocacy is concerned that EPA did not present the panel or SERs more specific information about the need to regulate liquids unloading or likely costs. Should EPA propose liquids unloading requirements, Advocacy recommends that EPA only propose best management practices during liquids unloading operations that align with industry best practices and give operators clear discretion to manage on-site operations to minimize venting and ensure operational safety. Further, Advocacy recommends that the proposal explicitly recognize the wide range of legitimate and allowable practices during liquids unloading that may result in some emissions. Advocacy recommends EPA require only limited recordkeeping associated with any liquids unloading operation and not require any reporting.

EPA recommends that the NSPS OOOOb proposal include a robust set of best management practices during liquids unloading operations to minimize venting. The industry best practices provided by a SER allow exemptions for multiple types of liquids unloading operations, including swabbing and the use of plunger lifts, and suggest only monitoring the manual unloading process and closing wellhead vents to the atmosphere as soon as practicable. EPA believes that the industry best practices are not sufficient to minimize venting from liquids unloading operations, and in particular, the number of exemptions would allow a significant portion of this emissions source to go unregulated.

The Panel recommends that EPA solicit comments on exemptions for operations that may be unlikely to result in emissions, such as wellheads that are not operating under positive pressure.

Storage Vessels

EPA and Advocacy recommend that EPA propose that NSPS OOOOb applies to tank batteries rather than single storage vessels. EPA and Advocacy agree that EPA propose an off-ramp for tank batteries with emissions that later fall below a certain threshold of VOC and methane emissions.

SERs raised concerns that situations exist where propane or other fossil fuel must be used to maintain continuous pilot lights for flares that serve as control devices on storage tanks that do not produce enough emissions. The Panel agrees that this issue deserves greater study, including whether the GHG benefits of these control devices are negated by the need to burn additional fossil fuels and whether additional factors exist that may cause variability in emissions from storage tanks or could be used to more narrowly target these requirements to limit the unnecessary operation of flares. The Panel recommends that EPA request comment on this issue.

The Panel recommends that EPA continue to consult with BLM on its oil and gas regulations to ensure the regulations are harmonized, good government practice, and that owners and operators have clarity on compliance requirements if they are subject to both BLM and EPA regulations.

Compressors

Advocacy recommends that, if EPA proposes a rod packing requirement based on flow measurement or other performance standard, EPA should propose an alternative compliance strategy based on time in service or hours of operation. EPA believes that the flow measurement is a straightforward and low cost compliance strategy. EPA recommends maintaining the alternative compliance strategy of routing reciprocating compressor emissions to a process.

EPA and Advocacy agree that, if EPA proposes to regulate compressors at centralized production facilities, the definition these facilities should clearly exclude single well head sites with small compressors.

Certification by Professional Engineers

Advocacy and EPA recommend that EPA maintain the flexibility for in-house engineers to complete certifications in NSPS OOOOa and include this same flexibility in NSPS OOOOb.

Sincerely,

**WILLIAM
NICKERSON**

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NICKERSON
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William Nickerson
Small Business Advocacy Chair
Office of Policy
U.S. Environmental Protection Agency

**SHARON
BLOCK**

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SHARON BLOCK
Date: 2021.09.24 15:58:15
-04'00'

Sharon Block
Acting Administrator
Office of Information and Regulatory Affairs
U.S. Office of Management and Budget

MAJOR CLARK

Digitally signed by MAJOR CLARK
Date: 2021.09.23 06:53:23 -04'00'

Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration

PENNY LASSITER

Digitally signed by PENNY
LASSITER
Date: 2021.09.21 08:39:47 -04'00'

Penny Lassiter
Director, Sector Policies and Programs Division
Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency

Enclosure