



December 15, 2021

VIA ELECTRONIC SUBMISSION

The Honorable Michael S. Regan
Administrator
Environmental Protection Agency
Washington, DC 20460

Re: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (Docket ID EPA-HQ-OAR-2021-0317)

Dear Administrator Regan:

On November 15, 2021, the Environmental Protection Agency (EPA) published a proposed rule titled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.”¹ On Monday, December 13, EPA announced an extension of the comment period to January 31, 2021. The Office of Advocacy (Advocacy) requests EPA further extend the public comment period for this proposed rule by 45 days.

I. Background

A. The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA). As such, the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small

¹ 86 Fed. Reg. 63110 (November 15, 2021)

² 5 U.S.C. §601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

B. The Proposed Rule

On November 15, 2021, EPA published a proposed rule that would revise and update the New Source Performance Standards (NSPS) for Oil and Gas production under Clean Air Act (CAA) section 111(b) and Emissions Guidelines for existing Oil and Natural Gas production sources under CAA section 111(d). This proposed rule would directly regulate methane emissions from new and modified sources and establish requirements for states to regulate methane emissions from existing sources. Existing sources includes some sources subject to EPA regulation under past and current NSPSs for this industry and some sources never before subject to EPA regulations. On December 13, EPA announced that it would extend the comment period to January 31, 2021.

The proposed rule and supporting materials are voluminous. The proposed rule preamble is over 150 pages in the Federal Register (with no published rule text) and makes 188 separate requests for information and/or public comment.⁶ The supporting documents include a Technical Support Document (TSD), which provides the technical details in support of EPA's determinations of the appropriate regulatory stringency. The TSD is over 300 pages, but the details and assumptions of EPA's calculations are in a dozen separate supporting spreadsheets. In addition, EPA states that it intends to issue a supplemental proposal after public comment that would provide regulatory text and perhaps expand the scope and/or stringency of the rule.

In advance of the proposed rule, EPA convened a SBREFA panel to consult with small entity representatives (SERs). While EPA did present to the small entities some of the regulatory options presented in the eventual proposed rule, the SERs did not have an opportunity to provide feedback on the technical details and assumption underlying EPA's initial cost effectiveness calculations. Similarly, after publication of the proposed rule, EPA held training sessions for

⁴ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁵ *Id.*

⁶ See U.S. Environmental Protection Agency, [Memorandum to Docket ID No. EPA-HQ-OAR-2021-0317. Subject: Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review – Proposed Rule Summary of Comment Solicitations](#), (November 1, 2021) [Regulations.gov Document ID EPA-HQ-OAR-2021-0317-0028](#).

small entities to facilitate their participation in the rulemaking, but these sessions focused on the contents of the proposed rules rather than the technical justifications.

II. Request for Extension of the public comment period

EPA has requested comments on this important rule by January 31, 2021, 77 days after publication in the Federal Register and release of the supporting information in the regulations.gov docket. This is an unreasonably short comment period for the scale and scope of the proposed rule. EPA should further extend the comment period by 45 days.

Small businesses and trade associations that represent their interests have expressed their concern that the complexity of the EPA proposal, the open-ended nature of some of the requests for comments, ambiguities in the proposal due to a lack of regulatory text, and the large number of previously unregulated sources that might be subject to the rule are making it extremely difficult to fully understand and comment on the rule. Small businesses want to contribute to EPA's understanding of the oil and natural gas production industry, correct potential errors in EPA's calculations, and project the unintended negative consequences of this proposal, to industry participants, to their suppliers and customers, and to the environment. However, this is not possible given the short time frame.

EPA has already received requests for an extension of the comment period from trade associations representing a range of oil and natural gas producers, large and small, and the two major associations representing state clean air regulators. Small businesses face the additional challenge that their operations are generally very lean, with regulatory compliance staff already overburdened. This same staff is being asked to also work on this complicated and voluminous proposal; at the same time the comment period both overlaps with the major holiday season and with a range of end-of-the-year compliance activities. EPA's extension of the comment period by 17 days ameliorates some of this impact but does not fully address the difficulty that small businesses are having understanding this complex rulemaking.

A further extension of the public comment period would also allow for small businesses to incorporate the results of the highly anticipated study sponsored by the Department of Energy, "Quantification of Methane Emissions from Marginal (Small Producing) Oil and Gas Wells." During the SBREFA panel, SERs strongly recommended that EPA delay the proposed rule until EPA could incorporate results of the study into its findings. Advocacy understands that this study should be released by the end of this calendar year. A further extension will give small businesses an opportunity to relate the results to their operations.

Advocacy believes that the prospect of a supplemental proposed rule and subsequent comment period are not a substitute for a further extension of this comment period. EPA has put forward this proposal as is, with the extensive request for comments and complex technical supporting documents. EPA should allow for a full consideration of these issues as they are now presented and respond to this public input in the supplemental. It does not serve the public interest for EPA to work on a supplemental proposal with incomplete information. Similarly, EPA should not rely on future comment periods to justify a decision to not further extend this comment period; any

supplemental proposal that does not benefit from the full and considered input of affected small entities is bound to be flawed.

III. Conclusion

Advocacy appreciates the efforts EPA has made in this proposed rule to identify and address small business concerns. However, EPA's efforts have focused on educating the public on the contents of the rule rather than the legal and analytical justification for the rule. Advocacy urges EPA to extend further the public comment period by 45 days to allow for small businesses to participate more meaningfully in this rulemaking process. Such extension will allow small businesses the time and preparation necessary to provide comprehensive and detailed comments and participate meaningfully in the regulatory process.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Dave Rostker at (202) 285-6860 or by email at david.rostker@sba.gov.

Sincerely,

/s/

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

/s/

Dave Rostker
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: Sharon Block, Associate Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget