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EPA Unveils 2023 Methane Emissions Rule for Oil and Gas Operations

On Saturday, December 2, during the United Nations Climate Change Conference in the United Arab Emirates, the U.S.

Environmental Protection Agency (EPA) announced new Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Gas Sector Climate Review, which had been signed by EPA Administrator Michael Regan on November 30, 2023. The 2023 Methane Rule will apply to new and existing upstream and midstream oil and gas operations, including oil and gas wells, well sites, their associated equipment, natural gas processing plants, storage facilities, and compressor stations.

The 2023 Methane Rule imposes several new methane emission requirements on the oil and gas industry. These include:

- For new, reconstructed, and modified covered sources (the “New Source Performance Standards” or “NSPS”), to be codified in 40 CFR Part 60, Subpart OOOOb (“Quad Ob”):
 - Adding control requirements for various oil and gas emissions sources (for example, well sites, storage tanks and vessels, process controllers, well liquids unloading, compressors, pumps, well completions, equipment leaks at natural gas processing plants, and flares);
 - Setting new fugitive emissions monitoring requirements for well sites and other emissions sources; and
 - Phasing out routine flaring of natural gas over two years and requiring instead routing to a sales pipeline, using the gas for another useful purpose, or recovering and re-injecting the gas into a well.
- For the first time at the federal level, requiring states to promulgate regulations to control methane emissions from existing oil and gas equipment that pre-dates EPA’s standards for control of methane emissions from new (or reconstructed or modified) equipment. Emissions guidelines

and requirements for state implementation plans (“SIPs”) on existing sources will be codified in 40 CFR Part 60, Subpart OOOOc (“Quad Oc”). The requirements of Quad Oc for existing sources are similar to the requirements of Quad Ob for new sources. EPA’s comparison table is available here: [Summary of Standards.](#)

- Establishing a new, “Super-Emitter Program” under which EPA will certify third parties from which EPA will accept data regarding emissions at an oil and gas facility from an abnormally large event, referred to in the Rule as a super-emitter event. A super-emitter event is any emissions event located at an oil and natural gas facility (e.g., individual well site, centralized production facility, natural gas processing plant, or compressor station) and that is detected using remote detection methods and has a quantified emission rate of 100 kilogram per hour of methane or greater. Many industry commenters questioned EPA’s authority under the Clean Air Act to promulgate the Super-Emitter Program. Key aspects of the program are:
 - If a report is received from a third-party certified by EPA, and the report meets criteria stated in the Rule, EPA will notify the owner or operator, who must then investigate, repair, and submit the results of the investigation to EPA.
 - Third parties are limited to using remote sensing technologies and are not authorized to enter oilfield facilities.
 - The Rule defines the information third parties must submit in their requests to EPA to be certified to submit reports under the Super-Emitter Program.
 - The Super-Emitter Program will be administered by EPA, not the states.

The Rule becomes effective 60 days after publication in the Federal Register. New, reconstructed, and modified sources will be required to comply with the performance standards in Subpart Quad Ob two years after publication. Existing sources will be required to comply

with Subpart Quad Oc five years after publication. The five year time frame is intended to allow states time to adopt final regulations implementing the Quad Oc emissions guidelines for existing sources and obtain U.S. EPA approval of revised SIPs. Revised SIPs are due to U.S. EPA 24 months after publication of the Rule in the Federal Register. Existing sources would be required to comply with the new state rules 36 months after the SIP submission deadline. If a state fails to submit a satisfactory plan, the EPA will promulgate a federal plan for the state.

Some major oil companies reportedly support the 2023 Methane Rule, but it is likely to increase costs and regulatory burdens on the oil and gas industry, especially for smaller operators and operators of older oil and gas wells, many of which are lower production, and infrastructure not subject to NSPS. Some state environmental authorities may already have adopted methane rules applicable to existing sources in their states, and oil and gas owners and operators in those states should analyze the 2023 Methane Rule for changes specific to new sources in their states of operation. Owners and operators should also follow the state implementation plan process to analyze and, if advisable, comment on changes proposed in SIPs applicable to existing sources. Industry commenters questioned EPA's statutory authority for some of the requirements of the new Rule, particularly with respect to the Super-Emitter Program. If the Rule is challenged, as appears likely, it will be important to monitor the litigation on the super-emitter program and other aspects of the rule subjected to judicial review.

Frost Brown Todd LLP has experienced energy and environmental lawyers with national practices from sixteen offices in eight states, including several offices in important oil-and-gas producing regions. We are well versed in issues arising under the Clean Air Act with respect to oil and gas operations and ready to help clients interpret and follow new developments relating to the new NSPS, emissions guidelines, and Super-Emitter Program for methane emissions from oil and gas activities.

For more information please contact any attorney in Frost Brown Todd's [Oil, Gas & Minerals](#) industry team.

The U.S. EPA's press release on the 2023 Methane Rule is available [here](#).

The pre-publication Rule and U.S. EPA's fact sheets are available [here](#). This link includes additional links to comparison tables and technical guidance prepared by U.S. EPA.

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